

The Legal Position of the Time Chartered Operator: Evaluating the Legal
Risks and Potential Responses of the Time Charterer Which Sub-Charters on
Voyage Terms

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In memory of Paul Russell Wereley 1939 - 2013

A great shipping man, but more importantly a great guy.

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ABSTRACT

There are many major shipping companies which operate fleets comprised largely of vessels which are time chartered and subsequently sub-chartered on voyage terms. Legal risks will arise for the time charterer due the differing natures and terms of time and voyage charters. The essential question examined in this thesis is that of whether, and to what extent, legal risk can be minimized by the negotiation of equivalent contractual terms under time and voyage charter parties.

The key areas addressed in this thesis are delivery under time charters compared to readiness under voyage charters, off hire under time charters versus suspension of laytime under voyage charters, obligations relating to cleanliness of cargo spaces, rights and responsibilities relative to safe berths and ports, the time charterer's position under bills of lading, and issues relating to redelivery of the vessel and consequent voyage charter liability if the vessel is unable to undertake the final voyage. The methodology applied is an examination of the case law, with a primary focus on the extensive body of English jurisprudence. This analysis of the case law is accompanied by a consideration of provisions of major charter party forms.

The analysis leads to the conclusion that risk, to varying degrees, can be minimized through the application and clarification of contractual language. With respect to readiness of the vessel it is considered that risk will be reduced through agreeing contractual language which requires early notification of the vessel's delay. As regards off hire and laytime wording that clarifies non physical deficiencies is proposed. With regard to vessel cargo spaces intermediate cleanliness is identified as the greatest risk. Safe port and berth warranties are determined to represent an area of easily manageable risk, while letters of indemnity relating to bills of lading

continue to represent very significant risk with suggested but no certain solution. Finally, with respect to redelivery a final voyage clause for time charters has been proposed which serves to almost eliminate risk in this area.

Therefore, it is broadly concluded that risk can be managed but not eliminated through drafting of appropriate contractual terms.

INTRODUCTION

This thesis undertakes a comparative study of voyage and time charter party law from the point of view of the ship operator, specifically examining the risks that the time charterer assumes which can and cannot be passed to either the vessel owner or the vessel voyage charterer, and further examines how these risks can be managed through the proper drafting of contractual terms.

This subject is important in that many ships are operated under time charters of various lengths; some vessels indeed spend their entire lives operating on time charter. In spite of this importance there is no consideration in the literature of the extent to which legal risks of the time charterer can be allocated to the owner or voyage charterer.

Therefore, the problem that this thesis will address is the extent to which contractual risks faced by the time chartered operator can be passed to one of the counterparties, and if not other methods through which these risks may be reduced.

The existing literature comprises of in depth examinations of both time and voyage charter party law. There is a wide range of books and articles examining these topics in both general and specific terms. These range from major works such as Time Charters,¹ Voyage Charters,² Carriage of Goods by Sea,³ Scrutton on Charter

¹ Terence Coghlin, Andrew W. Baker, Julian Kenny and John D. Kimball, *Time Charters*, 6th ed, (London, Informa, 2008) [*Time Charters*, 6th ed].

² Julian Cooke, Timothy Young, Andrew Taylor, John Kimball, David Martowski, LeRoy Lambert, *Voyage Charters*, 2nd ed, (London, Informa, 2007) [*Voyage Charters*, 2nd].

³ Stephen Girvin, *Carriage of Goods by Sea*, 2nd ed, (Oxford, Oxford University Press, 2011) [*Girvin*, 2nd].

Parties and Bills of Lading,⁴ all of which are specialist works dealing in depth with the law relating to charter parties, giving an outstanding treatment of their topics. There are also many lesser works that deal with charter parties, these books being typically generalist works on the subject of maritime law that include one or more chapters on charter parties.⁵ Significant books in this area include Shipping Law,⁶ Maritime Law,⁷ and The Carriage of Goods by Sea.⁸ The major Canadian works in this area are presently Maritime Law,⁹ which includes the usual individual examination of both time and voyage charters, and International Maritime and Admiralty Law,¹⁰ which gives the same treatment to the subject. There are many articles on the subject of charter parties however these typically deal with a specific aspects of charter parties and in particular recent legal developments. Major journals regularly publishing articles in the area of charter party law are The Journal of International Maritime Law, The Journal of International Maritime Law and Commerce, and the Lloyd's Maritime and Commercial Law Quarterly. These, and other, journals publish commentaries and articles on topical subjects dealing with charter party law, which tend to be practically oriented.¹¹ What has not been previously done is an analysis of the law of charter parties as it relates specifically to the position of the time chartered operator. The works in the field mentioned above examine the law

⁴ Bernard Eder, Howard Bennett, Steven Barry, David Foxton, Christopher Smith, *Scrutton on Charterparties and Bills of Lading*, 22nd ed, (London, Sweet & Maxwell, 2011) [*Scrutton*, 22nd].

⁵ Out of respect for their distinguished authors it must be clarified that the term "lesser" does not refer to quality, merely that these works are either more general treatments of the subject or broad works that limit their examination of charter parties.

⁶ Simon Baughen, *Shipping Law*, 4th ed, (London, Routledge-Cavendish, 2009) [*Baughen*, *Shipping Law*, 4th].

⁷ Christopher Hill, *Maritime Law*, 6th ed, (London, LLP, 2003) [*Hill*, *Maritime Law*, 6th].

⁸ John F. Wilson, *Carriage of Goods by Sea*, 6th ed, (Harlow, Pearson Education, 2009) [*Wilson*, *Carriage of Goods* 6th].

⁹ Edgar Gold, Aldo Chircop, and Hugh Kindred, *Maritime Law*, (Toronto, Irwin Law, 2003) [*Gold et al*]

¹⁰ William Tetley, *International Maritime and Admiralty Law*, (Cowansville, Yvon Blais, 2002) [*Tetley*, *Maritime and Admiralty*]

¹¹ For example, The Journal of Maritime Law and Commerce published John Weale "A Case of No Great Significance: Hogarth v. Miller (The Westphalia)", [1891] A.C. 48 34 J. Mar. L. & Com 683, an article dealing with off hire under time charters, and the Journal of International Maritime Law published Paul Todd, "Ransom Piracy and Time Charterparties", 18 JIML (2012) 3 193.

relating to charter parties well but not in a comparative sense. *Time Charters* deals uniquely with legal issues under time charter parties.¹² *Voyage Charters* does the equivalent for voyage charters.¹³ Scrutton, perhaps the most famous work in the field, examines both types of charter party, but looks at each topic individually,¹⁴ as does Stephen Girvin's *Carriage of Goods by Sea*.¹⁵ This is not to imply that there is no cross over between time and voyage charters in the literature, decisions from cases dealing with one type of charter are occasionally referenced in relation to the other type of charter, but this is where the topic occurs mutually, for example safe ports or seaworthiness, and does imply any comparative examination of the topics.

The originality of this thesis derives from the fact that the two types of charters are examined in a comparative context. This thesis is also valuable and original in that these topics are examined from the perspective of a time chartered operator and in addition to analysis this thesis suggests guidelines and approaches for risk management.

This thesis fills a gap in the existing literature in that there has been no previous analysis of charter party law from the perspective of the time chartered operator. This work analyzes areas of potential difficulties and additionally provides suggestions for dealing with these difficulties. Given that many ships are being operated by time chartered operators the practical value of this work is clear. It is also valuable in that it is novel perspective on charter party law generally and provides an opportunity to consider many cases in a different light, and in this way advances the field of maritime law.

¹² *Time Charters*, 6th ed, *supra* note 1.

¹³ *Voyage Charters*, 2nd, *supra* note 2.

¹⁴ *Scrutton*, 22nd, *supra* note 4.

¹⁵ *Girvin*, 2nd, *supra* note 3.

As this thesis undertakes an examination of the legal implications associated with being a time chartered operator it is necessary to place charter parties within the context of other contracts for maritime transport, and to consider the place of specific charter types within the broader category. This section will undertake the task of briefly describing maritime transport contracts, placing charter parties within the larger group, and giving an overview of charter parties. The introduction will also briefly examine the jurisdiction of the courts in the legal systems under consideration. This background information is also useful given the technical nature of the subject matter of this thesis. The movement of goods by sea is an unavoidably technical undertaking, and consequently the law relating to charter parties will inevitably be somewhat technical as well, and for this reason an effort has been made to include sufficient background information to assist the reader.

METHODOLOGY

This thesis has at its core an examination of the common law precedents related to charter party law. The focus in this thesis is the extensive body of case law established by the English Courts. This has been done for three fundamental reasons. The first is that there is very little precedent established by the Canadian Courts with respect charter party law.¹⁶ The second, and related, reason is that

¹⁶ An examination of the cases cited in *Maritime Law, Gold et al*, the most recent major Canadian work including the subject of charter parties, Chapter 8, section C. "Carriage by Charterparty" cites very few Canadian cases, these being: *Outtrim v British Colombia* [1948] 3 D.L.R. 273 (B.C.C.A.), a case dealing with demise charter, *Re Empire Shipping Co* [1940] 1 D.L.R. 695 (B.C.S.C), *Deep Sea Tankers Limited et al. v. The Ship "Tricape" et al.*, [1958] S.C.R. 585, dealing with a unique off hire clause, *N.M. Paterson & Sons Ltd. v Mannix Ltd.* [1966] S.C.R. 180, which dealt with the obligation of the crew to lash the cargo. Section E of the same work, dealing with time charters, cites only *Paterson Steamships Ltd v ALCAN* [1951] S.C.R. 852, which dealt with identity of carrier. None of these cases is recent, also none are influential in the development of charter party law, illustrated by the fact that none are cited in the major works on charter party law. One recent major international work, Stephen Girvin, *Carriage of Goods by*

Canadian Maritime Law is generally derived from English Admiralty Law,¹⁷ and as such in the absence of Canadian precedent it is logical that English cases should be examined. The third and most practical reason is that English law is still the most common legal system selected to govern charter parties,¹⁸ and it is therefore logical to focus on the English law perspective. However, given the international nature of maritime law cases from other jurisdictions will be referred to as appropriate. It must also be noted that authors in other jurisdictions, including civil law systems, will sometimes refer to English maritime law.¹⁹ United States authors will also refer to English maritime law.²⁰

PURPOSE

In line with the above this thesis outlines the basic law related to time and voyage charter parties from the perspective of the time chartered operator. Although a number of the cases referred to have already been widely examined and are key cases in the field it is necessary to consider them in order to place the topics in context and analyze them from the point of view of the time chartered operator. This study will fill a gap in the existing research by exploring the legal space in which

Sea, 2nd ed, (Oxford, Oxford University Press, 2011) cites several Canadian cases however none deal with charter party law.

¹⁷ Kieran E. Siddall, "The Confluence of Insolvency and Maritime Law in Canada, Navigating Troubled Waters", Lexpert Feature Articles, <http://www.lexpert.ca/directory/feature-articles/the-confluence-of-insolvency-and-maritime-law-in-canada-navigating-troubled-waters-12/> Viewed January 28, 2014, and *Gold et al*, *supra* note 9 at 5. With particular reference to charter parties this is illustrated by Chapter 8 of *Gold et al*, *supra* note 9, where by far the majority of cases cited are decisions of the Courts of England and Wales.

¹⁸ Britannia P & I Club Claims & Legal Volume 1: Number 3: November 2009 "Indian Law Provides a Trap for those Relying on Foreign Arbitration".

¹⁹ See for example, Pierre Bonassies, Christian Scapel, *Droit Maritime*, (Paris, L.G.D.J, 2006) [*Bonassies et al*].

²⁰ See for example Thomas J. Schoenbaum, *Admiralty and Maritime Law*, 3rd ed, (St. Paul, West Group, 2001), 675.

the time chartered operator exists and outline solutions to the identified areas of risk.

The hypothesis to be tested is that in general charter party risks encountered by the ship operator can be virtually eliminated through careful contractual drafting. This will be done through an examination and comparison of the case law relative to both types of charters. Once this first step is completed, the existing risks will be outlined and possible contractual remedies considered. Finally, the efficacy of these remedies will be evaluated and an assessment will be done of whether risk remains.

The chapters of this thesis are laid out in the logical order coinciding with the time the vessel is on charter, from delivery of the vessel, the intermediate stages related to the carriage of the cargo, and finally to redelivery. Each chapter commences with a hypothetical narrative placing some of the issues to be considered in a practical context, in order to illustrate that these are not merely theoretical considerations.

Chapter 1 is a comparative analysis of delivery and readiness. This chapter is representative of the one of the two broad categories of issues arising in this thesis, which is to say an issue that arises under one charter that has an equivalent but not exact duplicate under the other charter. Delivery and readiness are concepts that are entirely different, notwithstanding that they will often arise in tandem for the time chartered operator given that their timing can coincide. Therefore a vessel will often deliver to the time charterer at roughly the same time she is presenting as ready to the voyage charterer.

Chapter 2 considers the relationship between off hire and suspension of laytime. These concepts are technically different yet arise in conjunction because a theoretical

delay causing loss of time to the vessel will cause a time charterer to wish to place the vessel off hire and at the same time the voyage charterer will want to suspend the counting of laytime in port. The risk for the operator is that these concepts will not run in parallel and that the vessel will remain on hire but laytime will be suspended, thereby giving the time charterer no remuneration for the use of the vessel.

The third chapter examines cleanliness of vessel cargo spaces. This is an important issue for time charterers as under voyage charters risks related to vessel cleanliness rest with the contractual owner (in this case the time chartered operator) while under the time charter a great deal of responsibility is delegated to the time charterer. This is therefore an area which requires close attention from the perspective of the time charterer in order to minimize risk.

Chapter 4 analyzes safe ports and berths under the two types of charter. These concepts are essentially the same under both charters, however risk arises in that typical time and voyage charters contain different levels of warranties. This chapter explores how these differences may be contractually allowed for, and also when safe berth and port warranties may be implied under each type of charter.

Chapter 5 gives consideration to the question of bills of lading and the time chartered operator, with a particular focus on the practical questions surrounding clausings bills of lading and letters of indemnity.

Chapter 6 is the final substantive chapter and considers the question of redelivery. This concept has no equivalent under a voyage charter; a voyage charter effectively terminates upon completion of discharge. However under a time charter questions

arise with respect to final voyage orders and what constitutes a legitimate last voyage. A relationship with voyage charters arises owing to the fact that the time charterer may have committed to perform a last voyage which subsequently becomes illegitimate. Therefore, the time charterer must consider when determination of the validity of last voyage orders occurs relative to obligations under the voyage charter.

LIMITATIONS

The principal limitation of this thesis is that it does not attempt to cover every potential liability that the time chartered operator may encounter, it is limited to those which also involve the time charterer's relationship with the ship owner. Therefore, problems which arise uniquely under the time or voyage charter and do not give rise to any potential equivalent right or claim under the other type of charter are not considered.²¹

This work is not meant as a general reference for all those who time charter and operate vessels. In particular, this thesis examines the time chartered operator, which can be broadly defined as a company which time charts tonnage and then operates as the owner, the focus of this thesis is when such operators sub charter on voyage terms.

This has not been extended to the considerations of industrial and agricultural companies which time charter vessels in order to facilitate supply of either their inputs or outputs, although the analysis and conclusions contained in this thesis will

²¹ An example of this would be a claim against the owner for failing to meet the chartered speed or consumption.

incidentally apply to them when they utilize their time chartered vessels for third party business, as will happen when they do not have their own cargo for the vessel.

This thesis also does not undertake an examination of the risks that a vessel operator may face when either subletting a time chartered vessel on time charter terms or subletting a cargo booked in on voyage terms on sub voyage terms. Finally, notwithstanding consideration of bills of lading as related to letters of indemnity in chapter 5 this thesis does not address the time charterer that sub-contracts on bills of lading, rather than charter parties.

LEGAL SYSTEMS

The three primary legal systems to be considered in the context of this thesis are Canadian common law, English law and American law. As noted above English law is the legal system will be most often referenced.²²

English Law

Unlike Canada and the United States there is no division of powers between state and federal governments with reference to the laws of England and Wales. All claims of a maritime nature, with the exception of some claims for small amounts which would fall to the County Court,²³ are within the jurisdiction of the High Court of Justice.²⁴ In practice jurisdiction for maritime claims is exercised by the Queen's Bench Division, which includes the Commercial Court and the Admiralty Court. The

²² See section on methodology, *Supra* page 4-5.

²³ *County Courts Act 1984* (UK) ss.26-31.

²⁴ *S.5(5) Supreme Court Act 1981* (UK).

majority of claims relating to charter parties are heard by the Commercial Court,²⁵ although charter party claims are also within the scope of the Admiralty Court.²⁶ Actions in the Admiralty Court are generally reserved for cases where the claimant wishes to take action against the property of the defendant, and it is the Admiralty Court that is able to grant an arrest *in rem* against a vessel. Such an order is geographically limited to ports within the jurisdiction of the court, and therefore will only be useful when the asset is located within England

Canadian Law

Under the Canadian legal system there is significant legal power wielded by both the federal and provincial courts. The question therefore arises as to whether a charter party dispute falls within the competence of provincial or federal law. In Canada any legal issue of a maritime nature falls within the jurisdiction of federal law.²⁷ Therefore, in general, charter party disputes will be heard by the Federal Court of Canada.

The application of Federal law to charter party disputes is a certainty in the event that there is no express choice of law in the charter party. In this instance the question before the courts would be whether Canadian law was the proper law of the contract; the issue of whether federal or provincial law should apply would not be an issue. The question that arises is whether provincial law would apply if the parties were to contractually agree to apply the law of Quebec. In this case it is possible that the Civil Code of Quebec will be applied to the issue under consideration.

²⁵ Sir Alan Abraham Mocatta and Sir Michael J. Mustill, *Scrutton on Charterparties and Bills of Lading 19th Edition*, (London, Sweet & Maxwell, 1984) [*Mocatta et al, Scrutton 19th*] at p. 464.

²⁶ S.20(2)(h) *Supreme Court Act 1981* (UK), see also *The Alina* (1880) 5 Ex D 227 (CA) (UK).

²⁷ Federal Court Act R.S.C 1985 s.22, and see, for example, André Braen, "La Responsabilité de la société de classification en droit maritime canadien", (2007) 52 McGill L.J., 497, at 499-501

American Law

Like the Canadian legal system the United States has a division between State and Federal powers. Also similarly to Canada maritime jurisdiction in the United States is delegated to Federal law.²⁸ This leaves to determine the issue of whether a charter party claim would fall within the definition of admiralty law. It appears certain that this would be the case, in *Norfolk S. Ry v James N. Kirby, Pty Ltd*,²⁹ the United States Supreme Court held, with reference to a bill of lading, that as long as substantial carriage by sea was required then its purpose was to effect maritime commerce, and it would therefore be a maritime contract.³⁰ Charter parties fit comfortably within this test and there seems little doubt that charter party disputes fall within admiralty jurisdiction.

TOPICS NOT COVERED

There are areas of overlap between time and voyage charters that are not considered in this thesis. These topics have not been analyzed because they are either too simply solved or no clear risk exists. This thesis has been limited to an examination of topics that are relevant and sufficiently complex, when both the risk and solution are clearly obvious there is little point in examining the question in a work of this nature. The topics that are not covered will be, in any case, identified and outlined here.

²⁸ *U.S. Const* Art III, 2.

²⁹ *Norfolk S. Ry v James N. Kirby, Pty Ltd*, 543 U.S. 14, 30-35, 2004 AMC 2705, 2715-20 (2004) (US).

³⁰ *Ibid* at 27.

The first issue is that of description of the vessel. This is something which appears in both the time and voyage charter. Clearly, liability arises for the time charterer should he fail to describe the vessel accurately to the voyage charterer. However, liability is easily passed to the owner by using the same description as the owner provided in the time charter. This is the general practice and therefore there is little actual risk, and little of academic interest, in this area.

The second issue is that of the trading area. Time charters will generally limit the area where a vessel can trade while voyage charters will require that the vessel call at certain ports to load and discharge, and in other cases may even specify a certain route.³¹ This is a potential area of dispute that is easily avoided by simply ensuring that agreed ports and routes are within what is permitted in the charter party.

Similar issues arise with respect to excluded cargoes, although there can be more ambiguity in this respect. As with ports and areas, time charters will invariably include a list of cargoes which cannot be carried. This list will often extend to generalities, for example, no dangerous cargoes. As mentioned, ambiguities arise, particularly with cargoes that can be described by multiple names or whether a cargo is dangerous. These constitute questions of fact and as such the best advice that can be given is careful contractual drafting which gives, to the greatest extent possible, clarity in precisely which cargoes are excluded.

³¹ Recent years have seen piracy in the Gulf of Aden, with the result that in many charters the time charterer is prohibited from transiting the Gulf of Aden. This exclusion effectively means that a vessel cannot transit the Red Sea and consequently a vessel proceeding from the Atlantic to the Indian or Pacific Oceans that would normally find its shortest route via the Suez Canal would be forced to take the much longer route via the Cape of Good Hope.

Beyond this the key is to carry only cargoes which are permitted under the charter. Given the general ease with which this is manageable it is not a topic covered in this thesis.

Finally, the question of liability for damage inflicted on the vessel by stevedores must be considered. Under the time charter this will be the liability of the time charterer. Under the voyage charter, under free in and out terms, this will be the responsibility of the voyage charterer. Therefore, in general liability will flow through to the voyage charterer. However, it is in this case important to ensure that some of the technical provisions of the damage clauses are aligned, in particular when notice of damage must be given. Again, this is not in any way complicated and thus will not form part of the larger discussion in this thesis.

MARITIME TRANSPORT CONTRACTS

Broadly speaking there are three types of contract for maritime transport, these being common carriage, private carriage and towage.³² Common carriage is typically the carriage of goods under a bill of lading whereas private carriage is generally under a charter party.³³ While common and private carriage are distinct, they have more in common with each other than towage as a method of transportation of goods and this section will focus on the differentiation of common and private carriage.

The distinction between common and private carriage is the same under both English and American law. Common carriage under a bill of lading is distinguishable from private carriage under a charter party in that generally under private carriage the

³² Tetley, *Maritime and Admiralty*, *supra* note 10 at 43.

³³ *Ibid.*

charterer uses the entirety of the ship's capacity³⁴ and that a common carrier undertakes to transport goods for anyone who wishes to ship goods without variation of terms between customers.³⁵ It should be noted that carriage of multiple cargoes on a vessel does not preclude the carriage of multiple cargoes on the same ship at the same time; however there will be small number of consignments of cargo relative to a common carriage situation.³⁶ An example of the contrast between private and common carriage occurred in the American case of *Transportation by Mendez* where there was a combination of common and private carriage voyages on the same ship. In *Transportation by Mendez* the vessel *Grimsoy* had on board a shipment of the vessel operator's own merchandise, which was not in common carriage, and also somewhat over 2 tons of cargo consisting of 23 separate shipments, which were held to be in common carriage.³⁷

The common carrier is, at common law, subject to stricter liability than the private carrier. A common carrier will be liable for damage to goods arising from any causes other than acts of God or Queen's enemies, or inherent vice, essentially they are acting as an insurer of the goods, and if the goods are lost or damaged they are liable.³⁸ Under the *Civil Code of Quebec* the liability of the common carrier is similar to the common law position.³⁹ Unlike the position applicable to common carriers a private carrier can avoid liability if he can prove that he or his agents exercised reasonable care and diligence.⁴⁰

³⁴ Gustavus H. Robinson, *Robinson on Admiralty*, (St. Paul, West Publishing, 1939) at 593, [Robinson].

³⁵ *Semon v Royal Indemnity Co.*, 279 F.2d 737, 739 (5th Cir. 1960) (USA), see also *Mocatta et al, Scrutton 19th*, *supra* note 25 at p. 201 and Martine Remond-Gouilloud, *Droit Maritime 2e Edition*, (Paris, Pedone, 1993) [Remond-Gouilloud] at 459.

³⁶ For example, common carriage occurs on a container vessel where there can be over a thousand different consignments.

³⁷ 2 *U.S.M.C.* at 718-719.

³⁸ J.C.T. Chuah, *Law of International Trade*, 2nd Ed, (London, Sweet & Maxwell, 2001) at para 7-03.

³⁹ Art 2049 *Civil Code of Quebec*.

⁴⁰ *Mocatta et al, Scrutton 19th*, *supra* note 25 at 202.

Private carriage under charter parties is not regulated by any international conventions. There are three types of charter parties: voyage, time and demise. These will be explained more fully in the following sections. As outlined above, carriage under charter parties is private carriage, and the strict liability of the common carrier does not apply.

This thesis deals with time and voyage charter parties which falls within the realm of private carriage.

CHARTER PARTIES AND THE SHIP OPERATOR

Having briefly examined where private carriage fits into the larger framework of maritime transport contracts a brief overview of charter parties will be undertaken.

Charter parties can be divided into three types: voyage charters, time charters and demise (or bareboat) charters. However, the major division is between voyage and time charters on one hand and bareboat charters on the other.⁴¹ Voyage and time charters are contracts for the use of a ship, its equipment and crew, whereas demise charters are essentially for a lease of the hull of a ship, with the demise charterer taking responsibility for maintenance and provision of all necessities for the running of the ship, including items such as employing the crew and arranging most forms of insurance. Demise charters are often used as a financing tool and thus are considered to be significantly different from time and voyage charters in that while

⁴¹ Robinson, *supra* note 45 at 594 and Gold *et al*, *supra* note 9 at 379.

ownership does not transfer the demise charterer is effectively considered the owner of the vessel.⁴²

Voyage and time charters are both contracts for the use of a ship and under both charters the owner remains responsible for the technical running of the vessel. The functional difference between voyage and time charters arises in that under a voyage charter the owner of the vessel undertakes to ship a specified cargo between designated ports, whereas under a time charter the owner places the vessel at the disposal of the charterer for an agreed (approximate) period of time, and the charterer (within the limits of the contract) is free to commercially exploit the carrying capacity of the vessel during the currency of the charter. A key difference between time and voyage charters is the extent to which the charterer takes over the operation of the ship. Under a time charter the charterer has a far greater scope to give orders of an operational and commercial nature to the vessel.⁴³ Under a voyage charter the charterer has little authority over the activities of the ship, there is a contract to move a specified cargo between specified ports and the owner undertakes the operation of the vessel.

Unlike a traditional ship owner the ship operator does not own its own tonnage, but relies on time chartered vessels in order to meet its obligations to its customers.⁴⁴

The ship operator will charter vessels on time charter forms and sub charter on voyage charter forms, with the intention of making a profit. There are, however,

⁴² Sheldon A. Gebb, "The Demise Charter: A Conceptual and Practical Analysis", Tulane Law Review, Vol 49 Number 4 May 1975, 764.

⁴³ Under a time charter the charterer takes over responsibility for paying for a range of operational costs including fuel, port charges and canal tolls. Under a voyage charter the owner remains responsible for all these costs and the voyage charterer pays a fixed amount of freight.

⁴⁴ It must be pointed out that there are many shipping companies which use a combination of owned and time chartered tonnage.

legal risks associated with using different charter forms with varying terms, and the purpose of this paper is the examination of those risks.

Voyage Charters

Under a voyage charter the shipowner puts all or part of a ship at the voyage charterer's disposal for the carriage of cargo for a specified voyage,⁴⁵ or in some cases multiple voyages.⁴⁶ The parameters of the specified voyage will vary but at its simplest a voyage charter can be for the carriage of a full cargo of a specific commodity from one named port of loading to a named port of discharging. More complicated variations include voyage charters where the charterer is contracting for only part of the vessel, where there are multiple ports of loading and/or discharging, or where the loading and discharging ports are not specified but to be selected from a list, or are within a given geographical range. In some cases the charter party will also allow for the shipment of a variety of different commodities at the voyage charterer's option. These complexities necessitate additional contractual terms.

While most voyage charters have similar structure the terms contained therein vary by voyage charter form. There are a large number of standard forms in use, which are often designed for use in specific trades or for specific commodities, examples include the Norgrain charter (North American grain charter),⁴⁷ the Fertilvoy (fertilizer voyage charter party),⁴⁸ while the Gencon is considered a general voyage charter for use in trades where there is no specific form. It is vital to note that although the

⁴⁵ The term shipowner is used as a generic term for the party contracting as the owner in the voyage charter, and in this context may well encompass a time charterer who is sub chartering the vessel on voyage terms.

⁴⁶ This is a definition that is workable under both common and civil law. From an English law perspective see *Hill, Maritime Law* 6th, *supra* note 7 at 214. For a civil law point of view see French law: *loi de 1966*, art 5.

⁴⁷ See appendix A.

⁴⁸ *Ibid.*

word standard is used to describe voyage charters the printed text of all charter parties is amended to a lesser or greater extent during negotiations and furthermore additional terms will be added in rider clauses. However, there are certain issues that are addressed in virtually all voyage charters, even though the terms relative to these issues may vary. Therefore, in spite of the variations that arise in different forms it is possible to discuss the law of voyage charters in general terms as there exist commonalities among virtually all major forms in use.

In terms of the functioning of the voyage charter, as noted, the charterer is contracting for use of all or part of the ship for a defined voyage. Under the voyage charter the owner earns recompense by way of freight. Freight can be paid either on a lumpsum basis, where the amount of freight to be paid by the charterer to the owner is fixed irrespective of the amount of cargo loaded or, more commonly, it can be calculated on the basis of quantity of cargo loaded. In brief, the charterer is contracting with the owner who undertakes to carry the contracted cargo from one port to another port for a payment based on the amount of cargo shipped.

The execution of a voyage charter can be broadly divided into four stages, and each of these stages will have associated contractual terms. The stages are:

1. Approach to and arrival at the port of loading
2. Loading the cargo
3. Voyage to the discharge port
4. Discharge of the cargo

With reference to the contractual terms associated with each step of the voyage loading and discharging of the cargo involve similar contractual considerations and

can thus be amalgamated under the heading of “cargo operations”. This, therefore, leaves three broad headings under which the general characteristics of the voyage charter will be considered, these being:

1. Approach to and arrival at the port of loading
2. Cargo operations
3. Voyage from port of loading to port of discharge

These three distinct stages will be discussed under discrete headings.

1. Approach to and arrival at the port of loading

The first issue to be resolved in terms of the approach voyage is the determination of the port of loading. Although this can be straightforward there are many variations that may arise in terms of the port of loading in a voyage charter. The most straightforward situation is where the port is named. From this point charters can progress to more complicated scenarios, for example a particular berth within a port may be specified,⁴⁹ loading may take place at a port within a specified range (for example, one safe port out of Port Cartier, Baie Comeau and Quebec City), or within a geographical range (loading one safe port French Mediterranean). There may be multiple ports, for example loading at Thunder Bay plus Montreal, or there may be combinations of the above (loading Thunder Bay plus one safe port St Lawrence River).

⁴⁹ A situation that occurs routinely in the grain trades, where the vessel will be chartered to load at a specified grain elevator.

The question of port of loading can have legal ramifications in terms of when the nomination of the port must be made, which can, for example, impact the question of which contractual party is responsible for unsafety of the port and/or berth.⁵⁰

2. Expected Ready to Load and Laycan

There are two related elements with regard to information given regarding the vessel's expected arrival at the load port. The first is the expected ready to load date; the second is the dates between which the shipowner is contractually obligated to present a ready vessel ready to load in order to avoid the right to cancel the charter vesting in the charterer.

With regard to the expected ready to load date at the time of "fixing"⁵¹ the charterer will require information as to the present location of the vessel, her estimated time or arrival at the port of loading and estimated readiness to load. This information will be incorporated into the voyage charter as the vessel's present position and her expected ready to load date.⁵² The date given as the vessel being expected ready to load must be given with the owner's honest belief in its accuracy,⁵³ failure to do so is a breach of a condition of the charter party and will allow for rescission by the charterer.⁵⁴ In terms of proceeding to the port of loading it should be noted that under the common law the vessel is obligated to proceed to the port of loading with all possible despatch, however as a common law obligation this can be varied under the contract.

⁵⁰ This issue will be examined in detail in chapter 4.

⁵¹ Conclusion of a charter party is referred to as a fixture, and the process is referred to by the verb "fix".

⁵² Gencon box 8 will provide present position, box 9 expected ready to load date.

⁵³ *Maredelanto Compania Naviera SA v Bergbau-Handel, (Mihalis Angelos, The)* [1971] 1 QB 164 (UK).

⁵⁴ *Ibid* and NJJ Gaskell, C. Debattista & RJ Swatton, *Chorley & Giles' Shipping Law*, 8th ed, (Pitman, London, 1987) at p. 184.

The second element present in charters concerning the vessel's readiness to load is the "laycan", which is the abbreviated form for the terms "laydays/cancelling". The laydays represent the date window in which the vessel is contractually bound to present for loading. The cancelling date is the date by which the vessel must present for loading, failure by the vessel to do so will entitle the voyage charterer to cancel the charter.⁵⁵ Under English and American law the charterer's right is limited to cancellation, there is no right to damages.⁵⁶ In contrast, under French law the charterer may also be able to claim damages.⁵⁷ An example of laydays is November 1/15, meaning that the charterer is not under an obligation to load the vessel until November 1. The cancelling date would be November 15, and failure to present a ready vessel by this date would entitle the charterer to cancel the charter. A laycan may be viewed simply as the window in which the chartered vessel is to present for loading, the charterer is under no obligations prior to the opening date⁵⁸ and if the vessel is not ready to load by the cancelling date the charterer has the right to cancel. Unlike the expected ready to load date honest belief on the part of the owner that the vessel would be ready within the date range agreed does not impair the charterer's right to cancel.

The cancelling date gives rise to disputes concerning whether the vessel is ready for loading and the exact requirements that must be met by the vessel in order for her to be considered ready.⁵⁹

⁵⁵ Gencon (1994) Clause 9, Asbatankvoy Clause 5.

⁵⁶ Stephen Girvin, *Carriage of Goods by Sea*, (London, Sweet & Maxwell, 2007) [Girvin, *Carriage of Goods*] at para 30.18.

⁵⁷ Pierre Bonassies, Christian Scapel, *Droit Maritime*, (Paris, L.G.D.J., 2006) at 767.

⁵⁸ This also related to the question of commencement of laytime, see *infra* section 1.4.

⁵⁹ These are issues which are examined in chapters 1 and 3 *infra*.

3. Carrying Voyage

Under the typical voyage charter the carrying voyage is relatively straightforward. The owner has, under English common law, an obligation to both proceed directly to the port of discharge with no unreasonable deviation⁶⁰ and all reasonable despatch.⁶¹

The requirements regarding deviation and despatch are at common law and can be amended in the charter party. Many voyage charters contain wording requiring that the vessel proceed with “reasonable despatch”, both with respect to the voyage to the loading port as well as the carrying voyage.⁶² In terms of deviation charter parties will frequently provide for limited circumstances where the owner can proceed off the direct route. The circumstance which will generally appear is the right of the owner to proceed to any port during the voyage for the purpose of bunkering (the taking of fuel).⁶³

Cargo Operations

In considering cargo operations under voyage charters of primary concern is which contractual party is responsible for the loading and discharging of the vessel, with

⁶⁰ *Davis v Garrett* (1830), Bing. 716, 130 E.R. 1456 (UK).

⁶¹ *Hick v Raymond* (1893) AC 22 (UK), the position is similar under American law, see *Voyage Charters 2nd*, *supra* note 2, at 12.47-12.49.

⁶² For example: The voyage to the loading port see: Asbatankvoy at line 2; the carrying voyage: Worldfood 99 at Clause 2 line 25-26. However, one major charter form, the Gencon 1994, does not contain any obligation for the vessel to proceed with reasonable despatch to the discharge port, requiring only that the vessel proceed to the discharge port: see Clause 1.

⁶³ Australian Wheat Charter 1990 Clause 28 lines 193-194 allows for deviation for bunkering, The Synacomex 90 (Continent Grain Charterparty) Clause 20 permits deviation for the purpose of saving life or property at sea, for bunkering purposes or any other reasonable deviation.

related issues of liability for damage to cargo and vessel which occurs during loading and questions of responsibility for wrongly stowed cargo.

The issue of responsibility for cargo operations is addressed in virtually all charter parties, as is the issue of which party is responsible for time used in port.

Absent any mention of responsibility for the cost of loading and unloading the cargo this will fall upon the shipowner.⁶⁴ However, failure to allow for these costs in the charter party would be extremely unusual. The parties are free to contract that costs for loading and unloading can be borne by either the charterer or the owner and in practice responsibility for the cost of cargo operations will be covered in the charter party.⁶⁵ If the costs of loading and discharging are for the account of the charterer then the cargo will be described as “Free In and Out” (abbreviated FIO), meaning free of cost to the ship, with “In” referring to the cost of loading and “Out” referring to the cost of discharging. If the shipowner has contracted to pay for loading and discharging this will be described as “liner terms”, or “full liner terms”. Variations are possible, where loading can be for the account of the ship owner, and the charterer bearing the cost of discharging, in such a case the operation will be contractually described as “liner in, free out”, or the reverse, where the terms will be “free in, liner out”.

In the case of a cargo booked on liner terms the owner, with respect to rights and responsibilities in relation to the charterer, will be responsible for any delay to the

⁶⁴ *Girvin, Carriage of Goods*, *supra* note 67 at 30.26, 30.37.

⁶⁵ The Norgrain 89 at Clause 10 provides for both alternatives, with one to be deleted when drawing up the charter party. The Synacomex 90 at clause provides that loading is to be at the expense of “shippers/charterers” and that cost of discharging is for “receivers/charterers”.

loading or discharging.⁶⁶ In the case of FIO terms a charterer will frequently contractually agree that the time for loading and/or discharging will not exceed a fixed amount of time, and such provisions are called “laytime”. While the majority of modern charter parties are negotiated to allow for a fixed amount of time for cargo operations, less commonly some charters are negotiated on the basis of “customary quick despatch”, which, as the name implies, suggests that customary time should be allowed the charterer.⁶⁷

Laytime is technically complicated and gives rise to many disputes, the general principle is that the loading of a vessel must be completed within the contractually allotted time, which is called laytime. If the laytime is exceeded the charterer will be liable to pay the owner liquidated damages, known as demurrage, which are generally calculated on a daily basis and meant to compensate for the cost of the ship.⁶⁸ Many charter parties will allow the voyage charterer to claim a rebate, known as despatch, should the loading be completed in less than the allowed time.⁶⁹

Customary quick despatch essentially means that loading or discharge must be undertaken at the customary speed. When customary quick despatch is agreed it is still possible to claim damages for delays in loading or discharging, however given the imprecise nature of the obligation a claim becomes more difficult.⁷⁰

⁶⁶ Delays can be caused by inclement weather, poor performance on the part of the stevedores.

⁶⁷ Under CQD terms damages payable by the charterer to the ship owner are known as “detention”, rather than “demurrage”.

⁶⁸ See chapter 2, *infra*.

⁶⁹ Like demurrage the despatch rate is agreed in the charter party, in the majority of charters despatch is payable at half of the agreed demurrage rate.

⁷⁰ Joe Mays, "Charterers' CQD Obligations", Steamship Mutual website <http://www.steamshipmutual.com/publications/Articles/Articles/CQD1205.asp>, last viewed November 15, 2013.

TIME CHARTERS

Like the preceding section on voyage charters, this is not designed as a comprehensive review of the issues relating to time charters but merely as background and context for the more detailed discussion in the following chapters.

A time charter can be defined as a contract whereby a shipowner contracts to place a ship, with the necessary crew and equipment, at the disposal of the charterer for an agreed period of time.⁷¹ Under a time charter the owner retains possession of the vessel and is responsible for employing the crew and maintaining the ship. The time charterer pays the owner a rate of hire, which is virtually always calculated per day or pro rata. The charterer is additionally responsible for paying the costs associated with calling at ports as well as fuel and any pilotage; vis-à-vis the owner the time charterer will also be responsible for loading and discharging of the vessel.⁷² Essentially the time charterer will decide which ports to call and which cargoes will be loaded, within the parameters of the charter party.

Unlike voyage charters, it is difficult to divide time charters into meaningful stages given that a time chartered vessel may well undertake many diverse voyages during the charter period.

Therefore, rather than viewing the time charter in stages, consideration will be given to the general concept of the time charter and some of the main clauses contained in typical time charter parties.

⁷¹ *Bonassies et al*, *supra* note 18 at para 820, *Gold et al*, *supra* note 9, at 399.

⁷² Although as noted above responsibility for these costs will often be passed to the voyage charterer.

It can be seen that relative to a voyage charter more control over the vessel is delegated to the charterer under a time charter, however the owner, through the captain and crew, still retains a high level of both control and responsibility. A primary difference that arises between time and voyage charters is the payment for use of the vessel. Under voyage charters the charterer pays for the vessel through freight, which will not vary irrespective of the time taken in the prosecution of the voyage.⁷³ Under a time charter the charterer is paying for the vessel on a daily basis, and delays during the voyage will result in the charterer paying additional hire.⁷⁴

Key Features of the Typical Time Charter

While there are several main time charter forms in use the number of standard forms employed is far less than with respect to voyage charters, the primary dry bulk time charter parties are the New York Produce Exchange and Baltime forms, on the tanker side the Shelltime is commonly used.

Although terms vary based on the form employed, and also subject to the amendments made to the standard forms by the particular parties contracting, time charters possess many common features and clauses. These will be discussed in the following sections.

⁷³ Notwithstanding the question of laytime and demurrage.

⁷⁴ Assuming that the delays do not lead to an off-hire claim, see chapter 2, *infra*.

Description

The description clause in a time charter will generally be more detailed than that contained in a voyage charter. A detailed description is required because the time charterer will be making decisions regarding employment of the vessel and will need a broader range of technical information. It is in particular necessary for the time charterer to have information regarding the vessel's speed and fuel consumption as this will impact greatly on the vessel's earning potential. A voyage charterer will not be concerned with fuel consumption, as the voyage charterer is not liable to pay for fuel, and voyage charterers have less concern with vessel speed, because freight does not vary if the voyage is prosecuted more quickly.⁷⁵

Many disputes arise over elements of the vessel's description, with a main area of dispute being the ship's speed and consumption. While this is an important issue it will not be dealt with in this thesis as it is an issue that is limited in scope to time charters.

Delivery of the Vessel

Delivery refers to the time and place at which the owner places the ship at the disposal of the time charterer, who then takes over commercial decision making. Delivery of the vessel to the time charterer does not transfer possession of the ship, the master and crew of the ship remain the servants of the ship owner, but are required to obey the orders of the charterer,⁷⁶ within the limits of the contract.

⁷⁵ Occasionally voyage charterers will concern themselves with vessel speed when delivery deadlines are critical, however this is unusual.

⁷⁶ *Cheikh Boutros Selim El-Khoury v Ceylon Shipping Lines Ltd (The Madeleine)* (1967) 2 Lloyd's Rep 224 (UK).

Similarly to a voyage charter, a time charter will contain provisions for a date before which the time charterer is not required to accept delivery and after which the time charterer may cancel. As in the voyage charter these days are referred to as the laycan.⁷⁷

The Charter Period

An important provision in a time charter party is the period of time during which the vessel will be at the charterer's disposal.

The period will generally be described in days, months or years, or a combination thereof. The charter period will incorporate a degree of margin regarding when the vessel must be redelivered to the owner. This margin will either be expressly or impliedly incorporated, and is necessary because a ship is subject to external factors such as cargo delays, weather, strikes and holidays that impact its schedule.

Therefore the charter period will typically contain a qualification as to the precision of the duration; this can be a term such as "about", or a specified margin, for example "duration 15 days more or less in charterer's option". Examples from English case law include *The Dione*,⁷⁸ where the period was "six months time charter 20 days more or less", *The Gregos* "about 50 to maximum 70 days",⁷⁹ and *The Johnny* "minimum 11/maximum 13 months".⁸⁰ Redelivery can also be expressed to take place within a certain date range, as in the *Watson v Merryweather* where redelivery was to be "between 15 and 31 October".⁸¹

⁷⁷ See BPTIME3 at Part I line 24 (see appendix B).

⁷⁸ *Alma Shipping Corp. of Monrovia v Mantovani (The Dione)* (1975) 1 Lloyd's Rep 115 (UK).

⁷⁹ *Torvald Klaveness A/S v Arni Maritime Corp. (The Gregos)* (1995) 1 Lloyd's Rep 1; [1994] 1 WLR 1465; 4 All ER 998 (UK).

⁸⁰ *Arta Shipping Co v Thai Europe Tapioca Shipping Service (The Johnny)* (1977) 2 Lloyd's Rep 1 (UK).

⁸¹ *Watson SS Co v Merryweather & Co.* (1913) 108 LT 1031; 12 Asp MLC 226.

The duration of the charter will often lead to disputes, when the chartered rate is lower than the market rate the charterer will wish to keep the ship on charter for as long as possible, while if the market rate is below the agreed rate the desire will be to redeliver the vessel at the first opportunity. Therefore the wording of charter periods bears careful examination. The timing of redelivery is a major issue that often leads to disputes in terms of both the duration and the quantum of damages. This issue cuts across both time and voyage charters in that a time charterer may end up having a cargo booked for a vessel which is going to exceed the maximum charter period. In this case the time charterer has contracted to carry this cargo, however the owner may elect to refuse to perform the voyage, leaving the time charterer potentially liable towards the voyage charterer.⁸²

Payment of Hire

Time charters will contain a clause outlining how the hire is to be paid, including currency and place.⁸³ Payment of hire is relatively straightforward; the two main issues which arise in relation to hire are recourses available for non payment and what deductions are permitted from hire.

Related to the issue of payment of hire is the right of the owner to withdraw the vessel for non payment of hire. Typically, charter parties allow the owner to withdraw the vessel for non payment of hire.⁸⁴ If the charter party is silent then

⁸² This issue is examined in detail in chapter 6, *infra*.

⁸³ For example: Shelltime 4 Clause 8 and 9 (See Appendix B).

⁸⁴ NYPE (1946), cl 6, Baltime 1939 Part II cl 6.

there is no automatic right of withdrawal.⁸⁵ Many charter parties will also contain an “anti technicality clause”, which provides that in the case of non payment of hire the ship owner must give the time charterer notice of the default and allow the charterer time to remedy the breach.⁸⁶

In the event that the charter party permits withdrawal such withdrawal may not be temporary unless the charter party expressly provides for such a remedy. The owner is, for example, not permitted to suspend loading operations until such time that they receive payment.⁸⁷ While there is of course an equivalent under voyage charters (the payment of freight) there is not particular risk that flows through that is directly attributable to hire and freight, and thus this will not be examined in this thesis.

Trading Limits

A time charter will generally specify a geographical area where the vessel is allowed to trade, examples would include “world wide trading” and “Atlantic trading”.

Beyond this a time charter will include a list of prohibited cargoes and countries, and will usually provide certain general guidelines, these commonly include no trading in ice covered waters, trading only within International Navigation Limits⁸⁸, and no trading to war risk areas, in addition to requirements that the vessel call at only safe berths and ports. Because a voyage charter by its nature does not give as wide a

⁸⁵ John F. Wilson, *Carriage of Goods by Sea* 4th ed, (Harlow, Longman, 2001), p. 106 [Wilson, *Carriage of Goods*, 4th].

⁸⁶ For example: NYPE (1993) clause 11.

⁸⁷ Christopher Hill, *Maritime Law*, (London, LLP, 1998), p. 209 [Hill, *Maritime Law*, 4th].

⁸⁸ These limits, formerly known as the Institute Warranty Limits, were revised and renamed in January 2003. The International Navigation Limits set out certain geographic areas where, and in some cases times of the year when, vessels are not permitted to navigate without breaching their insurance cover. See: Alan E. Branch, *Elements of Shipping*, 8th ed, (Oxford, Routledge, 2007) at 13-16.

range of trading options as the typical time charter there is no equivalent right under a voyage charter.

Employment Clause

Most time charters will contain a clause allowing the time charterer to have full use of the vessel within the parameters established by the charter party. The charterer will be entitled to give the master lawful orders relating to the employment of the ship, and the owner has contracted that the master and crew will follow these orders.⁸⁹

One of the key rights that the charterer enjoys under a time charter is the right to issue, on behalf of the master, bills of lading. This right is significant in that the bill of lading will often contain contractual terms that are different from those contained in the charter party,⁹⁰ and the owner will often become directly liable to third parties through these bills of lading.⁹¹ Although the owner will generally be entitled to an indemnity from the charterer for any additional liability incurred as a result of the charterer exercising these rights such an indemnity may be valueless in the event that a time charterer encounters financial difficulties. It should be noted that while time charters generally incorporate such an indemnity clause⁹² the courts are often prepared to imply an indemnity if required.⁹³

⁸⁹ See, for example, NYPE 1993 cl 8(a) and Shelltime 4, cl 13, lines 225-228.

⁹⁰ *Wilson, Carriage of Goods 4th*, *supra* note 96, at 90.

⁹¹ *Tetley, Maritime and Admiralty*, *supra* note 10, at 131.

⁹² *Girvin, Carriage of Goods*, *supra* note 67, at 32.86.

⁹³ *Sig Bergensen DY A/S v Mobil Shipping & Transportation Co (The Berge Sund)* [1993] 2 Lloyd's Rep 453 (CA) (UK), *The Island Archon* [1994] 2 Lloyd's Rep 227 (UK).

The shipowner may also be required to follow orders from the charterers regarding the route the vessel is to take, unless there is a question of vessel safety involved. This gives rise to disputes regarding what constitutes a question of safety and when a master is entitled to disregard an order from a charterer regarding navigation.⁹⁴

The question of rights and responsibilities with respect to the giving of orders, and in particular related to the right to give orders regarding clausings bills of lading, is of interest to time charterers, and is also relevant with respect to voyage charters.⁹⁵

Redelivery of the Vessel

The general principle is that the charterer continues to pay hire until such time as the vessel is redelivered. The charter party will generally provide for redelivery either within a range of ports (for example redelivery within Boston/Miami range), or at a particular port (for example Rotterdam), or in some cases passing a particular point (for example passing Key West). The most common scenario will specify redelivery within a range of ports.

The time charterer's principal obligation is to redeliver vessel in "like good order" as on delivery.⁹⁶ Breach of this obligation will not, however, prevent redelivery of the ship.⁹⁷

As discussed above a major issue related to redelivery is that of exceeding the charter period.⁹⁸

⁹⁴ Issues which arose in *Whistler International Ltd v Kawasaki Kisen Kaisha Ltd (The Hill Harmony)* [2001] 1 AC 638.

⁹⁵ This will be examined in chapter 5, *infra*.

⁹⁶ NYPE 93, cl 10 lines 130-136, Shelltime 4, cl 16(b), lines 308-310.

⁹⁷ *Attica Sea Carriers Corp v Ferrostaal (The Puerto Buitrago)* [1976] 1 Lloyd's Rep 250 (UK).

THE SHIP OPERATOR

At the most basic level both voyage and time charters have two contractual parties: an owner and a charterer.

Typically a ship operator will be the charterer under the time charter and the owner under a voyage charter. Alternate scenarios do occur and it is possible for an operator to sub time charter a vessel, in which case a time charterer sub lets a time chartered vessel to another company. Another situation which occurs is when the operator has booked a cargo, and rather than utilizing a time chartered vessel to move the cargo instead voyage charters a ship, in this case the operator would appear as the owner under the initial voyage charter, and the charterer under the subsequent voyage charter. The most common occurrence, however, is that the time chartered operator will employ the vessel on voyage charter.

Time charterers include industrial companies, ship owning companies and companies purely based on time chartering tonnage and sub chartering at profitable levels. Virtually all time charterers will at some point sub charter their ships on voyage terms; however it is only ship operators who have this as their principle business model.

Industrial companies time charter vessels for a number of reasons, including the desire to better control the supply chain and their cost of transportation. Ship owners will often time charter vessels to supplement their existing fleet when it becomes insufficient to meet contractual requirements. In terms of the period of these charters they will vary based on requirements, industrial companies and ship

⁹⁸ See chapter 6, *infra*.

owners will both at times take vessels on for single time charter trips in order to meet contractual obligations as well as for longer periods.

The Role Of The Ship Operator

The ship operator has as its primary goal the maximization of profit through the operation of time chartered tonnage. To this end, and at the most basic level, the time charterer attempts to predict rises and falls in the market, and enters into voyage and time charters accordingly.

The operator will either fix cargoes under voyage charters, hoping to time charter tonnage to meet the commitment at profitable levels, or conversely time charter vessels with the goal of profitably subchartering the ships. Many operators are small companies, operating a small number of vessels on a speculative basis, whereas other operators become significant corporate entities, with large time chartered fleets servicing a wide variety of regular voyage charterers and contracts of affreightment.⁹⁹

As noted above a time charterer will at times sub time charter one or more of the vessels it has on time charter. It is equally true that at points an operating company that has contracted a voyage charter will sub let the voyage charter to another owner or operator. The risks involved with sub chartering on the same type of form are far less given that generally charters will be agreed on “back to back” terms. As such the focus of this thesis is on the time chartered operator and the risks related to sub chartering on voyage terms.

⁹⁹ English usage of contract of affreightment is generally taken to mean a long term or multiple shipment contract, see also *Gold et al*, *supra* note 9 at 379.

While the focus of this paper is on the risks encountered by the time chartered operator, the analysis presented herein is equally applicable to all those that operate time chartered vessels and sub charter those vessels on voyage terms.

TIME CHARTER TRIPS

Time charters which consist of only one trip are sometimes referred to as hybrid charters.¹⁰⁰ The rationale behind this is that while they are concluded on time charter forms they share many of the characteristics of a voyage charter. They are for one voyage, and will generally be more detailed about the cargo to be carried and the ports to be called. The legal issues that arise from a trip charter can involve almost the entire range of potential charter party disputes to be examined in this thesis.

While there is less operational scope to time charter trips relative to period time charters they are contracted on time charter party terms and as such the legal analysis applicable to time charters in general is applicable to trip charters.

DEMISE CHARTERS

Demise charters are distinct from time and voyage charters in that they are agreements to hire the ship and are not directly related to carriage of cargo.¹⁰¹ Under a demise charter the charterer takes over virtually all responsibility for the ship, employing the master and crew as well as victualing and supplying the ship.

¹⁰⁰ Hill, *Maritime Law*, 4th, *supra* note 98, p. 178.

¹⁰¹ Gold *et al*, *supra* note 9, at p. 379.

The charterer takes possession and effectively becomes the owner of the ship,¹⁰² assuming all responsibility for both commercial and operational management. In *Leary v United States* the U.S. Supreme Court took the view that for most purposes a demise charterer should be treated as the vessel's owner.¹⁰³ From a practical standpoint, a demise charter is used as a financing device and not a commercial charter agreement.¹⁰⁴

Given that the demise charterer is effectively the shipowner there is no examination of demise charters in this essay. Often the party identified as the shipowner without any qualification is in fact a demise charterer.

¹⁰² *Ibid*, p. 177. This is unlike time and voyage charters, where possession does not transfer.

¹⁰³ 81 U.S. (14 Wall) 607 at 611.

¹⁰⁴ *Girvin, Carriage of Goods*, *supra* note 67, para 1.41.

CHAPTER 1

DELIVERY AND READINESS

The MV Laskin is scheduled to deliver to Brooks Navigation, a time chartered operator. Brooks have chartered the ship for a single time chartered trip from the East Coast of Canada to the Black Sea with fertilizer. The ship is to deliver on sailing from Liverpool, England. The owner has given notice of an estimated delivery date, and the master of the MV Laskin has also provided an estimated time of arrival at the load port. Unfortunately, the owner has significantly underestimated the amount of time that discharge will take prior to delivery to Brooks without checking with the port agent in Liverpool, and the Captain of the vessel has miscalculated the sailing time from Liverpool to the load port. Brooks has not verified any of the information and has provided the estimated time of arrival given by the ship owner to the voyage charterer as an expected ready to load date. In reality, the ship cannot be ready for the expected ready to load date and will also almost certainly miss the cancelling date in the charter party. Furthermore, there is very little alternative cargo available for the vessel on the Canadian east coast and should the vessel be cancelled she will most likely be forced to sail a significant distance to find alternative cargo.

1.1 INTRODUCTION

The concept of readiness is one that has a place in both time and voyage charters. Readiness under a time charter is related to delivery of the vessel, while under voyage charters it is linked to acceptance of the vessel under the voyage charter as well as considerations regarding the notice of readiness. From the standpoint of the time chartered operator these concepts intersect under time and voyage charters

when considering in particular the vessel's first voyage under the time charter. A vessel that presents late for a voyage charter risks being cancelled, and in some cases when losing a first cargo under the time charter the time charterer may want to in turn cancel the vessel, and even in cases where the time charterer does not wish to or cannot cancel the vessel there is likely to be a negative financial impact upon the operator of the cancelled vessel. Once the vessel is on time charter, if the vessel presents late for a voyage charter the time charterer will not be able to cancel the voyage based on an equivalent time charter term, there is no right to cancel once the vessel has been delivered.¹⁰⁵

There are several risks that the time charterer runs with respect to the beginning of the charter. The ones to be examined in this chapter are obligations with regard to readiness, in particular what risks the time charterer encounters in terms of timing of cancelling dates and reasons for which the charter party can be cancelled.

This chapter will deal with the rights of the time charterer in terms of cancelling the vessel and claiming damages and what legal exposure may exist in terms of late arrival of the ship at ports of loading. The emphasis will be on finding contractual solutions to issues relating to the key question late arrival of the vessel at ports, and what contractual measures may be taken in order to reduce risk of the time charterer being exposed to claims, of the time charterer being liable for the costs associated with an unnecessary ballast voyage and the time charterer being unable to cancel the vessel despite having the cargo for which the vessel was intended cancelled. The emphasis is on delivery under the time charter and the first voyage

¹⁰⁵ In such a case the time charterer would need some kind of breach (such as frustration) in order to return the vessel to the owner. However this type of recourse is rare.

charter performed because this is the area that presents the greatest area of potential overlap between the two charters.

It is also important to note that this chapter focuses on a comparison of (1) delivery under time charters and (2) readiness under voyage charters at the first port of loading. It does not have as its goal a wide examination of readiness at intermediate ports, as there is no equivalent concept under time charters. However, the concepts of readiness and intermediate ports will be briefly examined in the context of issues that arise in this chapter, and many of the concepts discussed in relation to readiness will be applicable at intermediate ports.

The voyage and time charter overlap between delivery and readiness arises in three main areas. The first of these is the situation where a vessel misses the canceling under the voyage charter at the first port of loading and for this reason is cancelled by the charterer, and consequently the time charterer wishes to cancel the time charter. The second situation is where the delivery point is distant from the first load port and the vessel appears unable to meet a cancelling date under the voyage but irrespective of this fact due to the obligation to present at the port is faced with a ballast voyage, and the time charterer must therefore take delivery of the vessel and incur the cost of the ballast voyage without knowing whether the ship will be cancelled. The third scenario is when the vessel is in the right place for delivery and is at the load port in time but is not in some way ready for the purpose required.¹⁰⁶ These concepts will also be considered in terms of when they might give rise to a claim for damages.

¹⁰⁶ For example, the holds are not clean see section 4.4, *infra*.

In terms of readiness of the vessel this chapter deals only with readiness vis-à-vis the element of time. Readiness in terms of factors related to the vessel will be dealt with in the following chapters. This chapter will outline the main concepts of delivery and readiness, explore the overlap between them, and then examine them in relation to the specific right of cancellation.

1.2 SEAWORTHINESS

The subject of seaworthiness will be briefly addressed in the context of readiness because the general obligation for the vessel to be seaworthy arises under both time and voyage charters and is related to the beginning of the charter. On this basis it is related to the potential rejection of the ship. This section will briefly explore the concept of seaworthiness as it relates to the overlap between charter parties.

One condition that is common to both time and voyage charters is the requirement that the vessel be seaworthy. The concept of seaworthiness is the same under both types of charter,¹⁰⁷ but there are variations as to exactly when the obligation is applicable. Under a voyage charter the obligation is that the vessel be seaworthy on commencement of the chartered voyage,¹⁰⁸ which is to say on sailing from the load port with the cargo on board. The vessel can be unseaworthy prior to this point without the voyage charterer necessarily having a right to cancel, claim damages or refuse to load the cargo. Therefore, the vessel can be unseaworthy on the approach voyage or during the loading without a right to cancel under the voyage charter necessarily arising. Under a time charter the vessel must be seaworthy on delivery, and failure of the vessel to be seaworthy on the cancelling date allows the charterer

¹⁰⁷ See generally Chen Liang, "Seaworthiness under Charter Parties", *Journal of Business Law*, 2000, Jan, 1-35.

¹⁰⁸ *Stanton v Richardson* (1875) LR 9 CP 390.

to cancel the vessel. For sake of clarity it must be noted that seaworthiness is somewhat nuanced in that it is an innominate term and not a condition.¹⁰⁹ However, it is an innominate term in the sense that the charterer does not necessarily have a right to cancel the charter simply because of unseaworthiness, and not because the time charterer can be forced to take delivery of an unseaworthy ship. The charterer cannot in every instance cancel a ship for being unseaworthy, but is not obligated to take delivery of an unseaworthy ship, and can cancel the ship if she is not ready by the cancelling date. This is illustrated by *The Madeleine* where the vessel, under a Baltime charter, was unable to produce a deratization certificate by the cancelling date and the time charterer was able to cancel the vessel for this deficiency.¹¹⁰ Apart of the cancelling clause the charterers have an additional right at common law to treat the charter as at an end if the vessel is on delivery unseaworthy and cannot be made seaworthy within a time frame that would avoid the charter being frustrated.¹¹¹

The obligation regarding seaworthiness varies slightly in terms of when it arises in that the obligation arises under the voyage charter at a different point of time than under the time charter. However, this does not expose the time charterer to any specific liability as the obligation arises earlier under the time charter. Therefore, if the vessel is unseaworthy on delivery but the unseaworthiness is remedied by the time the vessel loads the cargo for the voyage charterer then there will no recourse on the part of the voyage charterer and consequently no claim by the time charterer against the owner. Furthermore, while the time charterer may cancel the vessel for being unseaworthy on delivery the time charterer will then be in breach of its

¹⁰⁹ *The Hongkong Fir* [1961] 2 Lloyd's Rep. 478 (CA), an innominate term in this context means that whether a right to cancellation exists will be dependant upon the circumstances.

¹¹⁰ *Supra* note 87 [1967] 2 Lloyd's Rep 224.

¹¹¹ *Stanton v Richardson* (1875) LR 9 CP 390.

obligation to present the vessel for loading under the voyage charter. Therefore, even if the vessel is unseaworthy the time charterer may have little choice but to take delivery. However, in such a case the time charterer would be advised to put the owner on notice and reserve all rights. Alternatively the time charterer could cancel the vessel and then claim any damages against the owner, however the results of such an action are difficult to predict as they would depend on a variety of factors, including remoteness and foreseeability.

It must be noted that when a vessel is on period time charterer the owner will only be responsible to have the vessel seaworthy on delivery but the time charterer will be responsible under each voyage charter for the seaworthiness of the vessel at the commencement of the voyage. This would appear to be a major gap and one that could expose the time charterer to significant potential liability. However, this must be viewed in the context of other obligations in the time charter party. Typically, time charters will incorporate a maintenance clause which is a continuing obligation.¹¹² The maintenance clause is effectively an ongoing obligation equivalent to seaworthiness, meaning that there is little liability on the part of the operator and any claim brought by the voyage charterer should be covered by the maintenance warranty from the ship owner. Also, in the event that a time charter party incorporates the United States Carriage of Goods by Sea Act 1936 then it is likely that this confers upon the owner the obligation to exercise due diligence to make the vessel seaworthy before and at the beginning of each voyage under the time charter.¹¹³ Although this is only an obligation of due diligence and not an absolute duty when combined with the maintenance obligations generally found in charter

¹¹² See line 38 of the NYPE 1946 Time Charter. While this is considered in some literature to be a maintenance clause, as distinct from a seaworthiness clause, at least one major work describes it as a continuing obligation of seaworthiness see: *Girvin*, 2nd *supra* note 3, 24.25.

¹¹³ *Adamastos Shipping v Anglo-Saxon Petroleum (The Saxon Star)*, [1958] 1 Lloyd's Rep.73 and Michael Wilford, Terence Coghlin, John D. Kimball, *Time Charters*, 3rd ed, (London, LLP, 1989), 426-427

parties it is not considered that a great deal of risk exists, from the time chartered operator's point of view, with respect to seaworthiness.

1.3 TIME CHARTERS: DELIVERY

Delivery is the point at which the owner transfers commercial control of the vessel to the charterer. Essentially, this means that the vessel is placed at the disposal of the time charterer within the terms of the charter party as regards the employment.

Delivery of the vessel will generally take place at a geographic point, most typically upon passing a geographic feature¹¹⁴ or on departure or arrival at a port.¹¹⁵ The ship specifically need not deliver at the first port of loading, and in fact may deliver quite far from the first port.

A charter party will usually contain a spread of days during which the vessel may deliver to the charterer. This period of time is referred to as the "laycan" and is necessary because a ship owner will not be able to foresee with complete accuracy when a vessel will complete her previous commitments and be available for the time charterer.

Should the vessel present after the laycan the charterer will have the right to cancel the vessel, however, such late delivery will not give rise to a claim for damages.¹¹⁶ The exception to this rule arises in the situation that the shipowner did not have a

¹¹⁴ For example: "On passing Key West"

¹¹⁵ The terminology that is usually use is "arrival pilot station" or "dropping last outward sea pilot" for arrival at or departure from a port respectively.

¹¹⁶ *The Democritos* [1976] 2 Lloyd's Rep 149 (CA).

reasonable belief that the vessel could arrive in the port on time.¹¹⁷ The two main conditions associated with delivery are the ship must be in the right location and must be ready under the terms of the charter party. The NYPE 1993 charter requires that the vessel on delivery be:

Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast and with sufficient power to operate all cargo-handling gear simultaneously.¹¹⁸

Different charters make different provisions with respect to readiness. For example, the Shellngtime 1 charter outlines twelve conditions with which the vessel must comply on delivery.¹¹⁹

1.4 VOYAGE CHARTERS: READINESS

Under voyage charters, as under time charters, there is also a window in which the vessel can present for loading, which is also referred to as the laycan. Unlike a time charter, where delivery is not linked to the port of loading,¹²⁰ voyage charter readiness is by its nature linked to being at the disposal of the charterer at the load port.

¹¹⁷ *Ibid.*

¹¹⁸ NYPE 1993 Time Charter at lines 33-36 (See Appendix B).

¹¹⁹ Shellngtime 1 Charter Party at clause 1 (See Appendix B).

¹²⁰ Time charter delivery can, as noted, take place at any geographic location agreed by the parties.

The cancelling clause is contained in clause 9 of the Gencon Charter party which states that: "Should the vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this charter party".¹²¹ Similarly, the Norgrain charter allows that "Should the vessel's notice of readiness not be tendered and accepted as per Clause 18 before 1200 on the (space provided for insertion of date) the Charterers have the option of cancelling this Charterparty any time thereafter, but not later than one hour after the tender of notice of readiness as per Clause 18".¹²² The Sugar Charter-Party 1999 adopts simple language similar to that of the Gencon: "...if the ship is not ready to load by the (space provided for insertion of date) Charterers have the option to cancel this Charter-Party, declarable latest upon vessel's arrival at loading port".

As can be seen, the charter parties all adopt relatively similar language, with the Gencon being the simplest and the Norgrain being the most involved. This is logically due to the Norgrain being used in a trade where specific requirements need to be met for loading, in this case inspections by government authorities,¹²³ and therefore these requirements have been wisely incorporated.

Voyage charter readiness must be divided into two distinct yet interrelated concepts which are readiness for the purposes of laytime and readiness under the laycan, the distinction between which is important yet not widely examined in the literature.¹²⁴

The notice of readiness is the trigger which allows laytime to commence counting

¹²¹ Gencon 1994 Charter Party

¹²² Norgrain 89 Charter Party. The cancelling clause refers the Clause 18, which sets specific conditions regarding the tender of the notice of readiness, most relevant to this discussion is that the vessel must have obtained approvals from the relevant grain loading authorities prior to tendering the notice of readiness.

¹²³ Norgrain 89 Charter Party, clause 3.

¹²⁴ None of the major texts examine this distinction, however Simon Baughen, *Shipping Law*, 3rd ed, (London, Cavendish, 2004), p 232 suggests that there is a difference, noting a distinction between notice of readiness cases and cancellation cases.

under the voyage charter, while readiness prior to the cancellation date is necessary or the charterer has a right to cancel the charter. These two are very closely related, and will often overlap, but are also at times distinct in the sense that a vessel that has not tendered a notice of readiness for laytime prior to the cancelling date may still be ready under the cancelling clause, contingent on the specific contractual language. A third related concept with respect to arrival at the load port is that of the “expected ready to load” date.

The first point is that the vessel must present at the port and be ready prior to the cancelling date. There is a distinction with respect to readiness which is important to note under voyage charters, which is that readiness under the cancelling date and readiness under laytime provisions will not necessarily run in parallel. In some charter parties in order for the vessel to be considered ready under the cancelling clause the vessel must tender a notice of readiness,¹²⁵ while in other charter parties the vessel is simply required to be ready to load, and tendering of notice of readiness is not relevant. This is an important distinction, as tendering notice of readiness for the commencement of laytime will often require that certain conditions be met, for example inspection of cargo spaces, and furthermore can often be done only at specific times of day, most often during office hours. This distinction is made clear in the case of *The Gevalia* where the vessel was physically ready within the laycan, but could not tender notice of readiness for laytime before the cancelling date due to her arrival over a holiday weekend.¹²⁶ The voyage charterer cancelled the vessel, however the court found that readiness in this case referred to the physical readiness of the vessel and not the notice of readiness and as such the charterer had wrongfully repudiated the charter. It has been considered that this decision is of

¹²⁵ Grain charters constitute a typical example of this type of charter, see for example the Norgrain 1989

¹²⁶ *Aktiebolaget Nordiska Lloyd v J. Brownlie & Co. (The Gevalia)* (1925) Com. Cas. 307

general applicability.¹²⁷ Under the Gencon there is no requirement that the vessel must tender a valid notice of readiness under the cancelling clause. However, other charter parties do clarify this, and the parties are of course able to contract on any terms they wish. The Norgrain charter, for example, requires that the vessel validly tender a notice of readiness prior to the expiration of the laycan.¹²⁸

The expected ready to load date is an area which any party contracting as an owner under a voyage charter must treat with caution.¹²⁹ When an expected ready to load date is included in a voyage charter it is a representation of the owner's honest belief, made on reasonable grounds, that the vessel would be ready to load on that day.¹³⁰ This includes facts that the owner should have known as well as those which it did know.¹³¹ If the representation was not made on reasonable grounds then the charterer can repudiate the contract and claim damages.¹³² Extending the obligation beyond what the owner knew to what the owner should have known greatly increases the potential for liability as the owner will have to carefully consider what enquiries should be made, and it is clear that this is a greater obligation than under the cancelling clause.

1.5 RISKS FOR THE OPERATOR SURROUNDING LAYCAN AND EXPECTED READY TO LOAD DATES

The risks related to the first voyage under the time charter are that, when arriving late at a first load port, the vessel will be cancelled under the voyage charter but

¹²⁷ *Voyage Charters*, 2nd, *supra* note 2 at 19.13

¹²⁸ North American Grain Charterparty 1973 (Amended May 1989) at clause 4

¹²⁹ The Gencon 1994 contains an expected ready to load date at Box 9

¹³⁰ *Maredelanto Compania Naviera SA v Bergbau-Handel GmbH (The Mihalis Angelos)* [1971] 1 QB 164 (CA) and *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215 (CA)

¹³¹ *R. Pagnan & Fratelli v. N.G.J. Schouten* [1973] 1 Lloyd's Rep 349

¹³² *The Mihalis Angelos*, [1971] 1 Q.B. 164, at 194

that the operator will not have an equivalent right of cancellation under the time charter and that the time charterer may face damages for late arrival from the voyage charterer that cannot be recovered from the vessel owner. A significant risk is that the time charterer will make warranties in terms of the readiness to the voyage charterer that are greater than those that the owner has made to the time charterer, and as such be open to damages that cannot be recovered from the ship owner. This can occur when the time charterer does not carefully and properly manage information.

How the contractual parties actually view the risks associated with the cancelling date is variable, related largely to the commercial nature of shipping. In many cases a time charterer will be chartering a ship because the vessel is needed to form part of its larger fleet. In such circumstances, barring a market fluctuation, the time charterer will not generally cancel the vessel because of losing the first cargo and will just deal with the ship as it would any other vessel in its fleet that missed the cancelling date. However, other areas of consideration, such as avoiding a long ballast or potentially pursuing damages may remain within the operator's contemplation. In other cases, and particularly in the situation of a time charter trip where the ship was taken for a specific cargo, the time charterer will be much more inclined to want to cancel the ship should the cargo be cancelled.

In circumstances where the voyage charterer has cancelled the vessel for the time charterer to consequently cancel the vessel under the time can pose technical difficulties. The reason for this difficulty is the mechanisms of the way delivery works versus the way that readiness under voyage charters works.

As noted vessels deliver in different locations, while readiness under voyage charters always occurs at the port. The difficulty that this poses in terms of cancelling the time charter is that the vessel has always delivered before the point in time when she has presented to the voyage charterer.¹³³ Thus, because the vessel has delivered, the time charterer no longer has a right to cancel the vessel. Also, as noted, since under the voyage charter the owner (time charterer) has an obligation to present the vessel for loading the time charterer faces potential difficulty in cancelling the vessel.

Another risk in respect of cancelling dates is that a vessel must often undertake a voyage in ballast for a significant distance in order to present for loading. The time charterer runs the risk that it will incur the costs of this ballast voyage just to be cancelled and therefore be left without any immediate employment for the vessel. This risk applies not only on delivery but also in relation to intermediate voyages.

A third risk is that the charterer will warrant an expected ready to load date without receiving an equivalent warranty from the ship owner. It must be recalled that the expected ready to load date is a condition of the contract and failure to arrive by this date is more likely to give rise to a claim in damages as compared to missing the cancelling date.¹³⁴ This can lead to the time charterer being liable to the voyage charterer for damages without having an equivalent warranty from the vessel's actual owner. This risk can also arise during intermediate voyages but since at this time it is the time charterer that has commercial control of the vessel between voyages it is effectively up to the time charterer to ascertain the expected ready to load date, whereas on arrival at the first port the time charterer will be relying on

¹³³ Where the vessel delivers on arrival at the port delivery may take place very shortly prior to the vessel tendering to the voyage charterer under the voyage charter party.

¹³⁴ Condition of the contract: As per Lord Denning, MR, in *The Mihalis Angelos*, [1971] 1 Q.B. 164 at 194.

information provided by the vessel owner. At this point it must be emphasized that with respect to the expected ready to load date the question of what the time charterer should have reasonably known is relevant. In this sense it must be considered whether the time charterer is able to rely exclusively on information from the owner and the vessel or whether under certain circumstances the time charterer is put on enquiry and required to verify with third parties.

While there is no established law in this regard, it has been suggested that an owner must verify information relative to the vessel's readiness with third parties,¹³⁵ which would generally mean checking with service providers such as stevedores, port agents, surveyors and weather routing companies regarding factors that would impact the vessel's progress. However, the issue that arises is whether, when the vessel is on time charter, the time charterer is able to rely solely on information provided by the owner or whether the time charterer is required to verify with other parties.

It is submitted that the time charterer can, from a legal standpoint, generally rely on information provided by the ship owner in terms of readiness without incurring legal liability should it prove to be inaccurate and that the owner's information will satisfy the test of what the time charterer should have "reasonably known". However, should there be negligence on the part of the owner or master in giving this information then liability may well accrue to the time charterer as it may be arguable that in the context of the voyage charter that the owner and master are servants of the time charterer.¹³⁶ However, if the information is obtained from a third party then it appears less likely that there is liability for information given by a third

¹³⁵ *Voyage Charters, 2nd, supra* note 2 at 4.8.

¹³⁶ Suggested in *Voyage Charters, 2nd, supra* note 2 at 4.8 that the owner is liable for information given by its employees.

party.¹³⁷ Furthermore, the time charterer may be found to have been put on enquiry in the event of any inconsistency or vagueness in the owner's information. It is worth noting that from a commercial standpoint that it is in the time charterer's best interests to have as accurate idea as possible about the readiness of the vessel.

1.6 POTENTIAL RISK MANAGEMENT APPROACHES FOR THE TIME

CHARTERER

In the event that the time charterer is prepared to retain the vessel even if the voyage charter is cancelled then there is less risk to be managed from a legal perspective. In a perfect world the time charterer would like to have recourse against the owner for losing the voyage fixture, but the ship owner is highly unlikely to give such an undertaking given that this could lead to potentially significant liability for something over which the shipowner has little control, for example the time charterer could be reckless in agreeing to the cancelling date or the vessel could encounter bad weather after delivery but en route to the load port. In the event that the owner has negligently or intentionally misrepresented in the readiness of the vessel then the time charterer may have recourse for losing the voyage fixture.¹³⁸

In terms of a first voyage under a time charter the time charterer must also be aware of the potential liability that arises from an expected ready to load date and ensure that it does not overstate any information that has been provided by the owner, for example giving the approximate estimated date of arrival supplied by the ship owner as an expected ready to load date. It is vital to ensure that information is represented and utilized correctly. In relation to a first voyage it is always prudent

¹³⁷ *Ibid.*

¹³⁸ *The Mihalis Angelos* [1971] 1 QB 164 (CA).

for the time charterer to verify the vessel's schedule with a third party in order to ensure that the most accurate information is available. This is important given that providing accurate information to the voyage charterer assists in avoiding claims and obtaining information from a third party makes it far more likely that in the case of negligence with relation to the information provided that the time charterer can avoid liability for this negligence and also avoids any claim that the time charterer failed to make proper enquiries and as such is liable for not providing information it should have reasonably known. With respect to intermediate voyages the charterer is more limited since there will be not be a laycan under the time charter (as the vessel will have already delivered) and the owner will not be giving notices to the charterer related to the vessel's itinerary and schedule. Therefore, the time charterer is far less likely to have any viable remedies against the owner as there is no right to cancel and the time charterer is responsible for the vessel scheduling. In terms of intermediate voyages the time charterer's obligations are those of the owner's under typical circumstances, which is to say that an expected ready to load date must be given on reasonable grounds. In such a case in order to minimize risk it is suggested that the time charterer verify information with third parties in order to ensure accuracy and assist with the avoidance of liability for negligence.

In terms of situations where the vessel delivers a distance from the load port and the time charterer is risking the cost of a voyage in ballast only to be cancelled a potential solution for time charterers is the inclusion in their voyage charters of a clause such as that found in the 1994 revision of the Gencon Charter at clause 9(b).¹³⁹ This clause states in part:

¹³⁹ See appendix A.

Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party or agree to a new cancelling date.¹⁴⁰

This clause will therefore allow the operator to receive notification from the voyage charterer as to whether or not the voyage charterer will cancel the fixture, with the advantage being that the operator should be able to save all or part of the cost of the ballast, or possibly allow the time charterer to cancel the vessel should they wish to. With reference to the right to request notification from the voyage charterer under a time charter the time charterer does not have an equivalent right to anticipatorily cancel the vessel. However, this does not incur risk as the time charterer will already know that the cargo is cancelled and can make a decision at the time of delivery in terms of whether or not to cancel the vessel.¹⁴¹

Clause 9(b) of the Gencon 1994 is useful in terms of a vessel on her first voyage under a time charter in the circumstances where the time charterer would actually wish to cancel the vessel and the timing is such that the notice can be given and the time for the election by the voyage charterer runs out prior to the vessel's actual delivery.¹⁴² Therefore it can be seen that while there certainly exist circumstances

¹⁴⁰ 1994 revision of the Gencon charter.

¹⁴¹ A more commercial approach would generally be to enter into a discussion with the owner in advance of the cancelling date allowing the owner the opportunity to mutually agree to cancel the charter with the owner waiving any right to hold the time charterer responsible for breaching the charter by anticipatorily cancelling.

¹⁴² Under the unamended clause the charterer will have 48 hours to decide whether to cancel the vessel.

where this clause will not assist the time chartered operator in general it is a large improvement over standard charter party phrasing. In terms of an intermediate voyage this clause is very helpful to time charterers as it assists in preventing costly ballast voyages.

Clause 9(b) of the 1994 version of the Gencon must be contrasted with that contained in the 1976 Gencon.¹⁴³ While the two versions are in many sections lightly modified the cancelling clause underwent major revision. In the 1976 version the clause reads, in part:

Should the vessel not be ready to load (whether in berth or not) on or before the date indicated in box 19, Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of loading.

This clause is of less assistance to operators as it has been considered that the owner is not entitled to make a demand under this clause until the cancelling date has passed.¹⁴⁴ This is clearly different from the 1994 version when the demand must be made as soon as it becomes clear the vessel cannot make the cancelling date. Therefore, under the 1994 Gencon the operator will generally be entitled to know much sooner whether the vessel is being cancelled, and as such the clause is much more useful from the perspective of the party contracting as the owner.

¹⁴³ The 1976 version of the Gencon is still in use, and this clause is still found in practice.

¹⁴⁴ *Voyage Charters*, 2nd, *supra* note 2 at 19.32, this is also supported by the decision in *Christie & Vesey Ltd. v. Maatschappij tot Exploitatie Van Schepen en Andere Zaken (The Helvetia-S)* [1960] 1 Lloyd's Rep 540.

It is strongly suggested that an operator attempt to have a clause such as the one from the 1994 Gencon included in all voyage charters. The key element from an operator's perspective is the entitlement to receive notification from the voyage charterer about its intention in relation to cancellation of the fixture at the earliest possible time.

However, barring such a set of circumstances it will almost certainly be necessary to include additional wording giving the time charterer a specific right to cancel the vessel should the voyage charter be cancelled. It is considered highly unlikely that such a provision would be generally acceptable to owners given that such a right is not historically incorporated in time charters and ship owners would argue that this is a risk inherent to time chartering, and that one of the incentives for the owner to time charter vessels out is the avoidance of risks such as these. From a practical standpoint an owner is unlikely to agree to deliver the vessel to a time charterer who ballasts the vessel several days only to return the vessel to the owner when the ship misses the cancelling date and would also put the ship owner at the whim of the time charterer in terms of risk taking, primarily with respect to agreeing dangerously tight cancelling dates.

With respect to the insertion of an expected ready to load date in the voyage charter party the steps that the time charterer may take in this regard are, first and foremost, eliminating the risk by not warranting a specific expected ready to load date. In the event that the voyage charterer requires an expected ready to load date then, in the case of a vessel delivering onto time charter, the preferred solution is to obtain an expected ready to load date from the ship owner. However, this will only be feasible if the first voyage is known at the time of chartering the ship. If it is not possible to obtain an expected ready to load date from the owner then the time

charterer will have to rely on the owner for information concerning the vessel's readiness, so it is imperative that the time charterer exercise caution in verifying information and passing it to the voyage charterer in an accurate manner.¹⁴⁵ If it is not possible to obtain a warranty of the expected ready to load date then an operator can attempt to have a clause inserted that states that it is understood that the time charterer will be relying upon notices given by the owner in informing the voyage charterer of the vessel's expected readiness. The advantage to this is that it has the potential to assist with arguments regarding remoteness of damages (an example of potential remoteness would be when the voyage charterer schedules delivery of the cargo the vessel by barge, and if the vessel is delayed barge demurrage will accrue) should the charterer rely on a notice negligently given by the owner.

1.7 CONCLUSION

In general risk arises in several ways for the time charterer. These risks can be divided between those which occur uniquely on a first voyage when the vessel is delivering and those which may also occur in relation to intermediate voyages.

With respect to the first voyage the risk that uniquely occurs is that the time charterer may wish to cancel the vessel if the voyage charter is lost. This can pose difficulties if the vessel has already delivered.

The other major risks involved are that a vessel will be required to undertake a ballast voyage facing the likelihood of being cancelled and that the time charterer

¹⁴⁵ The time chartered operator will not tend to have specific in depth details of the vessel's expected readiness when the vessel is coming on charter, the time charterer will often rely more extensively on the owner until the vessel actually delivers.

might face a claim for missing either the cancelling or the expected ready to load date. All of these risks are common to both first and subsequent voyages under the time charter.

In terms of the first voyage under a time charter there are particular risks that arise if the time charterer wishes to have the option to cancel the vessel should the vessel face cancellation under the voyage charter. If the voyage charter has a clause such as clause 9 of the Gencon, and in the event that it is possible for the owner to make a declaration under this clause and receive a reply from the voyage charterer prior to delivery of the vessel then it will be useful.

From a legal standpoint with regard to intermediate voyages as noted clause 9 of the Gencon 1994 includes wording that can be very useful to the time charterer, as this can reduce costly ballast voyages. In terms of alignment of contractual terms as between the time and voyage charter parties there is little to be done in these instances, as the vessel will have already delivered and it is up to the time charterer to schedule the voyages. In charter party terms the best advice for time charterers is to attempt to include a clause similar to clause 9, which will at least allow the time charterer to potentially limit the need to ballast the vessel only to find out if the charterer intends to cancel.

With respect to expected ready to load dates, this risk is entirely manageable primarily by an awareness of the additional responsibility for what the operator should reasonably have known. Once the operator is cognizant of this fact then it is a simple matter to ensure that all information is verified, particularly if any circumstances arise where the operator could be taken to have been put on enquiry.

The present state of the law in this area in brief is that delivery takes place generally at a specified geographic point and that a vessel must be ready in accordance with the terms of the charter party. Under a voyage charter readiness is linked to both tendering of notice of readiness and also to cancellation of the charter. The risk lies in that the time charterer may be cancelled under the voyage charter without an equivalent right to cancel under the time charter.

The overall risk in this area is considered moderate. While risk does exist from a purely legal standpoint there is little that can be done to bring time and voyage charter terms into line in order to avoid the risk, on an initial voyage the vessel will have delivered prior to the time for cancellation by the voyage charterer arising, therefore even if the vessel is rejected by the voyage charterer the time charterer will still have taken delivery of the vessel. This situation can be greatly lessened through the use of language, such as that contained at clause 9 of the Gencon 1994 which allows the time charterer to notify the voyage charterer that the vessel is running late and require the charterer to exercise a right to either maintain or cancel the charter with a revised cancelling date.

CHAPTER 2

OFF HIRE AND SUSPENSION OF LAYTIME

The MV Rideau is on period time charter to Wellington Navigation, a ship operator. Wellington has fixed the vessel on a voyage charter for a cargo of steel coils loading in Turkey, which includes a fixed amount of time for loading. Upon arrival at the load port the berth at which the Rideau is to load is occupied by another vessel. While waiting for the berth to become free it is discovered that several crew members on board the Rideau lack health certificates required for calling at Turkish ports. After a period of several days the vessel occupying the berth departs, however the Rideau is not permitted to berth owing to the lack of health certificates. These are received two days later at which point the vessel berths and commences loading the cargo of steel coils. While loading, the vessel is delayed due to a breakdown experienced by one of the vessel's cranes. The crane is repaired, loading is completed and the vessel sails. As a consequence of the problems encountered the vessel has accumulated several days of delays while waiting for the other vessel to depart the loading berth, waiting for health certificates, and during crane repairs. Wellington Navigation will want to claim as much of the time as possible as off hire under the charter party, or in the alternative from the voyage charterer as laytime.

2.1 INTRODUCTION

While the questions of when a vessel may be considered off hire and when laytime counts are both main issues under charter parties they remain distinct in the sense that questions of off hire are pertinent to time charters, while issues relating to laytime are relevant to voyage charters. For this reason analysis of each of these topics is typically undertaken without any consideration being given to the other, and

from the standpoint of a shipowner or a vessel voyage charterer this is reasonable, as they will only be dealing with one charter party at time. However, the ship operator is simultaneously dealing with charters on both voyage and time charter forms, and there is therefore practical and conceptual overlap with respect to the questions of laytime and off hire. It is important to note that these topics will only intersect while the vessel is in port because laytime is inapplicable during time spent sailing, whereas off hire can occur at any time during the voyage.

In general terms off hire can be defined as the time when a time charterer is not required to pay for the use of the vessel. This will typically be during some period of inefficiency of the vessel, an example of which would be an engine breakdown.

Laytime is less intuitively obvious. Under voyage charters there is often a provision whereby the voyage charterer undertakes to complete loading the vessel within an agreed period of time. If this time is exceeded the voyage charterer is liable to pay damages to the ship owner.

Broadly speaking risk arises for the operator in that an event may occur while the vessel is in port that will cause a delay to the vessel, and that the vessel will remain on hire, but laytime will be suspended. In other words the time charterer will have to pay hire but laytime will not count and therefore the time charterer will not be collecting any demurrage from the voyage charterer, leaving the time charterer suffering a loss. In this way the time charterer will be paying the owner for the use of the vessel but not receiving any equivalent compensation from the voyage charterer. The key for the owner is to manage charter party terms in a way that allows the minimization of the risk of this occurring.

The scenario outlined at the beginning of this chapter is a relatively simple example of the possible overlap between laytime and off hire. It brings up commonly occurring issues of whether the vessel can be off hire during a period when no actual time is lost (when awaiting health certificates while the loading berth was occupied), whether the vessel can be off hire when she is physically capable of performing the required task (lack of health certificate is not a physical deficiency in the vessel) and finally whether laytime counts or the vessel is off hire during the period during which the vessel is not fully, but partly, physically efficient (when the crane was not functional). It is vital to note that in all cases whether laytime will continue to count, and whether a vessel will be off hire will be subject to the exact facts of the case and the terms of the respective charter party.

The approach taken in this section will be to examine the topics of off hire and laytime separately, then the overlap between the concepts will be analyzed, and areas of particular risk will be identified. Finally, suggestions for addressing the areas of risk will be offered

2.2 OFF HIRE

It is not the purpose of this chapter, nor is it within the scope of this paper, to engage in an exhaustive examination of the law relating to off hire. However, the main concepts must be outlined owing to the central importance of the question of suspension of hire. Generally the discussion regarding off hire will use as a basis clause 15 of the NYPE 1946 time charter party. However, off hire clauses from other time charters will also be considered and compared.

The general principle related to off hire is stated in *The Mareva*: it is settled law that because the off hire clause relieves the charterer of its primary obligation to pay hire that it is the charterer's responsibility to bring itself within the ambit of any off hire clause.¹⁴⁶ The key is that in the event that the vessel is not in full working order to provide the required service then the charterer is entitled to cease paying hire for time thereby lost. It must also be noted that because the off hire clause relieves the time charterer of the obligation to pay hire, which is a fundamental duty under the time charter, any ambiguity in an off hire clause will be read in favour of the owner.¹⁴⁷

It is considered that there are two main issues as relates to the determination of whether a vessel can be held off hire, which are as follows:

1. Whether an off hire event occurred
2. Whether the charterer consequent to the off hire event suffered a loss of time

Lord Denning, M.R. suggested a similar two tier test in *The Aquacharm*. This test was to first establish whether the full working of the vessel has been prevented. If it has then it is possible to proceed to the second step, which is to consider the cause.¹⁴⁸ The test outlined by Lord Denning is fundamentally the same as the test above in reverse order. It is submitted that it is preferable to first consider whether an off hire event actually occurred, because in some cases a loss of time will not actually be necessary in order for the vessel to be off hire.¹⁴⁹

¹⁴⁶ *Mareva Navigation v Canadria Armadora SA (The Mareva AS)* [1977] 1 Lloyd's Rep 368 at page 381.

¹⁴⁷ *Royal Greek Government v Minister of Transport (The Ann Stathatos)* (1948) 82 Ll.L. Rep 196.

¹⁴⁸ *Actis Co. Ltd v Sanko Steamship Co (The Aquacharm)* [1982] 1 Lloyd's Rep 7.

¹⁴⁹ See period versus net loss of time clauses, pages 67-68, *infra*.

Subsequent to the determination of whether the vessel is off hire is the calculation of the precise amount of off hire time, it must therefore be determined precisely when hire ceases, and when hire recommences.

Regarding the question of what constitutes an off hire event, a time charter party will normally contain an enumeration of events that will result in the vessel being off hire. It is important to note that off hire works independently of breach of the charter party.¹⁵⁰ There is no element of fault in determining whether a vessel is off hire.

The NYPE 1946 off hire clause (unamended) is found at clause 15 of the charter party and reads as follows:

That in the event of the loss of time from deficiency of men or stores, fire, breakdown to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

¹⁵⁰ *The Ioanna* [1985] 2 Lloyd's Rep 164.

Breaking down this clause into its constituent parts we can see that it allows a vessel to be placed off hire in the following situations¹⁵¹:

- i. Deficiency of men: This basis for placing the vessel off hire refers to the number of crew,¹⁵² and not for example when the crew refuses to work because of a strike.¹⁵³
- ii. Breakdown of machinery: This is relatively straightforward; a vessel will be off hire for time used, for example, in repairing damage due to a collision.¹⁵⁴
- iii. Detention by average accidents to ship or cargo: In accordance with the decision in *The Mareva* an “average accident” refers to any accident causing damage, and not necessarily a general average incident.¹⁵⁵
- iv. Any other cause preventing the full working of the vessel: In *The Laconian Confidence* it was held that the phrase “any other cause preventing the full working of the vessel” was subject to the *ejusdem generis* rule of construction.¹⁵⁶ Essentially, this seems to limit “any other cause” to the genus of the previously noted off hire events, the fundamental effect of which is that it likely restricts causes to physical inefficiencies of the vessel rather than causes external to the vessel.¹⁵⁷ The insertion of the word “whatsoever” after “cause” in clause 15 of the NYPE has the effect of removing the limit imposed by the *ejusdem generis* rule, and will widen the scope of the off hire clause,¹⁵⁸

¹⁵¹ Although phrasing differs slightly these are generally common to both the Baltime and NYPE charter parties.

¹⁵² *Mocatta et al, Scrutton 19th, supra* note 25, p. 369.

¹⁵³ *Royal Greek Government v Minister of Transport (The Ann Stathatos)* (1948) 82 Ll.L. Rep 196.

¹⁵⁴ *Adelaide Steamship Co. v R* [1926] AC 172.

¹⁵⁵ *Mareva Navigation v Canadria Armadora SA (The Mareva AS)* [1977] 1 Lloyd’s Rep 368.

¹⁵⁶ [1997] 1 Lloyd’s Rep 139.

¹⁵⁷ Simon Baughen, *Shipping Law*, 3rd ed, (London, Cavendish, 2004), p. 254 [*Baughen, Shipping Law 3rd*].

¹⁵⁸ *Ibid* p. 255.

allowing the inclusion of non physical deficiency off hires in certain circumstances.¹⁵⁹

However, the simple occurrence of one of the listed events will not necessarily result in the vessel being placed off hire; under the NYPE 1946 form a consequential loss of time will also generally be necessary.¹⁶⁰ For example, in *The Ira* the vessel, while on time charter was required to drydock, and the time charter party allowed that time used in drydocking would be off hire.¹⁶¹ After discharging in Italy the vessel was to drydock in Greece, then proceed to the Black Sea for loading. The time charterer wished to claim the sailing time from Italy to Greece as off hire, however, the drydock in Greece was on the direct route from Italy to the Black Sea, therefore, this time would have been used in sailing irrespective of the owner bringing the vessel to the drydock. On the basis that there was no deviation from the direct route the court rejected the time charterer's argument. Therefore, the time charterer failed in the claim on the basis that there was no loss of time in sailing from Italy to Greece. In applying the two step test outlined above it can be observed that the while an off hire event did occur (the sailing to the port of drydock would generally be an off hire event) there was no loss of time and therefore the second requirement of off hire was not satisfied.

In order to calculate the precise period of off hire the question of when hire again become payable is relevant. This issue is dependant upon the exact wording of the charter party, and primarily upon the question of whether the charter terms provide that it is a "net loss of time" or a "period" off hire clause. The unamended NYPE charter party is a "net loss of time" charter, and in this type of charter any time

¹⁵⁹ The issues surrounding the requirements for physical inefficiency are discussed in section 2.2.1, *infra*.

¹⁶⁰ *Baughen, Shipping Law 3rd, supra* note 168, p. 253.

¹⁶¹ [1995] 1 Lloyd's Rep 103.

claimable as off hire will be the actual net time lost to the charterer.¹⁶² An example of this clause occurs in *The HR Macmillan* where the vessel suffered a breakdown of one crane but there was no time lost as the vessel's other cranes could perform the work required.¹⁶³ A period off hire clause is one that starts and ends with specific named events, such a clause is found in the Shelltime 3.¹⁶⁴ *Hogarth v Miller* is an example of a case involving a charter containing a period off hire clause.¹⁶⁵ In this case a vessel suffered an engine breakdown and was taken under tow to the discharge port. The House of Lords found that the vessel was off hire for the time when she was being towed, and that hire only resumed once the vessel was discharging the cargo with her own winches. This can be contrasted with *The Ira*, discussed above, which contained a net loss of time clause. In *Hogarth v Miller* there was no effective loss of time as the vessel was transiting to the discharge port while under tow, however, as the relevant clause was a period off hire clause no hire was payable. It will be recalled that in *The Ira* the time charterer could not claim the time used to sail from Italy to Greece as off hire. Under a net loss of time clause this time was not actually lost to the time charterer, because the vessel was proceeding en route to the Black Sea and the court held that this time was not to be considered as off hire because the time that was used in sailing from Italy to Greece was of benefit to the charterer; this route would have been sailed in the passage to the Black Sea whether or not the vessel had been required to drydock.

If the vessel is partially able to perform the functions required of her then the time allotted for off hire will also vary under the two types of off hire clause. Under a

¹⁶² *Western Sealanes Corp. v Unimarine S.A. The Pythia* [1982] 2 Lloyd's Rep 160.

¹⁶³ *Canadian Pacific (Bermuda) Ltd v Canadian Transport Co. Ltd.* (1974) 1 Lloyd's Rep 311 (C.A.).

¹⁶⁴ "In the event of loss of time (whether arising from...or in any other manner)...hire shall cease to be due or payable from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced." See also *The Bridgestone Maru No. 3* [1985] 2 Lloyd's Rep. 62.

¹⁶⁵ [1891] A.C. 48 (H.L.).

period clause, a partially efficient vessel will be off hire irrespective of the partial efficiency.¹⁶⁶ In the case of a net loss of time charter, the vessel will only be off hire for the time actually lost.¹⁶⁷ It should be noted that the majority of off hire clauses are now net loss of time rather than period off hire clauses.

Owners must however be prudent that when they are negotiating additional clauses they do not inadvertently agree to a period off hire clause. An example of wording that may lead to such a result would be “In the event of any arrest of the vessel the vessel will be off hire until such time as the arrest is lifted”. While this is a hypothetical clause one can see the potential for interpretation as a period off hire clause as there is no mention of the necessity of any time being lost.

Against the background of this discussion the specific question of when may a physically efficient vessel be placed off hire arises.

2.2.1 Physical Efficiency and Off Hire

A key issue with respect to off hire is the question of whether a vessel is capable of undertaking the task required of her. Often a vessel is clearly physically incapable of performing the required task, for example when there is an engine breakdown and a vessel is unable to proceed on the voyage as required. However, the question becomes more complex when there is no physical deficiency, for example if a vessel was delayed from calling at a Canadian port due to being considered a high risk vessel for Asian Gypsy Moth. In this case there is no physical impediment to the vessel entering a Canadian port; the vessel is fully physically capable of sailing into

¹⁶⁶ *Tynedale Steam Shipping Co. Ltd. v. Anglo-Soviet Shipping Co. Ltd.* [1936] 1 All E.R. 389.

¹⁶⁷ *The HR Macmillan* (1974) 1 Lloyd's Rep 311 (CA).

port. The question arises as to whether this constitutes an off hire. Another situation, and one that may impact the counting of laytime, is the question of a vessel being delayed due to being arrested in port for an issue relating to cargo, a situation that can arise with respect to cargo damage and one that will be examined in detail in this chapter.

In both of the specific sets of circumstances outlined in the previous paragraph as well as with respect to non physical inefficiency in general the wording of the specific clause is of paramount importance. In particular, with respect to the NYPE 1946 charter the question of the inclusion of the word “whatsoever” in the off hire clause is important and must be considered. Although it is important to consider the wording of specific clauses there is still a great deal of reliance on the off hire provisions contained in the unamended charter forms and many valuable general observations can therefore be made.

With respect to the wording of off hire clauses several charter parties will be examined, these are the Baltime 1939, the NYPE 1946 and the NYPE 1993 for dry cargo charters and the Shelltime 4 and BPTIME 3 for liquid cargoes.¹⁶⁸ The focus will be on the NYPE 1946 time charter, as this form has been in wide use for many years and continues to be heavily relied upon in the dry cargo trades.

In terms of the dry cargo charter parties under consideration an examination of the off hire clauses illustrates that under the Baltime and NYPE 1946 forms there is no immediately obvious basis on which a vessel can be placed off hire for a non physical inefficiency. The NYPE 1993 form explicitly allows for two bases upon which a physically efficient vessel can be placed off hire, these being strike by officers or

¹⁶⁸ Copies of all the mentioned charter parties are found in appendix B.

crew and detention or arrest. As noted above the amendment of clause 15 of the standard NYPE 1946 form to include the word “whatsoever” after the words “any other cause” is also relevant to the question of placing a vessel off hire for a non physical deficiency.

On the tanker side the Shelltime 4 covers extensive ground with regard to non physical reasons for off hire, while the BPTIME includes more limited scope regarding non physical factors.

There are a number of decided cases which address the issue of non physical inefficiency, spanning several different charter forms. Unfortunately, these cases fail to adopt a universal view and leave the question somewhat open. These decisions will be briefly reviewed in the following paragraphs, and placed within the context of physical and non physical inefficiency. There are two questions which must be broadly considered, the first of these being whether a vessel can be considered off hire when the vessel is physically efficient and the cause of the delay is external to the vessel, the second being whether the vessel can be considered off hire when the vessel is physically efficient but the cause of the delay is related to the vessel. Examples of both of these scenarios will be seen in the discussion of several cases relevant to the question of whether a physically efficient vessel can be placed off hire.

The first case to be considered is *Court Line v Dant & Russell*.¹⁶⁹ In this case the vessel in question, the *Errington Court*, was prevented from departing the Yangtze River. This was due to the Chinese government sinking several ships with the goal of blocking the Yangtze River after an outbreak of hostilities between China and

¹⁶⁹ (1939) 44 Com. Cas. 345.

Japan. The charter was held to be frustrated, but in *obiter* comments regarding the question of off hire Branson J. considered that the vessel would not be off hire owing to the blockage of the river. It seems to be that because this cause was entirely external to the vessel the vessel could not be considered off hire.

In *The Aquacharm*, the master of a vessel negligently loaded too much cargo after failing to consider the draft change from salt water to fresh water while transiting a fresh water lake in the Panama Canal. As such, prior to transiting the canal, the vessel had to discharge part of her cargo which was subsequently reloaded after transit. The charterer argued that the vessel was off hire because she was impeded from performing the service immediately required of her owing to her increased draft. In a decision upheld by the Court of Appeal it was held that the vessel was not off hire because she was fit “in herself” to perform the service required.¹⁷⁰ In this case there was no deficiency in the ship, her machinery, equipment or crew that prevented the immediate working of the vessel. In the case of *The Aquacharm* the off hire clause in question was an unamended NYPE 1946 clause and did not contain the insertion of the word “whatsoever”.

The next case to be considered is *The Apollo*.¹⁷¹ In this case the vessel was chartered on an NYPE 1946 form that was amended to include the word “whatsoever” after “any other cause”. This case involved a vessel that was delayed in receiving free pratique due to the reasonable apprehension of the port authority that there may be typhus on board. In this instance it was found that the action of the authorities did prevent the full working of the vessel within the meaning of the

¹⁷⁰ *Actis Co. Ltd. v The Sanko Steamship Co Ltd. (The Aquacharm)* [1980] 2 Lloyd’s Rep. 237 and [1982] 1 Lloyd’s Rep 7 (C.A.).

¹⁷¹ *Sidermar S.p.A. v Apollo Corp (The Apollo)* [1978] 1 Lloyd’s Rep. 200.

clause and as such the vessel was off hire. It would appear that the addition of the word “whatsoever” was instrumental in the court reaching this decision.

The Mastro Giorgis was a case that provided some useful definition in terms of the relationship between the insertion of the word “whatsoever” and non physical delays to off hire.¹⁷² In this case a ship chartered on an NYPE form with the off hire clause amended by the insertion of “whatsoever” was prevented from sailing due to arrest by the receivers of a cargo of grain that had been damaged during the voyage. In this case it was held that when the word “whatsoever” was inserted that non physical causes would suffice to put the vessel off hire if the full working of the vessel was prevented. However, it was stated that a distinction still had to be drawn between causes internal to and external from the vessel. In this case physical condition of the vessel was extended to other qualities of the vessel, including issues such as ownership and history.

The Roachbank also addressed the issue of extraneous causes with Webster J. taking the view that there was no need to distinguish between internal and external causes under the NYPE form as long as clause 15 was amended by the insertion of the word “whatsoever”.¹⁷³

The *Manhattan Prince* involved a vessel chartered on the Shelltime 3 form.¹⁷⁴ The vessel was delayed due to industrial action taken by the International Transport Workers Federation (ITF) against the vessel for employing crew that were not paid at ITF rates. The time charterer attempted to hold the vessel off hire for the time lost.

¹⁷² *Bellcore Maritime Corp v Fratelli Moretti Cereali S.p.A. (The Mastro Giorgis)* [1983] 2 Lloyd’s Rep 66.

¹⁷³ *Venezolana de Navigacion v Bank Line (The Roachbank)* [1987] 2 Lloyd’s Rep 138.

¹⁷⁴ *The Sanko Steamship Co. v Fearnley & Eger A/S (The Manhattan Prince)* 1985] 1 Lloyd’s Rep 140.

In this case the Shelltime 3 off hire clause was unamended, and the clause used the term “efficient working”. It was held that these words, read in the context of the clause, meant the physical working of the vessel. The case was distinguished from the non physical inefficiency in *The Apollo* and *The Mastro Giorgis* on the basis that the inclusion of the word “whatsoever” in those charters had the effect of excluding the *ejusdem generis* rule, thereby allowing for the vessels to be off hire for non physical reasons. In this case despite the ITF's actions the vessel was physically capable working and as such was on hire. It can be seen that in this case in order for the vessel to be off hire the charter party would have required amendment to allow off hire for non physical deficiency.

The Bridgestone Maru No. 3 is another case on the Shelltime 3 charter.¹⁷⁵ In this case, which featured an unamended off hire clause, a vessel was delayed due to the failure of a vessel's discharging equipment to comply with local regulations. The vessel was held off hire, the rationale being that the inability of the ship to discharge was attributable to the suspected condition of the ship, which could therefore be considered a physical deficiency.

In *The Laconian Confidence* the port authority at Chittagong refused to allow the vessel to sail with cargo residues remaining on board.¹⁷⁶ This vessel was operating under an NYPE charter with an off hire clause unamended by the insertion of “whatsoever”. The vessel was held to be on hire during this period. Rix J. stated that the unamended words “any other cause” do not cover an entirely extraneous cause, which this was considered to be as it was interference by an outside authority. Rix J did go on to state that it was considered that in the event that the

¹⁷⁵ *Navigas International Ltd v Trans-Offshore Inc. (The Bridgestone Maru No. 3)* [1985] 2 Lloyd's Rep 62.

¹⁷⁶ *Andre et Cie v Orient Shipping (Rotterdam) (The Laconian Confidence)* [1997] 1 Lloyd's Rep 139.

word “whatsoever” was incorporated into the clause then interference by outside authorities would fall within the ambit of the off hire clause.

The Jalagouri involved a vessel chartered under a NYPE 1946 form which had been in an accident while entering port which had resulted in damage to the cargo on board. The port authority refused the vessel permission to discharge the damaged cargo without a financial guarantee for its value. This resulted in a loss of time until the charterer provided the guarantee. The charterer subsequently claimed the vessel was off hire. This claim against the owner succeeded, however this decision was based on an additional clause to the charter party and not on clause 15. It appears that had clause 15 been the sole basis for contending the vessel was off hire then the claim would have failed.

In terms of the unamended NYPE off hire clause it can be illustrated that barring an additional clause, such as that in *The Jalagouri*,¹⁷⁷ a vessel will remain on hire during periods when the inefficiency is not directly related to the physical condition of the vessel, or to one of the enumerated reasons for being off hire. If clause 15 of the charter party has been amended by the insertion of the word “whatsoever” then a claim for non physical inefficiency has a much greater possibility of success.

In *The Doric Pride* a vessel was time chartered on an NYPE form for a single trip from the United States Gulf to Korea. Upon arriving at South West Pass (Mississippi River) the vessel was targeted as a “high interest vessel” for security reasons and directed to a waiting position where she would be inspected by the US Coast Guard. The vessel arrived at the waiting position, and, following a collision that closed the

¹⁷⁷ *The Scindia Steamship Navigation Company Limited Bombay v Nippon Yusen Kaisha Limited (The Jalagouri)* [2000] EWCA Civ 93.

Mississippi River was ordered to await inspection. The vessel was inspected and cleared to continue her voyage several days later. Like *The Jalagouri* this decision appeared to turn on an additional clause which allowed the vessel to be held off hire. There is no suggestion in the decision that the vessel would have been off hire had there been no additional clause dealing with this issue, nor is there any indication as to whether clause 15 of the charter party was amended. However, given the decision in *The Mastro Giorgis* which involved the vessel remaining on hire during the period of detention as well as the decision in *The Apollo*, where the vessel was delayed in receiving free pratique and the off hire seemed contingent upon the inclusion of the word “whatsoever” in clause 15 it would appear highly likely that the vessel would remain on hire in the event of detention for security reasons.

2.2.2 Conclusions Regarding Inefficiency

Under the common dry bulk forms it appears that, barring some amendment to the charter party, that vessel off hire is largely restricted to physical inefficiency of the vessel. Therefore cargo gear breakdowns and engine difficulties are prime examples of off hires, while detention due to arrest is a typical example of what does not constitute an off hire. This is due, under the NYPE form, to the application of the *ejusdem generis* rule which essentially limits the words “any other cause” to the genus of the preceding words, which do not include any non physical deficiencies.

By way of comparison tanker charter parties appear more variable. The Shelltime 4 contains an extensive list of potential off hire events which are non physical in nature. The BPTIME 3 is less clear in this regard, but does allow for off hire in the event that the vessel is unable to comply with charterers orders, which potentially allows for off hire claims based on non physical deficiency. Whether this could be

used to put the vessel off hire would be a matter of construction of the charter terms and the specific event. In *The Manhattan Prince* The off hire clause in the Shelltime 3 was interpreted similarly to the NYPE form, whereby additional wording would be necessary to extend the clause to non physical inefficiency.

2.3 LAYTIME

Cargo operations under charter parties are broadly divided along the lines of who is responsible for paying for the loading and/or discharging. When the owner is to pay for these operations (known as “liner terms”) laytime is not relevant, as the owner takes responsibility for the time used. When the charterer is responsible for cargo operations then laytime provisions are virtually always present in the charter party.¹⁷⁸ Where a charterer has agreed to laytime provisions it is allowed a certain amount of time to load and/or discharge the vessel. This amount of time is called laytime, which basically defines the amount of time which the charterer is permitted to completed cargo operations. When this time is exceeded the charterer will generally be liable to pay liquidated damages known as demurrage to the vessel owner.¹⁷⁹ Demurrage is typically calculated per day or pro rata. While laytime can be expressed as either a fixed amount of time or as the “customary” time this section will deal primarily with laytime on a fixed terms basis. The reasons for focusing on fixed laytime are twofold. First, it is more difficult to pursue any sort of effective claim for detention under a non-fixed (customary) laytime charter. Second, the majority of charters now include fixed load and discharge terms.

¹⁷⁸ *Voyage Charters*, 2nd, *supra* note 2, at 337.

¹⁷⁹ Demurrage represents liquidated damages for breach of the charter in failing to complete cargo operations within the allowed laytime: See John Schofield, *Laytime and Demurrage*, 2nd ed, (London, LLP, 1990), [Schofield, *Laytime 2nd*], p. 289.

The following paragraphs will describe generally the process whereby laytime begins to count and which periods are normally excepted from the running of laytime.

The first step in laytime counting is that the vessel must arrive at the port.

Moreover, the vessel must become an “arrived ship”. For a vessel to become an arrived ship there are three conditions that must be satisfied. The first condition is that the vessel must have arrived at the agreed destination; the second is that she must be ready to load or discharge and the third is that a “notice of readiness” must be tendered.¹⁸⁰ Each of these conditions will be briefly examined.

When a vessel will be considered to have arrived at her destination is a function of what terms have been agreed in the charter party. Charter parties are either port charters or berth charters. In the case of a berth charter the vessel will have arrived only upon reaching the loading or discharging berth. In the case of a port charter, the vessel may be considered as arrived upon arrival in the port. In *The Maratha Envoy* the House of Lords determined that a vessel would not qualify as an arrived ship under a port charter unless she is actually within the commercial limits of the port in question,¹⁸¹ even in the event that the vessel is at the usual waiting place and this place is outside of the port limits. It is, however, possible to provide for this by including a contractual term that the vessel can tender notice of readiness from the usual waiting place outside the port.¹⁸² The key practical implication is that in a

¹⁸⁰ At common law a notice of readiness need not be tendered at discharge port, but from a practical standpoint most voyage charters contain a provision that a notice of readiness is to be tendered at discharge ports. See in this regard Donald Davies, *Commencement of Laytime* 3rd ed, (London, LLP, 1998), p. 1.

¹⁸¹ *Federal Commerce and Navigation Co Ltd v Tradax Export SA (The Maratha Envoy)* [1978] A.C .1.

¹⁸² Many voyage charter forms cover this with a “whether in port or not” clause. It was noted in the decision in *The Maratha Envoy* that there was a “Weser Lightship” Clause, wherein it was agreed that vessels waiting at the Weser Lightship, the normal place of waiting outside port limits where the *Maratha Envoy* waited, could tender notice of readiness, but that this clause was not present in *The Maratha Envoy*.

berth charter the risk of waiting time in the case of the berth being occupied rests with the owner and in the case of a port charter this risk rests with the charterer.¹⁸³

The second condition is readiness to perform cargo operations. In *The Tres Flores* notice was given prior to fumigation of the holds, which was required in order for the cargo to be loaded.¹⁸⁴ The Court of Appeal held that the notice was invalid despite the facts that the fumigation was completed prior to a berth becoming available and it did not take an excessive amount of time.

The final condition is that a notice of readiness must be tendered. In *The Happy Day* the vessel arrived at the discharge port and due to tidal restrictions could not proceed immediately to the berth.¹⁸⁵ The vessel tendered notice of readiness at the usual waiting place, and subsequently berthed when there was sufficient water to do so. The vessel took approximately three months to complete discharge. The difficulty for the owner arose because the charter was a berth charter, and as such the notice of readiness should have been tendered at the berth and not at the usual waiting place.¹⁸⁶ The charterer argued that as the notice of readiness had been tendered at the improper place that in fact the owner had never tendered a valid notice and laytime therefore never started to count, and consequently no demurrage was due. The owner argued that laytime commenced either on the start of discharge or when a valid notice, theoretically tendered at the earliest possible moment, would have expired. The House of Lords held that unless the charterer or receiver served notice upon the owner that the notice of readiness tendered was invalid then the

¹⁸³ Or time chartered owner when the vessel is on time charter.

¹⁸⁴ *Compania de Naviera Nedelka v Tradax International (The Tres Flores)* [1974] Q.B. 264.

¹⁸⁵ *Glencore Grain Ltd v Flacker Shipping Ltd, (The Happy Day)* [2002] 2 Lloyd's Rep 487

¹⁸⁶ It should be noted that often in berth charters there is a provision that allows for the notice of readiness to be tendered when the vessel is at the usual waiting place, however this is almost invariably only permitted when the intended berth is occupied by another vessel, and not when the vessel's berthing is delayed other factors (such as tidal variations).

notice of readiness would be considered to have been served at the commencement of discharge.¹⁸⁷ Therefore, any time that may have counted as laytime during the period waiting for the berth was lost to the owner due to the failure to properly tender the notice of readiness. In spite of loss of any waiting time the outcome in this charter was a positive one for the owner, as the vessel was at the berth for three months. If the waiting time had been longer the situation whereby time only started to count after commencement of discharge could have had severe consequences for the owner. Another case involving an improperly tendered notice of readiness is *The Agamemnon*,¹⁸⁸ where a vessel proceeding to a Mississippi River port gave notice at the first pilot station, which is geographically distant from the actual port rather than at the actual place of discharge. The fact that the vessel later arrived at the correct location did not cure the incorrect notice. This result is similar to that in *The Happy Day* where laytime started shortly after commencement of discharge. Therefore it can be seen that a notice given in the wrong location, whether it is a case of the vessel not being at the berth or not being within the port (dependant upon the charter party terms), is an invalid notice.

Having determined what is necessary to start laytime the issue of what time counts as laytime must be addressed. Once laytime starts to count it will run continuously unless interrupted. Events that interrupt the running of laytime will generally be specified in the charter party; however, it is possible that laytime will be suspended by situations that are not allowed for in the charter party. The events that are typically agreed in the charter party will be discussed in this section events not generally included in the charter party will be considered later in this chapter.

¹⁸⁷ This was a victory for the vessel's owner, in this case but only to the extent that the *Happy Day* commenced discharging almost immediately. Had the vessel waited a prolonged period for the berth then all the waiting time would have been unrecoverable by the owner.

¹⁸⁸ *TA Shipping v Comet Shipping, (The Agammemnon)*, [1998] 2 Lloyd's Rep 675.

Laytime is often expressed, in dry bulk charter parties, as either a fixed amount of time or as a particular rate of tons per unit of time. The phrasing is then further qualified by the presence of the basic terms of what time will count. For example, a loading rate may be agreed as 5 Weather Working Days, Sundays and holidays excluded or as 5000 metric tons per weather working day, Sundays and holidays excluded.¹⁸⁹ The theory is that periods where the vessel will not be loaded or discharged due to weather or non availability of labour should not count as laytime. In tanker charters charterers will generally have a fixed number of hours in which to load and/or discharge the cargo.

A key and (in dry cargo charters) almost universal interruption to laytime is weather. As outlined above this is generally included in the agreed laytime and reflected in the wording “weather working days”. This essentially means that if a vessel is unable to load or discharge due to adverse weather conditions then laytime will not count for the time lost thereby. In the case of a vessel waiting for a berth to become free such waiting time will not count if the vessel’s cargo operations would have been interrupted by the prevailing weather conditions.¹⁹⁰

A second major exception is for non working days, as represented above by the wording “Sundays and holidays excluded”. Depending on the commodity in question and the countries where the cargo is to be loaded and/or discharged Saturdays, Sundays and holidays will frequently be excluded by agreement in the charter

¹⁸⁹ The first example means that the charterer will have 5 days of laytime available within which to load the vessel, after which time the contracting owner will be entitled to claim damages. Excluded from the 5 days of laytime are Sundays and holidays, during which time the charterer will not be using any laytime. In short form this would usually be expressed 5 WWD Shex.

¹⁹⁰ *Dow Chemical (Nederland) v B.P. Tanker Co. (The Vorras)* [1983] 1 Lloyd’s Rep 579 (C.A.).

party.¹⁹¹ In other trades where loading takes place 24 hours per day 7 days per week charter parties will often be based on “Weather Working Days, Sundays and Holidays Included”.

The third major excluded period is strikes. The issue of strikes by stevedores is covered in virtually all voyage charters, and strikes beyond the control of the charterer will generally not count as laytime. Therefore, in such cases it is the owner under the voyage charter that is assuming the risk of any time lost owing to strikes.

However, when laytime has expired the situation with regard to exceptions to time counting is somewhat different. In *The Dias* the House of Lords affirmed that once on demurrage a vessel will stay on demurrage barring very specific language to the contrary.¹⁹² Typically, an exception that interrupts laytime due to a specific event will be inapplicable to demurrage unless the charter specifies that time is to be suspended due to the specific cause even while the ship is on demurrage.

The situations outlined above are typically allowed for in the charter party. However, at times an event may arise that the charterer feels should interrupt the counting of laytime, but that situation is not included in the agreed terms. In such a case the charterer will be required to prove that laytime should be suspended. In order to do so it will be necessary to prove that the cause of the delay was specifically the fault of the owner or of those for whom he is responsible.¹⁹³ Laytime is not suspended in the case of a situation arising that is merely not the fault of the charterer.

¹⁹¹ In non-Christian countries the local equivalent will be excluded, for instance in Muslim countries Fridays will often be excluded.

¹⁹² *Dias Compania Naviera v Louis Dreyfus (The Dias)* [1978] 1 Lloyd’s Rep 325.

¹⁹³ *Gem Shipping Co of Monrovia v Babanaft (Lebanon) Sarl (The Fontevivo)* [1975] 1 Lloyd’s Rep 399.

Situations will arise while the vessel is in port either awaiting cargo operations or during cargo operations that cause delay. It is expected that a voyage charterer will wish to suspend the counting of laytime during these events. However, there are instances where these events will not be covered by specific contractual language. For example, a failure in the vessel's cargo handling gear is not covered in the Norgrain charter party. The key test in cases such as these is that of whether the delay is attributable to the fault of the shipowner. The courts have taken a fairly strict view with respect to fault, finding for example that in the case of a strike by stevedores employed by the owner that time was to continue counting.¹⁹⁴

One point that is well worth noting is that a general exception clause in the charter party will not impact the counting of laytime. In the case of laytime being suspended, depending on the circumstances, the owner may attempt to rely on a clause relieving the owner of any responsibility due to negligence on the part of the vessel's owner or master.¹⁹⁵ However, in accordance with the decision in *The Johs Stove* a general charter party exception clause does not apply to laytime provisions unless clear wording provides otherwise and accordingly such a clause would not generally impact the counting of laytime.¹⁹⁶

2.4 COMPARISON OF LAYTIME AND OFF HIRE

As noted above laytime and off hire are generally considered as discrete topics, which is undeniably reasonable when looking at them from a ship owner or voyage charterer's perspective. However, a time chartered operator will always be eager to

¹⁹⁴ *Budgett & Co. v Binnington & Co.* [1891] 1 Q.B. 35.

¹⁹⁵ An example of such a clause is Clause 2 of the Gencon 1994 form, which reads in part: "And the owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the master or crew".

¹⁹⁶ *Sametiet M/T Johs Stove v Istanbul Petrol Raffinerisi (The Johs Stove)* [1984] 1 Lloyd's Rep. 38.

pass any loss of time to either the voyage charterer or the ship owner. In order to do this the time charterer must ensure, to the greatest extent possible, that the charter parties, despite being very different forms, are drafted in a consistent manner. Furthermore, the time charterer is advised to pay close attention to tendering of the notice of readiness in accordance with the contractual terms.

The most common exceptions to laytime are weather delays and non working periods that are excluded by contractual agreement, for example Sundays and holidays. Clearly, neither of these events can be considered as an off hire under the standard wording of any charter form. A key benefit for the owner when contracting on a time charter basis is that he is no longer subject to the vagaries of weather, and it is clear that when cargo operations are interrupted due to inclement weather that the vessel will remain on hire.¹⁹⁷

Equally, a time charterer would be unable to put a vessel off hire due to a vessel not being discharged over a weekend or holiday period, as there is no basis for the time charterer to claim that the vessel was unable to provide the service required. This is purely a matter as between the operator and the voyage charterer, it is clear that if the time charterer has agreed that a period is to be an exclusion from laytime it cannot be argued that the owner is liable for the vessel not loading or discharging during this period.

¹⁹⁷ An exception to this may arise to be if the master acted unreasonably in stopping discharge during the period of inclement weather; however an examination of this issue is outside the scope of this paper.

A strike by shore labour that prevents the working of the vessel will generally not count as laytime,¹⁹⁸ and this time will not be claimable by the time charterer as off hire, as again there is no inefficiency on the part of the vessel.

There are, however, several situations where the vessel may unexpectedly remain on hire while laytime is suspended. What are considered as the major occurrences to be examined include circumstances such as when discharge is interrupted or delayed due to arrest of the vessel, delays owing to damaged cargo and cargo handling equipment breakdowns. Other situations to be considered are delays due to quarantine of the vessel, time lost in ballasting or deballasting the vessel, failure of hold inspection and lack of correct vessel certificates. This is not an exhaustive list of situations that could lead to an overlap between off hire and laytime exceptions, but these scenarios will form the basis for this section and are among the most common of dispute causing situations. Also to be considered are instances when tendering of notice of readiness or berthing is delayed owing to a fault of the vessel owner.

A key point in the comparison between off hire and laytime is the issue of physical as compared to non physical inefficiency. While it has been illustrated that there is a degree of uncertainty with respect to the relationship between physical efficiency and off hire under time charters it must be noted that there is no equivalent issue in voyage charters as relates to laytime, as suspension of laytime is not necessarily related to actions taken by or deficiencies with the vessel. Therefore, physical inefficiency is not a requirement of suspension of laytime.

¹⁹⁸ *Schofield, Laytime 2nd, supra* note 190 at 210, an example of a charter party clause is found in the Norgrain 1989 at clause 30 (See appendix A).

It must also be noted that suspension of laytime, again unlike hire, does not involve any examination of whether the reason for suspension is external or internal to the party bearing the consequence of the interruption. With respect to both hire and laytime it is the vessel owner that would bear the loss of an interruption, however, there is no provision that the cause of the interruption be internal to the vessel or cargo handling.

2.5 INTERRUPTION OF DISCHARGE DUE TO CARGO DAMAGE OR ARREST

The question of delay due to cargo damage may be divided into two categories. The first category is stoppage of discharge, which includes situations where the vessel is arrested or discharge is refused due to cargo damage. It can be seen that within this category that there is a potential distinction between a physical stoppage, for example where due to cargo damage the cargo cannot physically be discharged by normal means, and a non physical stoppage, for example arrest or refusal to discharge. The second category is that of partial delay, where cargo damage does not prevent discharge but does result in slower discharge.

Turning first to the question of arrest or detention due to cargo damage, it is clear that in order for a vessel to be off hire there are two criteria that must be met: there must be an off hire event and time must be lost. Assuming an unamended NYPE 1946 time charter cargo damage generally falls within the ambit of “average accidents to ship or cargo”. The distinction noted above between physical and legal inefficiency must be taken into consideration at this stage. If the cause of the stoppage is non physical, for example if authorities refuse discharge of the vessel due to the presence of damaged cargo then this would (under an unamended NYPE charter) probably not qualify as an off hire because it constitutes a non physical

deficiency. In the case of damaged cargo that is slower to discharge owing to the state of the cargo (for example if water ingress has caused a change to the composition of the cargo) the decision in the *Mareva* suggests that once again an off hire claim is not likely to succeed. *The Jalagouri* is a case where the port authority refused discharge of damaged cargo without a guarantee,¹⁹⁹ and as such is not strictly speaking a vessel arrest case but can be seen as analogous. In this case the vessel sustained damage that resulted in ingress of water into the cargo spaces, and as a consequence some of the cargo on board was damaged. In this case the sound cargo was discharged and the vessel was required to vacate the discharging berth. Discharge was delayed until a guarantee for costs of storing or clearing the damaged goods from the port area was provided. The vessel was found to be off hire while awaiting the posting of the guarantee, but that decision seemed to turn on the interpretation of an additional clause. It appears probable that under an unamended clause 15 of the NYPE that these facts would not be sustainable as an off hire because the vessel was efficient in and of herself and the detention was due to the port authority refusing discharge, which is a cause external to the vessel. It is important to note in this context that the time charter did not incorporate the word “whatsoever” after “cause” in clause 15 of the NYPE. The modification of clause 15 in this way may have allowed the vessel to be placed off hire for detention when the vessel was otherwise efficient.²⁰⁰ Therefore, it seems unlikely that a vessel could be considered off hire under an unamended NYPE for arrest or detention due to cargo damage as long as the vessel was able to discharge the cargo.

¹⁹⁹ *The Scindia Steamship Navigation Company Limited Bombay v Nippon Yusen Kaisha Limited (The Jalagouri)* [2000] EWCA Civ 93.

²⁰⁰ See previous section and also for example *Andre et Cie v Orient Shipping (Rotterdam) (The Laconian Confidence)* [1997] 1 Lloyd’s Rep 139.

The Mareva also addresses the issue of cargo damage and time lost.²⁰¹ In this case seawater damaged cargo loaded on the vessel; the largest part of the damage was attributable to water ingress through the hatchcover, which was due to unseaworthiness of the vessel. This case raised the point of whether time lost at discharging ports owing to cargo damage could be claimed as off hire. An additional point raised was whether the owner had any right to claim part of the demurrage that the time charterer may have earned from the sub voyage charterer as an offset for any off hire that might be allowed.

The Mareva is authority for the view that time lost due to delay because of damage to cargo cannot be claimed as off hire under the unamended NYPE. While it is possible that a claim may be pursued in such an instance for damages the vessel will not be off hire because, in spite of the delay encountered, the vessel was capable of discharging the cargo, which was the service required. As noted above in *The Jalagouri* the vessel was off hire based on a specific additional charter party clause, and absent such a clause it appears probable that under a standard NYPE 1946 form that a vessel will remain on hire due to loss of time attributable to cargo damage. Additionally, it was found in *The Mareva* that the owner did not have any right to claim demurrage paid to the time charterer, even if the vessel was off hire at the time demurrage was being collected, meaning that the time charterer can theoretically recover compensation from both parties for the same loss.

In the alternative it can occur that a vessel with damaged cargo on board will be able to discharge the cargo but due to the damage the discharge will proceed slowly relative to the time required had the cargo been sound. This slower rate of discharge can occur due to the alteration of physical properties of the cargo which is

²⁰¹ *Mareva Navigation Co. Ltd. v Canaria Armadora S.A. (The Mareva A.S.)* [1977] 1 Lloyd's Rep 368.

attributable to the cargo damage, for example, mixing cargo with water. It can also be attributable to the need to separate damaged cargo from sound cargo.

Obviously, it is in the time charterer's interest to claim time lost in this manner from the owner as off hire. *The Mareva* further serves as authority that a vessel will not be off hire when, due to cargo damage for which the owner is at fault, the vessel discharges more slowly than she would otherwise have.

It has been noted above that the insertion of the word "whatsoever" in the NYPE 1946 off hire clause removes the effect of the *ejusdem generis* rule. This would appear relevant in the case of detention or arrest due to cargo damage. In *The Mastro Giorgis* cargo was damaged and the receiver arrested the vessel.²⁰² The arrest did not interrupt discharging. However, upon completion of discharge the vessel was unable to depart the port owing to the arrest and was therefore delayed for several days. This case appeared to turn on the inclusion of the word "whatsoever" in NYPE clause 15, and the vessel was held to be off hire despite not suffering from any physical inefficiency.

Therefore, it can be seen that a vessel will generally not be off hire under an unamended NYPE 1946 time charter when a vessel is detained due to cargo damage. Furthermore, when discharge proceeds more slowly due to cargo damage it also seems that the vessel will not be off hire. When the word "whatsoever" is inserted after the word "cause" in the standard NYPE 1946 form this will lead to the exclusion of the *ejusdem generis* rule and as such the charterer will be able to benefit from a wider interpretation of the off hire clause, including in terms of vessel arrest related to cargo damage, where the vessel is more likely to be off hire.

²⁰² *Bellcore Maritime Corp v Fratelli Moretti Cereali S.p.A. (The Mastro Giorgis)* [1983] 2 Lloyd's Rep 66.

Having examined the situation vis-à-vis off hire, the question of whether laytime will continue to run during any disruption due to cargo damage must be considered. This is particularly important from the time charterer's standpoint, as the vessel can be delayed significantly without the vessel going off hire, as would have been the case in *The Jalagouri*, if not for the inclusion of an additional clause covering the consequences of detention.

It must be noted that relative to the few standard time charter forms used there are many different forms of voyage charter in use. Therefore, a paramount consideration in whether or not laytime will be interrupted is the precise wording of the charter. Having said this, there are general principles that can be observed. The first being that in general the counting of laytime will only be suspended if the terms of the charter party expressly allow it.²⁰³ It is established law that in a fixed laytime charter there is an obligation on the part of the charterer to discharge the vessel and laytime will continue to count unless the reason for stoppage is covered by a term of the charter party. The exception to this guideline being fault of the shipowner or those for whom he is responsible,²⁰⁴ under which circumstances laytime will cease to count or demurrage will cease to accrue. The House of Lords in *William Alexander & Sons v A/S Hansa* (a case on appeal from Scotland) affirmed the aforementioned concepts,²⁰⁵ as did the case of *Budgett v Binnington*,²⁰⁶ a case involving a strike by shore labour.

²⁰³ *Mocatta et al, Scrutton 19th, supra* note 25 at 318.

²⁰⁴ *Ibid.*

²⁰⁵ [1920] AC 88.

²⁰⁶ *Budgett & Co. v Binnington & Co.* [1891] 1 Q.B. 35.

Having reviewed these scenarios, the application of these rules to laytime calculation and an arrested vessel must be considered.

In *The Jalagouri* it will be recalled that the port authority refused to allow discharge of the damaged cargo until a guarantee was given. The question at hand would be whether, under a voyage charter, the time spent idle waiting for such a guarantee, which was equivalent to arrest of the ship, would count as laytime. As outlined above the general principle is that laytime will count unless the charterer can bring the claimed exception within the terms of the charter, or alternatively if the delay was due to the fault of the shipowner, or those for whom he is responsible. Barring a specific term in the charter which states that laytime will not count during arrest, which is not present in any of the voyage charters examined and would therefore seem unusual, it will be incumbent upon the charterer to prove that the delay was attributable to the fault of the owner or those for whom he is responsible. Returning to the example of *The Jalagouri* the port authority required a guarantee. It seems unlikely that the port authority would be a party for whom the shipowner was responsible, therefore the only avenue open to the charterer would be to claim on the basis that the cargo damage, and consequently the delay, was the fault of the shipowner and therefore laytime should not count. In the event that cargo damage was attributable to the fault of the shipowner then it would appear likely that laytime would cease to count. However, if the cargo was damaged without the fault of the ship owner then on the balance of probabilities it would seem that laytime would not be interrupted. Similarly it has been considered that laytime would not be interrupted if cargo operation were disrupted due the vessel being damaged by a collision that did not involve any negligence on the part of the owner.²⁰⁷ The key

²⁰⁷ Martin Dockray, *Cases and Materials on the Carriage of Goods by Sea*, 3rd ed, (London, Cavendish Publishing, 2004), p. 251 [Dockray].

concept in the calculation of cargo damage and laytime would appear to be the question of fault; if the cargo damage is the fault of the owner or his servant then it seems likely that the charterer can suspend time counting.

As noted previously a general exception clause in the charter party will not allow the owner to avoid having laytime suspended. In the case of cargo damage the owner may attempt to rely on charter party clause relieving the owner of any responsibility due to negligence on the part of the vessel owner; however a general charter party clause to this effect will not apply to laytime provisions.

In summary the most likely outcome seems to be that any consequent delay in the event of arrest of the vessel due to cargo damage would not count as laytime if the damage was attributable to the fault of the owner. However, failing any fault on the part of the shipowner then in accordance with the principle in *The Fontevivo* laytime should continue to count.

A particular area of liability on the part of the time charterer can be seen with regard to vessel arrest. Barring an amendment to the standard off hire clause, or the insertion of an additional clause, the *ejusdem generis* rule will generally exclude the vessel being off hire during arrest periods, thus in the instance that a vessel detention is occasioned by cargo damage it seems likely that the vessel will not be off hire.

The next section will deal with the issue of breakdown of cargo handling equipment and the effect on laytime.

2.6 CARGO HANDLING EQUIPMENT BREAKDOWN

One of the most frequent causes of lost time in port is cargo handling gear breakdown. This is of consideration related to both laytime and off-hire. These breakdowns will become relevant in port, as there will be no loss of time should they occur at sea as there will be no impact on the service required of the ship. However, if the vessel is in port and the gear is required for loading or discharge of the vessel then a gear breakdown will result in lost time. This loss of time will have contractual consequences under both time and voyage charters. This is a major consideration for charterers since in many cases cargo handling gear is absolutely necessary for discharging of cargo as some ports do not have large cranes available and in other cases there is a limited availability of cranes. There are also "heavy lift" vessels which are used to carry extremely heavy weight cargo, vessels which are chartered solely for their large crane capacity.²⁰⁸ In all these examples, cargo operations could be delayed severely if one of more cranes were to cease operation.

Typically, gear breakdown will not affect all cranes simultaneously, but in an exceptional situation all cranes may be unusable. Therefore, this scenario will be considered in terms of both partial and complete inefficiency of the vessel. It should be noted that while this discussion focuses on the question of gear breakdown many of the concepts raised are applicable to other situations involving complete or partial inefficiency of the vessel.²⁰⁹

²⁰⁸ An example of a heavy lift shipping company is Jumbo Shipping, which have the capacity to lift up to 3000 tons using vessel's gear. See <http://www.jumbomaritime.nl/site/> (last viewed January 2, 2014).

²⁰⁹ For example, partial inefficiency could occur if the hatch cover of one hold where cargo was loaded was unable to open due to a mechanical failure.

When only one or some of the vessel's cranes are unavailable to handle cargo the question related to off hire will be whether this inability to work impacts the cargo operation. This issue was addressed in *The HR Macmillan* where the Court of Appeal held that off hire would be calculated on the time actually lost.²¹⁰ If only two of three cranes were available and but only two were required no time would be lost, however, if three cranes were required and only two were available then the owner would be liable for the time lost. Logically, it would also stand to reason that if cargo was to be loaded or discharged in one specific hold using the vessel's cargo gear and all cargo handling gear able to service that hold was unavailable then the vessel would be fully off hire, in spite of other efficient cargo gear. Therefore it is clear that precedent exists for a partially efficient vessel to be considered partially off hire. This is an important point as it will often arise that a vessel is loading or discharging cargo from only one hold and if that hold cannot be worked then the fact other cranes are available is of little benefit to the time charterer.

Having examined off hire the question of cargo gear inefficiency with respect to laytime provisions must be addressed. What is clear is that in terms of a complete inefficiency that satisfies the conditions in the voyage charter laytime will be suspended. More pertinent at this point is an examination of the impact on laytime of a partial inefficiency in the vessel.

The impact on laytime of a partial inefficiency of the vessel due to gear breakdown will in often be expressly defined by the terms of the charter party, typically under an additional clause. However, for those instances where the charter terms do not address this situation the implications of a partial breakdown must be examined. It should be noted that while this is a general laytime concept partial breakdown is

²¹⁰ [1974] 1 Lloyd's Rep. 311 (CA).

principally related to the question of gear breakdown and as such is being dealt with in this section.

As previously noted, in a fixed laytime charter the charterer is under a strict obligation to load or discharge the vessel within the allotted time. If there is a deficiency in the vessel that interrupts cargo operations the owner will only be liable for the time lost if there is a specific term in the charter party to that effect or in the event of fault on the part of the owner or those for whom he is responsible.

Most of the precedent on the subject of suspension of laytime and laytime exceptions deals with complete suspension of laytime.²¹¹ From this body of case law the test of fault discussed above has emerged. However, there does not appear to be extensive law concerning a situation when, due to the fault of the owner, the vessel is partially efficient. Breakdown of some of the vessel's cargo handling equipment would constitute such a partial efficiency.

In spite of the lack of precedent supporting partial counting of laytime it would appear illogical to argue that the charterer should not be entitled to some remedy in the event that the vessel is not able to fully perform. A leading text on laytime states that after arrival a vessel "ought thereafter to be at the **entire disposal** (emphasis added) of the charterers to enable them to complete their work within the agreed lay days".²¹² It should be emphasised that the excerpt makes reference to the "entire" disposal. Therefore, some solution for partial efficiency must be available.

²¹¹ For example: *The Afraparl* [2004] EWCA Civ 864, *Compania Naviera Azuero sa v British Oil & Cake Mills Ltd.* [1957] 1 Lloyd's Rep 312, *The Lefthero* [1993] 2 Lloyd's Rep 109 CA.

²¹² *Schofield, Laytime 2nd, supra* note 190, p.162.

Alternatively, the charterer may advance the claim that laytime should be completely suspended for the period of time of partial inefficiency. However, this argument would not seem viable given that the charterer has a strong obligation to complete cargo operations within a fixed time and that there is a presumption against the suspension of laytime. This is particularly true in a case where the charterer was receiving a large proportion of the vessel's service. On this basis it is considered unlikely that laytime would cease to count entirely.

In terms of partial counting of laytime the case of *Leeds Shipping Company v Duncan, Fox & Co., Ltd* is useful.²¹³ Although in this case there were unique facts surrounding additional payments for overtime work performed the case also involved arguments concerning laytime and reduced rates of performance for which it was alleged the owner was responsible. The ultimate decision was in favour of the owner, however the case indicated a willingness on the part of the court to entertain a reduced rate of discharge, considering particularly that there was much discussion in the decision of various rates of production, and the court did appear open to considering different calculations relative to discharge speeds, which would indicate that had the court felt it appropriate, they would have allocated a theoretical production figure, providing a compromise between either fully counting or completely suspending laytime.

In conclusion it is submitted that in the event of partial inefficiency of the vessel under a voyage charter that laytime may be adjusted accordingly, irrespective of whether there exists a specific charter party clause to that effect. Although there does not appear to be direct judicial authority to this effect *Leeds v Duncan, Fox* suggests an openness on the part of the courts. In the case of partial inefficiency

²¹³ (1932) 42 L.L. Rep 123.

under a time charter party, *The HR Macmillan* serves as authority that a vessel can be held proportionately off hire. However, it is in the best interests of the contracting parties to define the method of calculating such inefficiencies in the charter party, which provides clarity and the avoidance of doubt.

In the circumstance that all of a vessel's cranes become unavailable and they were required for cargo operations (or if all cranes that were required were unavailable) then it would seem clear that the vessel will be fully off hire (this may not be the case if the charterer was responsible for the crane problems, an example would be if the damage to the cranes was occasioned by a servant of the charterer, for example a crane operator). Under the voyage charter, applying the "fault of the owner" test outlined above, it would appear to be equally clear that laytime would not count during the period of entire inefficiency of the vessel's gear. A proviso with regard to the foregoing would be if the deficiency in the cargo gear were attributable to a fault on the part of the voyage charterer or someone for whom he is responsible.

Therefore, in terms of breakdown of ship based cargo handling equipment the provisions under time and voyage charters generally run in parallel. In the case of a full stoppage of work then the vessel will generally be off hire and laytime will cease to count. With regard to a partial inefficiency the laytime situation is not entirely clear but it is considered that laytime would count partially in such a case, and similarly the vessel would be partially off hire. Overall it is considered that there does not exist a great deal of potential risk in this area, and any risk that does exist can be minimized through the negotiation of appropriate terms in the charter parties.

2.7 QUARANTINE

A vessel which arrives at a port may be delayed from loading or discharging due to quarantine restrictions. These restrictions can be imposed for a number of reasons, these include disease at a port previously called, sickness among the crew, or because of some other factor at a place previously called, for example, during certain months of the year vessels that have called at certain Russian Pacific ports during certain time periods are considered high risk vessels for infestation with Asian Gypsy Moth. This is not harmful to people, but could have severe environmental impact in terms of Canada's forests. These vessels are required to pass an inspection prior to berthing at Canadian ports.

From a voyage charter standpoint quarantine is not generally covered specifically in laytime clauses, with the Shellvoy 5 being an exception. Notwithstanding the lack of specific coverage of the issue of quarantine it must be considered whether a vessel that is quarantined is ready to load, and therefore able to tender a notice of readiness. It is important to note that in most cases quarantine will impact a vessel upon arrival at the port, prior to commencing of cargo operations. Therefore the key issue from a voyage charter standpoint is whether the vessel can tender a notice of readiness.

There are several decisions that deal with this issue. The 1894 case of *The Austin Friars* is among the old key cases in this area.²¹⁴ In this case the vessel arrived in port prior to the cancelling date but was not permitted to load until visited and cleared by the port health authorities. As it transpired, the clearance was only received after the cancelling date and as such the voyage charterer cancelled the

²¹⁴ (1894) 71 L.T. 27.

vessel. The English High Court held that the charterer was within its rights to cancel the vessel under such circumstances and there was no distinction between the loading prohibition being due to quarantine or not being cleared by the competent authority. This case was taken as authority that a vessel without free pratique could not tender a valid notice of readiness.

However, in the case of *The Delian Spirit* Lord Denning stated that the *ratio* of *The Austin Friars* did not include the proposition that a notice of readiness was not valid without free pratique. It is now considered that obtaining free pratique is not a condition precedent to tendering a notice of readiness at common law.²¹⁵ It is possible for a charter party to specify that free pratique is required prior to tendering notice of readiness, in which case free pratique will be required. It is now common to agree a provision that a vessel can tender a notice of readiness whether or not the ship has been granted free pratique. These provisions as a rule allow that the vessel can tender prior to obtaining free pratique, but that if the vessel does not subsequently gain free pratique then the notice is invalid, or laytime does not count for the time that is lost.

Therefore, in terms of the voyage charter position it can be seen that the general result of the vessel being quarantined is a delay in tendering the notice of readiness, which will lead in turn to a delay in the commencement of laytime. The issue then becomes whether a vessel that is unable to tender notice of readiness is able to claim waiting time due to quarantine as off hire.

Under a time charter party the issue from the charterer's standpoint is whether time lost due to quarantine may be claimed as off hire, however, none of the time

²¹⁵ *Schofield, Laytime 2nd, supra* note 190, p. 103.

charters examined, with the exception of the Shelltime 4 explicitly covers quarantine. Therefore, as with all losses of time that are not specifically quarantine must be examined in the context of the general wording of the off hire clause.

A case that deals specifically with the issue of off hire in the context of free pratique is *The Apollo*.²¹⁶ The Apollo was chartered on an NYPE form. Due to hospitalization of two crew members at a previous port the vessel was delayed in obtaining free pratique at a subsequent port. It was held that the vessel was off hire during the time lost. However, the charter party contained the addition of the word “whatsoever” in clause 15 of the NYPE 1946 and it is implied in the decision that without this addition and the consequent exclusion of the *ejusdem generis* rule that the vessel would not have been off hire for time lost due to the delay in obtaining free pratique.

A related question is whether illness of crew could lead to off hire under the “deficiency of men” provision that forms part of many off hire clauses. It must be noted that while illness of crew may be related to quarantine this is not necessarily the case, and the two can arise independent of one another. However, due to the potential relationship between illness and quarantine these issues are being addressed within the same section. The issue of illness of crew as related to deficiency of men was addressed in *obiter* comments in *Royal Greek Government v Minister of Transport*.²¹⁷ At first instance the view was expressed that illness of a significant number of crew would fall within the deficiency of men provision, thereby allowing a vessel to be placed off hire.²¹⁸ This was doubted at the Court of Appeal. It is submitted that the view of the Court of Appeal is the correct one in this case, as

²¹⁶ *Sidermar S.p.A v Apollo Corp (The Apollo)* [1978] 1 Lloyd’s Rep. 200.

²¹⁷ *Royal Greek Government v Minister of Transport (The Ilissos)* 1 All E.R. 171 (C.A.).

²¹⁸ 81 L.L.Rep. at p 359.

the term deficiency of men is generally accepted to refer to an insufficient complement of crew, not inefficiency on the part of the crew.²¹⁹ However, under American law the position seems somewhat different, physical incapacity, including sickness, would fall under the deficiency of men provision and allow a vessel to be held off hire.²²⁰

Furthermore, under American law attempting to hold a vessel off hire due to quarantine alone does not seem viable. In *West India Steamship Co. v Clyde Commercial Steamship Co.* a vessel was delayed at Panama due to sickness of several crew members.²²¹ After the crew were again fit to perform their duties the vessel proceeded to Texas. Under Texas law a vessel arriving from a port where there had been a contagious disease was to be quarantined for ten days, and because the vessel had had sickness on board the total was increased to 17 days, although no crew members were sick at the present time. The charterer claimed as off hire the time lost at Colon as well as all the waiting time while quarantined in Texas. The court held that the period lost at Colon due to sickness constituted a deficiency of men. The court further held that the time lost while under quarantine at Texas was not off hire because there was no deficiency of men and that the time was lost due to the actions of the State of Texas.

The logic applied in the *Clyde* case by the US courts is consistent with English law. A vessel under quarantine (under an unamended NYPE 1946 off hire clause) is fully physically efficient. The action of the authority responsible for the quarantine can be

²¹⁹ *Hill, Maritime Law, 4th, supra* note 98. p. 190.

²²⁰ *Northern S.S. Co. v Earn Line S.S. Co.*, 175 Fed. 529 (2 Cir. 1910); *Tweddle Trad. Co. v George D. Emery Co.*, 154 Fed. 472 (2 Cir. 1907).

²²¹ 169 F.275 (2d Cir) *cert. denied*, 214 U.S. 523 (1909).

viewed as similar to that taken by the port authority in *The Laconian Confidence*,²²² where the vessel was delayed due to cargo residue remaining on board. In that case delay by an external authority was not sufficient to place the vessel off hire. It is therefore submitted that a vessel under quarantine would not be considered as off hire, barring an appropriate amendment of the charter party.

2.8 TIME LOST DUE TO BALLASTING AND DEBALLASTING

Ballasting is an operation necessary for vessel safety, and vessels will frequently arrive at load ports with ballast on board. On arrival at the port of loading the vessel will discharge the ballast, either prior to loading or during the loading process. This may lead to a situation where the vessel upon tendering notice of readiness has some cargo space containing ballast water or that is still wet from having recently discharged ballast water. Similarly, during the course of discharging cargo at the end of the carrying voyage the vessel will often take ballast on board. During both loading and discharging, it is possible that cargo operations may be delayed owing to the necessity to handle ballast. Therefore it can be seen that issues regarding ballasting have the potential to impact both the tendering the notice of readiness and the actual counting of laytime.

In terms of the treatment of ballast operations under charter parties some voyage charters deal with the issue while others do not. There exists, however, a reasonable amount of case law on the subject.

With respect to ballast and the tendering of notice of readiness, *Vaughan v Campbell, Heatley & Co.* indicates that the notice of readiness can be tendered while

²²² *Andre et Cie v Orient Shipping (Rotterdam) (The Laconian Confidence)* [1997] 1 Lloyd's Rep 139.

the vessel has ballast on board.²²³ However, this older case was decided prior to the advent of the use of seawater in cargo spaces as ballast, and use of water in this way affects the ability of the vessel to load cargo, both in terms of the time used to discharge the ballast and the subsequent time required to dry the vessel's holds. Therefore, while *Vaughan v Campbell, Heatley* suggests that notice can be tendered with ballast on board it is less than clear that a vessel can tender with ballast in cargo spaces. This is particularly true with respect to tanker charters.²²⁴ In general, tanker charters make provisions regarding tendering of notice of readiness and ballast, and it is usual to exclude deballasting time from laytime.

In dry cargo charters the unamended charters do not typically make any provisions with respect to deballasting. The Norgrain charter party is silent on the question, but requires that the master warrant that the vessel is ready to load. The Gencon charter contains similar language. In many cases, however, the charter party will contain an additional clause that allows tendering with ballast on board.

It should be noted that in deciding tanker charter arbitrations the arbitrators have taken a commercially sensible approach to the question of ballast being on board, finding in several arbitrations that this did not interfere with the ability of the vessel to tender a notice of readiness.²²⁵ However, there are also instances of the arbitrators taking a less commercially minded view. An example of this stricter view occurred in an arbitration where a literal interpretation of a clause meant that time on demurrage ceased to count while a vessel continued to discharge, because the vessel started ballast operations.²²⁶

²²³ (1885) 2 TLR 33.

²²⁴ Donald Davies, *Commencement of Laytime*, 4th ed, (London, Informa, 2006), p. 197.

²²⁵ LMLN 337-3 October 1992; LMLN 200-20 April 1991.

²²⁶ LMLN 72-5 August 1982.

Although a case on fumigation and not ballast, worth noting in this context is *The Tres Flores*, where the vessel tendered notice of readiness prior to being completely ready, and the notice of readiness was considered invalid. One could see a similar conclusion being reached with respect to a ship that tendered notice of readiness with ballast on board, as the general concept is similar, and that is that not all steps necessary for the vessel to be ready were undertaken prior to tendering the notice of readiness, in the case of *The Tres Flores* fumigation was necessary prior to loading, and it is clear that a vessel would be unable to load (and would therefore be unable to meet the readiness requirement of tendering the notice of readiness) with ballast still on board.

The approach suggested by one author is, lacking specific wording in the charter party, as follows:

1. If ballasting and deballasting can be carried out along with cargo operations then laytime should not be suspended, and the vessel should not be prevented from becoming an arrived ship.
2. If ballast handling is continued after cargo operations are complete laytime or time on demurrage should cease to count.
3. If ballasting operations interrupt cargo operations and are necessary for safety of the vessel or cargo then such operations will not interrupt the counting of laytime.

4. If ballasting operations interrupt cargo operations but are not necessary for safety of the vessel or cargo and could have been carried out at a different time then such operations should interrupt the counting of laytime.²²⁷

While these guidelines are eminently sensible it is clear that they have not been adopted by the courts and as such it is suggested that a ship operator should consider these items during charter party negotiations avoid any unfortunate surprises.

In terms of time charter treatment of ballast operations there seems to be no basis for putting a vessel off hire during this time. Considering that clause 15 of the NYPE 1946 form does not make any reference to ballasting it would have to be brought within the provision for “any other cause preventing the full working of the vessel”. As has been previously discussed, this phrase, barring the addition of the word “whatsoever”, is *ejusdem generis* and therefore essentially limited to causes internal to the vessel. In this sense, ballast operations would be within the functioning of the clause as ballasting constitutes a physical action. However, as can be seen from the phrase the cause must prevent the “full working of the vessel”. Ballasting is an integral part of the working of the vessel, and as such vessel ballasting is not likely to be interpreted as preventing the full working of the vessel. A properly working ballast system being used at an essential but unnecessary time may be inconvenient to the charterer but is not preventing the full working of the vessel. An improperly functioning ballast system would be within the ambit of the clause, but a malfunctioning ballast system would only lead to an off hire if the vessel was in some way delayed as a consequence.

²²⁷ Schofield, *Laytime 2nd*, *supra* note 190, at 165-166.

Therefore, given that off hire is not really claimable for proper ballasting it is all the more vital that ship operators negotiate a clause in the voyage charter that permits them to tender notice of readiness if the vessel arrives with ballast on board and allows them to count laytime during periods of essential ballast handling during cargo operations.

2.9 SECURITY DETENTION

Security detention of vessels is a relatively recent phenomenon, and as such is not dealt with in the standard printed form of older charter parties, both time and voyage. However, with the increasing emphasis on port security and since the introduction of the International Ship and Port Facility Security Code (ISPS code)²²⁸ BIMCO has produced security clauses for both time and voyage charters that include provisions regarding delays and how they are to be apportioned. The most recent BIMCO approved clauses for both time and voyage charters were released in 2005.²²⁹ The approach taken in this section is to examine security detentions under charter forms that do not include any purpose written security clauses as well as considering the impact that the BIMCO recommended clauses have on the unamended forms.

The issue with respect to security detention is that its fundamental purpose is to stop the vessel from proceeding to her load or discharge location until such time that the authorities are satisfied that there is no risk associated with the vessel. The vessel

²²⁸ The ISPS code came into force in 2004 and is an amendment to the Safety of Life at Sea Convention. The aim of the code is to increase security with respect to both ships and ports. See *Branch, supra* note 88, p. 214.

²²⁹ See appendix D.

will be detained either outside of the port or at a waiting place within the port. In either case, the vessel will not be permitted to proceed until such time as the vessel has been cleared by the proper authorities. Therefore, in terms of a voyage charter that does not incorporate the BIMCO ISPS Clause for Voyage Charters (or a similar clause), it is difficult to see, from a laytime perspective, how such a vessel would become an arrived ship and tender a notice of readiness. Even if the vessel had arrived at the usual waiting place and tendered notice of readiness, the inability to actually proceed to the berth would vitiate such a notice.

Therefore, barring a specific clause under the voyage charter permitting the tendering of the notice of readiness there is little recourse for an operator under a voyage charter, so from the operator's perspective the issue is how a security detention is dealt with under a time charter.

The recent case of *The Doric Pride* deals with the question of security detention under a time charter.²³⁰ In this case a vessel was approaching the Mississippi River with orders to load at New Orleans when she was detained by the U.S. Coast Guard for a security inspection. It was found both at first instance and on appeal that the vessel was off hire for the time lost.

There are three points which are of particular note with respect to this decision. The first is that the decision appears to be largely based on an additional clause to the charter party, which covered "capture, seizure, arrest". Absent a specific clause covering this type of detention it is difficult to envision that under an unamended NYPE 1946 form that this would be an off hire, as the vessel would be physically

²³⁰ *Hyundai Merchant Marine Co Ltd v Furness Withy (Australia) Pty* [2006] 2 Lloyd's Rep 175.

efficient, and time lost in the case of a security detention would arise from a non physical cause.

The second point is that made by the court at first instance and affirmed on appeal by Rix, LJ, which is that the treatment would have been the same irrespective of which U.S. port the vessel called.²³¹ Therefore, illustrating that the real problem was not the time charterer's trading of the vessel to a certain port, but the legal status of the vessel, and that this point is considered relevant in the determination of off hire.

The third point is with respect to Rix LJ's comment that the detention was not due to the charterer's trading. This brings up the point that consideration may be given to the issue of the trading of the vessel. Consequently, it may be important to consider the reason for the vessel's identification as a vessel of interest. If, for example, the vessel was detained due to the nationality of the crew this is a factor over which the time charterer has no control. On the other hand, if the detention is due to the trading of the vessel to certain countries while on time charter to the operator, the owner may be able to claim that responsibility for the detention should lie with the time charterer.

In any case, it must be noted that a security detention off hire claim is unlikely to succeed under an unamended NYPE 1946 form. The addition of the word "whatsoever" to clause 15 would potentially have the effect of bringing this type of occurrence within the ambit of the off hire clause, while the preferred route would be a clause specifying the allocation of the risk for this type of inspection. It is suggested that the fairest approach is that any off hire resulting from trading of the vessel prior to the time charter period or relating to nationality of the vessel, crew or

²³¹ *Ibid.*

owners should be the responsibility of the vessel owner, while responsibility for off hire due to charterer's trading of the vessel should be for the account of the time charterer.

Under the BIMCO ISPS clause the situation is somewhat different. The BIMCO ISPS Clause for Voyage Charters²³² provides a significant amendment to the results outlined above. Under section (C)(i) of the clause the vessel is permitted to tender notice of readiness even if not cleared by the relevant authority. In terms of actual counting of laytime and demurrage, (C)(ii) provides that time lost will count as laytime or demurrage. Delays that occur prior to the commencement of laytime or after laytime or time on demurrage has ceased to count will be compensated at the charter party demurrage rate. It can be seen that this clause is very favourable to the vessel owner.

The BIMCO ISPS Clause for Time Charters under section (a)ii allows that in the event of delay due to non compliance with the ISPS code by the vessel owner that any time lost is to be for the account of the owner.²³³ The clause excludes liability for any consequential loss. At section (b)ii of the same clause the time charterer is responsible for any delay occasioned by its failure to comply with any provisions of the ISPS code.

From the perspective of the time chartered operator it can be seen that contracting under charter forms with no specific wording dealing with security delays is not a recommendable method of handling risk. Under a time charter the vessel is likely to

²³² See appendix D.

²³³ *Ibid.*

stay on hire, while under the voyage charter laytime is unlikely to count, thereby leading to the operator's "nightmare" scenario.

The use of clauses such as BIMCO's ISPS clauses provides a framework whereby the operator is able to better anticipate the risk that is being assumed. As opposed to working without any specific contractual provisions dealing with security the unamended BIMCO ISPS security clauses will lead to the operators "dream" scenario: time under the time charter will be suspended, while laytime will continue to count. Therefore, the operator will be collecting money from the voyage charterer while not paying the time charterer. However, it must be noted that amendment of the clauses is possible, an issue that will depend on prevailing market conditions and the relative negotiating strength of the parties. However, adoption of the BIMCO ISPS clauses is suggested as a prudent measure for operators.

2.10 CERTIFICATES

There are many different types of certificates required for a vessel trading internationally. These include certificates of class, various safety certificates, tonnage and loadline certificates, certificates with respect to grain loading, as well as (in the case of a geared vessel) cargo gear certificates. This is not an exhaustive list, but is merely meant to illustrate the breadth of certification a vessel engaged in worldwide trading is required to possess. There are also certificates that are not strictly speaking required for trading of the vessel, but which do allow the vessel to trade to more easily or to a wider range of ports, an example of this type of certification would be Rightship approval.²³⁴

²³⁴ Rightship approval is a vetting system that was established in 2001. The use of Rightship limited to the coal and iron ore markets, and is maintained by three major operators in that trade. Rightship has no legal

More modern time charters will generally include provisions that the owner is obligated to provide certificates. The NYPE 93 form, at clause 40, requires that the owner provide all documentation required for the trading of the vessel. The Shelltime 4 charter, at clause 1(g) requires that the vessel have on board all certificates required, and specifies that there is to be no delay attributable to the vessel lacking certificates. Although such provisions are not generally included within the off hire clause the vessel owner will be in breach should the vessel not possess required certificates. Older charters, such as the NYPE 1946, do not in every case specify that the vessel is to have all certificates; however such charters are frequently amended to include references to certificates.

In the case that an unamended NYPE 1946 charter lacking certificates was the subject of a dispute the question of whether the vessel was off hire may arise.

As off hire clauses generally do not include wording regarding certificates it would seem that lack of certificates falls outside of the ambit of the typical off hire clause. For example, as noted above under the NYPE 93 and the Shelltime 4 both charters contain specific wording regarding certificates, yet neither incorporates these into the off hire clause. From a technical standpoint in the case of a breach this would then be an instance of breach of contract rather than strictly speaking an off hire event. In reality the approach taken would be to deal with the breach in very much the same way as an off hire. Therefore, while time lost due to lack of certificates does not fall within the typical off hire clause it is a breach of charter that would generally be calculated in the same way.

force, but over the past several years has become a commercial requirement of engaging in this trade. See for example *Seagate Shipping Ltd v Glencore International AG (The Silver Constellation)* [2008] EWHC 1904 (Comm).

From a laytime perspective lack of certificates will either delay the vessel from proceeding to the berth, cause loading to be suspended, or departure from the port to be delayed.

If the vessel is unable to proceed to the berth because a required certificate is missing, then in the case of a berth charter tendering of the notice of readiness would be delayed as the vessel would be unable to berth. In the case of a port charter and in a situation where the notice could be validly tendered while the vessel was not at the berth a notice tendered would be subsequently invalidated if a certificate was discovered to be not in order. This conclusion can be reached by examining the cases discussed relating to free pratique. Also of note is the decision in *The Madeleine*.²³⁵ Although not a laytime case this case involved a vessel which was cancelled under a voyage charter for having a deratization certificate that was not valid. Therefore, it can be seen that a vessel that does not possess a necessary certificate is unable to tender a valid notice of readiness.

In terms of a vessel that is required to stop loading or discharging due to a missing certificate it is submitted that the outcome is easily determinable by reference to standard laytime interpretation techniques. If cargo handling is suspended due to a lack of a certificate then, in the case that this is the fault of the owner, laytime or demurrage will be suspended.

Finally, in the instance that a vessel is delayed from departing a port after loading due to missing a certificate it is once again difficult to see how this would continue laytime counting. Lacking any fault on the part of the charterer laytime would cease

²³⁵ [1967] 2 Lloyd's Rep 224.

to count under its normal course. Under a dry bulk charter laytime will end upon completion of cargo operations, with the possibility of extending laytime slightly to accommodate documentation requirements.²³⁶ Under tanker charters, laytime will usually run until hoses are disconnected, or until documentation is on board at the loading port.²³⁷

It must be noted that the discussion in this section is limited to certificates that the owner must procure, and not any certificates that are the responsibility of the charterer to arrange.

2.11 VESSEL CLEANING

A vessel arriving with holds in a condition that is not acceptable for the loading of cargo will not be able to tender notice of readiness, and as such time will not commence. Whether the vessel is off hire will be a function of the charter party terms, and is an issue that will be discussed in detail in chapter 3, which covers the subject of cargo space cleaning.

2.12 RECOVERABILITY OF DELAYS RELATED TO TENDERING NOTICE OF READINESS

The next aspect to be explored under the topic of laytime and off hire is related to the tendering notice of readiness and when events delay either the tendering of the notice of readiness or delay the vessel after tendering the notice but prior to the

²³⁶ *Schofield, Laytime 2nd, supra* note 190, p.259, 263.

²³⁷ *Ibid*, p. 266-267.

vessel commencing loading or discharging. This is a subject of key importance to a time charterer, as when a vessel is delayed in commencing cargo operations the time charterer will wish to recover the time lost from either of the two counter parties, either the owner as off hire or the voyage charterer in the counting of laytime.

The commonly cited example of this type of problem in an off hire context arose in the case of the *Marika M*,²³⁸ where a vessel was approaching Bahrain and was due to berth on July 18. The vessel grounded on July 17, and was refloated ten days later. However, in the period the *Marika M* was grounded the berth she was to use was occupied by another vessel and the *Marika M* had to wait approximately ten additional days until the berth was again available. The time charterer contended that the vessel was off hire from the time she grounded until the time she berthed, including as off hire the period waiting for the berth subsequent to being refloated. The time charterer's argument in this regard was that the additional waiting time for the berth was a consequence of the vessel grounding. The owner argued that the vessel again became fully efficient upon being refloated. The owner's argument prevailed, and the charterer was liable to pay hire again upon the vessel being refloated. The vessel was only off hire for the time aground, and not for the consequential waiting time, which resulted in a loss of ten days which the time charterer was unable to claim from the owner. This case clearly illustrates not only that a time charterer will not be able to claim consequential waiting time but the general principle that off hire is related only to the service immediately required and does not take into account any damages incurred as a consequence of the off hire.

²³⁸ *Eastern Mediterranean Maritime (Liechtenstein) Ltd. v Unimarine S.A. (The Marika M)* [1981] 2 Lloyd's Rep. 622.

Having considered the consequences of delay as related to off hire it is necessary to consider the position under the laytime provisions. Three main possibilities will be explored, and the example of grounding will be employed, however it should be noted that other types of delay could also arise:

- i. The vessel upon approaching the port grounds, prior to being in a position to tender the notice of readiness.
- ii. The vessel grounds after having tendered notice of readiness but before the expiration of laytime.
- iii. The vessel grounds after having tendered notice of readiness and after expiration of laytime, while the vessel is on demurrage.

In the first situation, there will be no impact from the voyage charter standpoint as arrival at a point where notice may validly be tendered is a condition precedent to laytime commencing, therefore there will be no dispute over whether laytime while aground may count, as the vessel will not have tendered a notice of readiness at this stage. Grounding may cause delays to the tendering of the notice of readiness which may be costly to the time charterer, such as in a case where this causes the vessel to miss tendering the notice by a short time, and subsequently delaying the commencement of laytime, or time on demurrage, by a longer period. It is important to note that tendering a notice of readiness one day later does not necessarily lead to a one day loss of laytime. Under an unamended Gencon charter, a notice of readiness tendered in the morning will result in time counting on the afternoon of the same day. However, a notice of readiness tendered during the afternoon before a holiday will only count the morning of the next working day, therefore over a holiday weekend this can make a substantial difference. The *Marika M*, is authority that the time charterer would be unable to claim time waiting for a

berth that consequentially arises as off hire time. Equally, the argument that the vessel should be off hire until the (delayed) commencement of laytime would also seem certain to fail as related to off hire, in the *Marika M* the time charterer was unable to claim waiting for the berth, therefore a time charterer would be unable to claim time as a result of being unable to tender a notice of readiness.

The only difference between the second and third scenarios is whether the incident takes place before or after the expiration of laytime, this distinction is minor and these two points will therefore be dealt with together. It has been noted previously that in order for the voyage charterer to suspend laytime counting that the exception must be noted in the charter party, or for those exceptions not noted in the charter party that they must be the fault of the owner or those for whom he is responsible.

The Union Amsterdam is useful as authority in the context of grounding en route to the berth.²³⁹ In this case the vessel had arrived and tendered notice of readiness. All available laytime was used while waiting for the berth and demurrage was accruing while the vessel was still at anchorage. A berth ultimately became available but while proceeding to the berth the vessel grounded in heavy fog. In this instance it was found that demurrage did not continue to accrue while the vessel was grounded, and this decision was linked to negligence on the part of the Captain. Therefore, it can be seen that as outlined above the element of fault of the owner or those for whom he is responsible is also required in this situation, as it appears that the fault of the owner was an essential ingredient in the interruption of demurrage, and that without this fault demurrage would not have been interrupted. From a time charterer's perspective the vessel would typically in these circumstances be

²³⁹ *Blue Anchor Line Ltd v Alfred C Toepfer International GmbH (The Union Amsterdam)* [1982] 2 Lloyd's Rep. 432.

considered off hire, so the loss of demurrage would not be as difficult to accept, as demurrage would be begin to accrue again when the vessel was refloated.²⁴⁰ However, where greater losses could be encountered would be in the case of a berth charter, where the vessel is unable to start time counting without having reached the berth. In a case such as *The Marika M* where a substantial berthing delay resulted after refloating that could not be counted as off hire the consequences for the time charterer can be significant. While *The Union Amsterdam* involved a vessel on demurrage, this case would also indicate that laytime would be interrupted for a vessel prior to going on demurrage; given that the general rule being that laytime is more likely to be suspended than demurrage. So in the case of *The Union Amsterdam*, if the vessel on demurrage under the circumstances encountered an interruption to the accrual of demurrage then it is a virtual certainty that a vessel under the same set of facts but with laytime remaining would see the counting of laytime suspended. It must be noted that the decision in *The Union Amsterdam* seemed to largely turn on the fault of the master; if not for this fault demurrage would not have been interrupted.

It should also be noted that in the event there is no fault on the part of the owner then laytime should continue to count. However, the fact that the vessel grounded almost invariably puts the vessel off hire irrespective of whether the reason for the grounding is the fault of the vessel owner or some other third party,²⁴¹ therefore a situation can potentially arise where the vessel could be off hire and yet the time charterer could still be collecting demurrage from the voyage charterer. In spite of the incongruity of this situation the owner is not, in accordance with *The Mareva*,²⁴²

²⁴⁰ At which point the vessel would be on hire again: See *Eastern Mediterranean Maritime (Liechtenstein) Ltd. v Unimarine S.A. (The Marika M)* [1981] 2 Lloyd's Rep. 622.

²⁴¹ However, if the vessel grounded due to unsafety of the port the situation may be different.

²⁴² [1977] 1 Lloyd's Rep 368 at p 380.

entitled to any relief of the off hire simply because the time charterer was collecting demurrage while the ship was off hire.

2.13 CONCEPTUAL COMPARISON OF LAYTIME AND OFF HIRE

A key conceptual difference between laytime and off hire arises with respect to the role of the fault of the owner.

Under the off hire clause there is generally no element of fault in deciding whether or not a vessel is off hire.²⁴³ If the provisions of the charter party are satisfied then the vessel will be off hire irrespective of fault. Conversely, when dealing with laytime the question of fault is frequently encountered. The general legal position is that laytime will not be suspended without the fault of the owner; mere lack of fault on the part of the charterer is insufficient barring a specific contractual term to that effect. An example of the importance of this fault was examined above in *The Union Amsterdam*. Without the fault of the master the outcome of this case would have been different in that demurrage would have continued to accrue. Therefore, under laytime, the assessment of fault plays a key role when considering the merits of a claim.

The issue of fault of the shipowner can further be illustrated by the decision in *Leeds v Duncan Fox* where the stevedores were servants of the owner and the vessel was delayed due to a need to restow the cargo.²⁴⁴ The charterer was not held to be liable for demurrage during this time. Conversely, in *Houlder v Weir* discharge was delayed due to the vessel leaving the berth to take on necessary ballast and this did

²⁴³ *Wilson, Carriage of Goods 4th, supra* note 96, p. 89.

²⁴⁴ (1932) 42 L.L.R. 123.

not interrupt the accrual of demurrage.²⁴⁵ The distinction therefore seems to be the question of whether the action is justifiable and without fault; in *Houlder v Weir* the ballasting operation was necessary and justifiable, whereas in *Leeds v Duncan Fox* the restowage was necessary due to fault of those for whom the owner was responsible. *Houlder v Weir* may be contrasted with *The Fontevivo*,²⁴⁶ in which case the vessel also left the berth during discharge. In *The Fontevivo* the vessel was discharging cargo in Syria and prior to completing discharge the vessel sailed away, claiming unsafety of the port due to war risks. Three days later the vessel returned to the port and completed discharge. The owner claimed that time away from the berth counted as laytime. It was held that the master was not justified in taking this action and the time did not count as laytime. This illustrates the concept of fault and its relationship with laytime, as in this case the fault of the master (on behalf of the owner) in leaving the berth meant that time would not count.

Also noteworthy is that while the element of fault is in contrast between laytime and off hire under both regimes it is the responsibility of the charterer to bring himself within the terms of the clause, whether it is hire or laytime that the charterer wishes to suspend. This is entirely reasonable from a fairness standpoint as the party claiming the reduction of payment should be responsible for making the case.

The issue of responsibility of making out the claim for off hire and suspension of laytime resting with the charterer under both voyage and time charters is one which can be advantageous for operators. In order to avoid laytime counting the voyage charterer will have to produce evidence and detail a claim showing that it is the responsibility of the operator. As noted above the voyage charterer may be required

²⁴⁵ [1905] 2 KB 267.

²⁴⁶ *Gem Shipping of Monrovia v Babanaft (The Fontevivo)* [1975] Lloyd's Rep 399.

to prove an element of fault of the owner, in which case the evidence accumulated and presented by the voyage charterer may prove very useful to the operator in making an off hire case against the vessel owner.

However, as many of these cases will turn on construction of the clause in question, and the wording of laytime and off hire clauses is completely dissimilar, in many cases the issue of fault does not play a role and the question is of interpretation of the clause.

It is also noteworthy that in terms of both laytime and off hire any ambiguity will be resolved in favour of the charterer.

2.14 SUSPENSION OF LAYTIME, OFF HIRE AND SEAWORTHINESS

Given that many events which may lead to suspension of laytime or vessel off hire can also be viewed as potentially relating to the vessel's seaworthiness the question naturally arises as to the relationship between seaworthiness and off hire or laytime.

It is important to recall that under a voyage charter, with respect to seaworthiness, the doctrine of stages will apply,²⁴⁷ which is to say an obligation that the vessel be seaworthy arises at the beginning of each stage of the voyage. Furthermore, there is an implied obligation at common law that the vessel be seaworthy.²⁴⁸ Therefore under the voyage charter the time charterer (as the contractual owner) will have an obligation to the voyage charterer.²⁴⁹

²⁴⁷ *Voyage Charters*, 2nd, *supra* note 2 at 11.44.

²⁴⁸ *Ibid* at 11.20.

²⁴⁹ Notwithstanding anything in the charter party that lessens the seaworthiness obligation, see for example clause 2 of the Gencon 1994 Charter Party.

One of the stages of the voyage is the loading stage,²⁵⁰ thus if the vessel is not seaworthy at the beginning of this stage and there is a delay owing to this unseaworthiness, then there will potentially be recourse against the time charterer.²⁵¹

While the voyage charterer would have a claim in damages for the unseaworthiness of the vessel this is clearly different than a claim under the laytime provisions. In order for laytime to be suspended, as previously noted, there is a requirement that the exception either be under the laytime clause or that fault of the owner be present.²⁵² Contingent upon the facts it may be more advantageous for the charterer to claim under the laytime provisions. A main reason for this is the doctrine of stages which requires that the vessel be seaworthy at the beginning of each stage of the voyage. Therefore, if a vessel is seaworthy at the beginning of the loading stage but subsequently suffered an event that made her unseaworthy the charterer could potentially not have a claim under the seaworthiness provision. An example of this would be a failure of the ballast system, a vessel while loading may need to discharge ballast while cargo is loaded on board. Should the ballast system fail during loading this could interrupt cargo operations. While it is clear that a failure in a vessel's machinery will lead to a vessel being unseaworthy,²⁵³ and in particular that a failure of the ballast system can lead to unseaworthiness.²⁵⁴ The seaworthiness obligation however only exists at the beginning of the stage of the voyage. Therefore, if the system had been functional upon commencement of

²⁵⁰ *Ibid* at 11.50.

²⁵¹ Under the Gencon 1994 Charter Party this is covered under clause 2, however under this clause there only exists an obligation of due diligence.

²⁵² See section 2.3, *supra*.

²⁵³ *Owners of Cargo on Ship Maori King v. Hughes* [1895] 2 Q.B. 550.

²⁵⁴ *McFadden v Blue Star Line* [1905] 1 KB 697.

loading the owner would have satisfied the seaworthiness obligation and the charterer's claim would fail. However, in spite of the charterer not having a claim under the seaworthiness provisions of the charter party, the charterer would still be able to suspend laytime for the time lost due to the ballasting system being inoperative.²⁵⁵

A second reason that it is generally preferable to pursue a claim under the laytime provisions is that voyage charter parties may contain clauses which will limit the owners' liability. One such example is the "Owners' Responsibility" clause contained in the Gencon voyage charter party.²⁵⁶ This clause relieves the ship owners (or the time charterer, in the case of a vessel operating on time charter) from responsibility for delays in delivery of the cargo unless it derives from the "...personal lack of due diligence on the part of the owners or their manager to provide a seaworthy vessel...".²⁵⁷ This language is more favourable to owners and potentially very restrictive of charterer's right to recovery.

Additionally, it must be noted that if a voyage charterer pursues a claim under the seaworthiness provisions and is successful in claiming damages for time lost, then these damages are likely to be similar to the laytime provisions in any case, assuming that the demurrage rate in the charter party is approximately reflective of the market rate for the vessel.

²⁵⁵ See section 2.8, *supra*.

²⁵⁶ Gencon 1994 Charter Party at Clause 2.

²⁵⁷ *Ibid*.

Questions regarding seaworthiness that may impact laytime are not limited to physical deficiencies. It is now clear that a vessel that is not in compliance with appropriate certificates and documents will not be considered seaworthy.²⁵⁸

Therefore, while a claim can be advanced under the seaworthiness provisions it is considered that it is more straightforward to take action under the laytime provisions.

If a voyage charterer chooses to pursue a claim under the head of unseaworthiness the time charterer still has the option to attempt to pursue an equivalent claim under the off hire provisions of the time charter party. This may prove to be advantageous to the time charterer, as under some time charters the obligation of the owner to provide a seaworthy vessel is modified from the absolute obligation under the common law to one of due diligence that only applies at the beginning of the voyage.²⁵⁹

Overall, given the limitations on when a vessel must be considered seaworthy it seems more practical that these claims be pursued under laytime rather than unseaworthiness. It must be acknowledged however that many situations that give rise to suspension of laytime (mechanical failures, for example) are equally potential unseaworthiness claims.

²⁵⁸ *Voyage Charters*, 2nd, *supra* note 2 at 11.41.

²⁵⁹ This occurs due to the incorporation of the *Hague-Visby Rules* into time charters, see John F. Wilson, *Carriage of Goods by Sea* 4th ed, (Harlow, Pearson Education, 2001), at 10-11 and 191.

2.15 STEPS THE TIME CHARTERER MAY TAKE TO REDUCE RISK

There are several key subjects in this section that highlight risks to the time charterer that must be considered.

The first issue is arrests and detentions. The risk for the time charterer in this area is that while arrested the vessel may remain on hire, but laytime may be suspended. This would seem quite likely to arise in the situation of cargo damage, as the vessel is physically efficient there is unlikely to be a successful off hire claim under the NYPE charter. In this instance the easiest solution would be the incorporation of a clause in the time charter party providing that the vessel was to be off hire during a period of arrest.²⁶⁰ The addition of the word “whatsoever” after the word “cause” in the NYPE off hire clause would also seem prudent in this regard, as this is a key factor in extending the events that can lead to a vessel being off hire for non physical inefficiency. It is considered that the best approach in this situation is to amend the time charter party to allow for the expanded range of off hires, because it is unlikely that a voyage charterer will wish to agree a clause that laytime will continue to count in the event that the vessel is arrested and the vessel is not working. The ability to amend either type of charter will naturally depend on the relative bargaining positions of the parties at the time of concluding the charter.

The second area explored was cargo handling equipment breakdown. Many modern dry cargo time and voyage charter parties contain additional clauses specifying what will happen in the event that there are crane breakdowns. From the time charterer's perspective, it should be ensured that similar results derive from both the time and

²⁶⁰ It was a clause such at this in *The Scindia Steamship Navigation Company Limited Bombay v Nippon Yusen Kaisha Limited (The Jalagouri)* [2000] EWCA Civ 93, that led to a finding that the vessel was off hire, under the unamended form the vessel would most likely have remained on hire.

voyage charters. For example, under both types of charters it is important²⁶¹ to specify what happens in the event of partial efficiency, particularly in the event that some cranes are efficient, but those are the ones that are not needed. Vessel owners should pay particular attention that they are not inadvertently agreeing to a “period” rather than a “net loss of time” clause when agreeing to a clause governing gear breakdown and off hire, the owner will wish to avoid a situation whereby the vessel is fully off hire when some cranes are capable of working and useful to the charterers. Although under an unamended dry cargo form this is considered unlikely it is a risk under a clause that is drafted during negotiations and subsequently added to the charter party.

Finally, there is the situation of a vessel grounding or being delayed en route to the berth. From a time charterer’s standpoint it would seem unlikely that an owner under a time charter would agree to accept responsibility for all consequential delays resulting from grounding. An owner would find such an agreement too onerous in terms of potential liability; therefore it would seem more effective to approach this from the standpoint of the voyage charter. A main risk arises for the voyage charterer when, after grounding, the vessel misses an opportunity to berth and the berth is then occupied by another vessel, particularly in the case that the voyage charter is a berth charter. The simple remedy for this is to, whenever possible, agree to a port charter, as this will at least allow laytime to count during waiting time.²⁶² In trades where this is not possible it would seem that there is no easy

²⁶¹ Although less important under a time charter, where Lord Denning in *The HR Macmillan* [1974] 1 Lloyd’s Rep 311 (CA) established that a vessel may be partially off hire. Under both voyage and time charters it is advisable to agree before hand which party will assume responsibility for shore labour standby time incurred while the vessel is idle due to gear breakdown and what is to happen in terms of laytime and off hire if shore cranes must be employed.

²⁶² Within the limits previously discussed.

solution, and it would appear that much of the risk must be accepted, realizing that this is an unusual situation.

Although it is not the aim of this paper to examine charter parties from the voyage charterer's standpoint it does become clear from the examination of laytime provisions in this section that a party bearing significant risk is the voyage charterer. As has been outlined above there are a number of instances where the voyage charterer must continue to pay demurrage in spite of the fact that the vessel is not available, since demurrage will not cease to accrue except through fault of the owner. A voyage charterer would be advised to attempt to agree on a clause with wording that establishes a more balanced approach, ideally where if the vessel becomes unavailable to the charterer for reasons that are not attributable to the fault of the charterer then laytime will continue to count. An example of this solution is found in *Navrom v Callistis Ship Management SA*; the charter party in this case allowed that any time lost without the fault of the charterer was not to count as laytime or time on demurrage.²⁶³ In this case it was found that port congestion was a hindrance for which the charterer was not responsible.

Overall, from the time charterer's standpoint there appears to be risk in off hire and laytime not running in parallel. However, as outlined above, much of this risk appears to be manageable by attention to contract terms, although a certain amount appears unavoidable. Of paramount importance in managing this risk is the negotiation of some provisions regarding off hire for non physical deficiency, as this will be instrumental in assisting in avoiding the vessel remaining on hire during events such as arrest of the vessel. A first step is the modification of charter terms in such a way that non physical inefficiency is potentially brought within the ambit of

²⁶³ *Navrom v Callistis Ship Management S.A. (The Radauti)* [1988] 2 Lloyd's Rep. 416 (CA).

the charter terms, in the NYPE 1946 charter this can be achieved through the modification of clause 15 to include the word “whatsoever”, the second step is the insertion of an additional charter party clause that clearly outlines the factors which will result in charter hire being suspended.

2.16 CONCLUSION

Overall, from the time charterer's standpoint there appears to be the potential for significant risk in off hire and laytime not running in parallel. However, as outlined in this chapter, much of this risk appears to be manageable by attention to charter party terms, although a certain amount appears unavoidable. Of paramount importance in managing this risk is the negotiation of some provisions regarding off hire for non physical deficiency, as this will be instrumental in assisting in avoiding the vessel remaining on hire during events such as arrest of the vessel. A first step is the modification of charter terms in such a way that non physical inefficiency is potentially brought within the ambit of the charter terms, in the NYPE 1946 charter this can be achieved largely through the modification of clause 15 to include the word “whatsoever”, the second step is the insertion of an additional charter party clause that clearly outlines the factors which will result in charter hire being suspended.

Therefore, this is viewed as an area that presents considerable risk for the operator. There are many situations where laytime and off hire will potentially not run in parallel under typical charter party terms. However, as illustrated in this chapter the potential exists to minimize these risks.

CHAPTER 3

CLEANLINESS OF VESSEL CARGO SPACES

The MV Tabaret is a bulk carrier employed primarily in the carriage of coal and iron ore. Her owner fixes her on a period time charter to Morriset Chartering. Morriset carry a first cargo of coal which is loaded and discharged without incident, then sub charters the vessel on voyage terms to load a cargo of fertilizer. The voyage charter includes a provision that prior to tendering notice of readiness the vessel's cargo holds must be inspected and approved for loading by a surveyor appointed by the voyage charterer. The MV Tabaret has a two day ballast between the last discharge port and the loading port and the crew is instructed to clean en route, the time charter provides that the crew is to clean the vessel between voyages but the owner does not warrant that the vessel will pass hold inspections. Upon arrival at the load port the vessel is rejected by the surveyor due to coal residues and extensive staining of the bulkheads due the presence of coal. There are also residues of other cargoes in the upper spaces of the holds. The crew works over the course of several days to clean the holds, but the vessel is not ready by the cancelling date and the voyage charterer cancels the vessel. Morriset are unable to find another cargo for the ship and wait several days before ballasting the vessel across the ocean.

3.1 INTRODUCTION

An important consideration for those shipping goods by sea is the suitability of the cargo spaces for the goods to be loaded. In the case of non unitized cargo the spaces need to be clean in order to avoid contamination of the cargo, which can occur either

from previous cargo residues or from causes inherent to the vessel, such as flaking of paint or rust from the interior of the cargo spaces. The level of cleanliness required for different cargoes is varies and as such hold cleanliness requirements and the amount of work required to achieve the necessary standard will vary. Also, the amount of work will be partially dependent upon the last cargo carried as some cargoes have characteristics that make them difficult to clean.²⁶⁴ While in other cases certain cargoes are specifically injurious to certain other cargoes, meaning that particular care must be paid when cleaning between voyages in which these commodities are carried consecutively.

Ships will need to be cleaned between most cargoes, and as such the cleanliness of the vessel will be a consideration under virtually all charter parties. Preparation of the cargo spaces can be performed by either the crew or by shore labour. In most cases the vessel's crew will perform the cleaning, although there are certain commodities and special circumstances where shore labour is more commonly employed.²⁶⁵

For a vessel on time charter there are three types of cleanliness that will concern the time charterer, these being cleanliness on delivery, cleaning between voyages and cleaning on redelivery.

With respect to the voyage charterer the primary consideration is the suitability and related cleanliness of the vessel on arrival at the port of loading. By their nature

²⁶⁴ Because cargoes all have individual properties there are some that are more adhering to the inside of the vessel, while others, notably types of equipment such as tractors or steel cargoes, will require very little cleaning.

²⁶⁵ There are greater efficiencies realized if the crew cleans the cargo spaces as shore cleaning is in more cases more expensive and will often delay the ship. However, certain commodities (such as cement) are more often cleaned by shore labour, often due to either the requirement of particular expertise or the requirement for specialized equipment.

voyage charters exclude any consideration of intermediate or redelivery hold cleaning. This is due to the fundamental nature of voyage charters versus time charters; under the voyage charter the owner undertakes to carry the cargo in question and manages all operational considerations.

This chapter will examine vessel cleaning and related rights and obligations from the perspective of the operator who has time chartered the vessel and sub chartered on voyage charter forms. The primary issue to be addressed is the question of liability for time lost should the vessel's cargo spaces not be adequately clean. This will include substantial consideration of off hire and the impact of the vessel being unclean on tendering of notice of readiness and laytime. Also to be considered is the question of which party is responsible for the cost of removing dunnage used in the stowage of the cargo.

As noted above a ship will generally need to have her cargo carrying spaces cleaned in order to prepare them for the carriage of the following cargo.²⁶⁶ When a vessel is trading for the account of the owner it is the owner will make the decisions with respect to employment and therefore selecting the cargoes and deciding what steps should be taken to ensure that the vessel is properly cleaned. However, when the vessel is on time charter the owner relinquishes specific authority over the cargoes to be carried and the order in which they are carried and accordingly the owner also relinquishes a degree of responsibility over the cleaning operations.²⁶⁷

²⁶⁶ There will be cases when this will not be necessary, for example when a vessel is performing consecutive voyages with the same cargo.

²⁶⁷ The time charterer will have, within the restrictions of the charter party, discretion which cargoes to load.

When on time charter, the time charterer will want the vessel to proceed as quickly as possible from one cargo to the next, minimizing idle time between voyages. Often the situation will occur in which there will be sufficient time for cleaning between voyages in which case there will be no delay. However it is also not unusual the crew is unable to clean the cargo spaces before arrival at the port of loading, in which case a delay will result, and the time charterer will wish to examine whether such loss of time may be claimed from the owner. It must be noted that cleaning takes time and on occasion it will take more time than there is between discharging one cargo and loading the next. These delays are fertile grounds for disputes.

3.2 TIME CHARTERS: CLEANING AT DIFFERENT STAGES OF THE VOYAGE

From a purely technical standpoint the actual process of cleaning the vessel's cargo spaces is the same irrespective of whether it is performed on delivery or as intermediate cleaning. Generally the vessel's crew, but sometimes a cleaning crew, will undertake cleaning of the cargo spaces. However, from a legal standpoint under a time charter the rights and obligations between the parties vary with respect to whether the vessel is delivering or is between voyages under the time charter.

In general the vessel will be required to deliver, or arrive at the first port of loading, clean and ready to load her cargo. This is an obligation on the part of the owner, and should the owner breach this obligation the charterer will usually have recourse, which is generally to place the vessel off hire. The obligation to deliver clean is incorporated into the NYPE 1946 charter party at lines 21-22, which read "Vessel on

her delivery to be ready to receive cargo with clean-swept holds...”.²⁶⁸ It must also be noted that the cleanliness obligation is a condition precedent to delivery and as such the time charterer is not required to accept delivery until such time as the obligation is satisfied.²⁶⁹

By comparison intermediate cleaning clauses generally place very little obligation upon the owner. A typical intermediate cleaning clause will require that the crew work to the best of their ability in cleaning the vessel on the basis that the owner is not responsible should the vessel fail hold inspection.²⁷⁰ In the absence of an express provision regarding intermediate hold cleaning then the owner will be obligated to perform this function as part of the time charter under the customary assistance provision however virtually all time charters now incorporate intermediate hold cleaning clauses.²⁷¹

While the two main areas of dispute regarding hold cleaning are when a vessel is presenting at her first port of loading under the time charter and not being clean or the vessel being delayed between voyages while cleaning a cargo that the charterer loaded. A variation may occur whereby the vessel is not clean to the required delivery standard upon delivery but the vessel is able to load the first cargo but then owing to this failure to be clean to the required level on delivery the vessel fails subsequent hold inspections.²⁷²

²⁶⁸ The identical wording is retained in the 1993 version of the NYPE at lines 33-34.

²⁶⁹ *Time Charters*, 6th, *supra* note 1 at 8.41 and *The Hongkong fir* [1961] 2 Lloyd’s Rep 478.

²⁷⁰ For example, the intermediate hold cleaning provisions in *The Bela Krajina* [1975] 1 Lloyd’s Rep 139 or *The Bunga Saga Lima* [2005] 2 Lloyd’s Rep 1, or see for example the Bimco hold cleaning clause, reproduced in section 3.7 *infra*.

²⁷¹ Clause 8 of the NYPE 1946 form provides at line 76 that “The Captain...shall render all customary assistance...”. In *The Bela Krajina* [1975] 1 Lloyd’s Rep 139 this was clearly taken to include hold cleaning, and also makes clear that customary assistance in providing hold cleaning is not without limits.

²⁷² It is important to note that different cargoes will require different levels of cargo space cleanliness.

The final stage of the voyage is redelivery. In this case the time charterer under the charter party has an obligation to redeliver the vessel in “like good order and condition”.²⁷³ This would therefore include redelivering the vessel in clean condition. However, virtually all charter parties now contain a provision that the charterer will pay the owner a fixed sum “in lieu of hold cleaning” and redeliver the vessel with her holds unclean.

3.3 CLEANING AND VOYAGE CHARTERS

The primary consideration with respect to cleaning under voyage charters is that the contracting owner (in this case the time charterer) will have an obligation to present a vessel that is sufficiently clean to load the cargo. If the vessel is not clean to the required standard then the main recourses open to the voyage charterer are suspension of laytime during time used in cleaning or invalidity of the notice of readiness. Which of these options is open to the charterer will depend on the terms of the charter. The other option available to the charterer is cancellation of the charter party; however this right only arises if the vessel has been unable to tender notice of readiness by the cancelling date, or if the condition of the vessel is so severe as to frustrate the charter. There does not exist any right to cancel the charter simply because the vessel presents with cargo spaces in an unsuitable condition, the vessel need only be ready within the laycan, therefore if vessel presents in an unready condition and the vessel's cargo spaces can be made ready within the laycan no right to cancel arises, as the right to cancellation only accrues once the vessel has missed her cancelling date.²⁷⁴

²⁷³ NYPE 1946 Time Charter at lines 54-55.

²⁷⁴ *Voyage Charters*, 2nd, *supra* note 2, 19.7-19.8.

The cleanliness obligation under a typical voyage charter party derives from either the specific wording of the charter party or the seaworthiness obligation, and in many cases both.²⁷⁵ Additionally, the obligation is also one which arises under the common law.

Specific charter party clauses regarding cleanliness arise because often there is a requirement that the vessel, prior to loading, be accepted as suitable to the satisfaction of either an independent surveyor or a surveyor appointed by the charterer. Perhaps the most obvious example of this type of requirement is grain carriage. Bulk grain charters will invariably require that the vessel undergo a pre-loading inspection.²⁷⁶ Tanker charters also incorporate requirements regarding cleaning, which usually provide that the inspection is to be performed by a surveyor appointed by the charterer.²⁷⁷

With reference to the seaworthiness obligation in accordance with the decision in *The Good Friend* under a voyage charter in order for the vessel to be considered seaworthy the cargo spaces must be properly clean and free of rust, cargo residues and other factors which might lead to contamination of the cargo.²⁷⁸ Additionally, any residues which may render the cargo to be loaded dangerous would also result in the vessel being considered unseaworthy.²⁷⁹ Therefore the cargo holds must be cleaned to a standard that avoids unseaworthiness.

²⁷⁵ However, as with many charter party clauses often the seaworthiness obligation is amended.

²⁷⁶ See for example North American Grain Charterparty 1973 (Amended May 1989) at clause 3 and clause 18.

²⁷⁷ See for example Asbatankvoy voyage charter at clause 18.

²⁷⁸ [1984] 2 Lloyd's Rep 586.

²⁷⁹ *Mediterranean Freight Services v B.P. Oil International (The Fiona)* [1994] 2 Lloyd's Rep 506.

However, it is submitted that the decision in *The Good Friend* must still be viewed in the context of what is reasonable, and considered relative to the description of the cargo in question. In this respect the decision in *Holman v Dasnieres* is relevant where it was held that the cargo must be one that is reasonable to ask the vessel to carry.²⁸⁰ It is considered that when one looks at this obligation of reasonableness in relation to the obligation of cleanliness under the seaworthiness obligation that this results in moderation of the cleanliness obligation to that which is reasonable based on the description of the cargo in question. However standards will vary according to port and region, and this variation does not constitute unreasonableness.²⁸¹ As will be illustrated in this chapter, there is in general a high burden of proof placed on the time charterer who attempts to show that inadequate cargo space cleanliness is the responsibility of the owner, in particular in relation to intermediate cleaning.

Tanker charters are also instructive with respect to cleanliness. Tanker charter parties generally require that the tanks be clean to the satisfaction of the charterer's inspector.²⁸² It can be noted that while there is no requirement in a typical tanker charter party that the surveyor act reasonably, it is considered likely that such a term could be implied. In this case the logic applied in *Voyage Charters* 3rd edition is convincing, where the authors suggest that otherwise the charterer would have the power to prevent the fulfillment of the charter and as such it is likely an obligation that the inspector must act in good faith and on reasonable grounds can be implied.²⁸³

²⁸⁰ (1886) 2 T.L.R. 607.

²⁸¹ In terms of varying standards see, for example, Richard Malbane, "Outcome of hold-cleaning case a warning to charterers", *Lloyd's List*, 18 June 2008. Different standards of cleanliness can be applied at different ports for the same commodity.

²⁸² See, for example, *Shellvoy 6 Charter Party* at clause 2 (see appendix A).

²⁸³ *Voyage Charters*, 2nd, *supra* note 2, 68.2.

The common law obligation is clearly outlined in the well known *Tres Flores* decision.²⁸⁴ Under the common law the vessel must be ready at the time the notice of readiness is tendered, and not at some future point.²⁸⁵ On this basis, it has been found that a notice of readiness that is given when the ship is not completely ready to load is invalid. Minor formalities can still be left to be completed,²⁸⁶ but the vessel must be clean and ready in all her cargo spaces.²⁸⁷ In the *Tres Flores* the vessel tendered notice of readiness but was subsequently found to have pests in the cargo holds and required fumigation prior to loading. Despite the fact that the fumigation did not involve a large sum of money and only required about four and a half hours the tender of the notice of readiness was found to be invalid. Also in the *Tres Flores* decision it was determined that the charterer did not have an implied obligation to inspect the vessel at the earliest possible time.

In the event that a vessel fails a pre-loading inspection the result is, in the first instance, related to the notice of readiness. This is because if virtually all cases where a pre-loading cargo space condition survey is required then the tendering of the notice of readiness will be contingent upon obtaining a pass from the surveyor. However, if the vessel is not ready for loading by the cancelling date then it is open to the charterer to cancel the vessel. Therefore it is possible that lack of ready cargo spaces can result in the cancellation of the voyage charter.²⁸⁸

With respect to tendering of notice of readiness and laytime, a vessel will often have the right to tender notice of readiness prior to obtaining a pass of her hold

²⁸⁴ [1972] 2 Lloyd's Rep 384; [1973] 2 Lloyd's Rep 247 (C.A.).

²⁸⁵ *Ibid* Per Lord Denning, MR.

²⁸⁶ *The Aello* [1961] AC 135.

²⁸⁷ *Groves, Maclean & Co. v Volkart* (1884) C & E 309, *Noemijulia v Minister of Food* [1951] 1 K.B. 223.

²⁸⁸ See chapter 3, *supra*.

inspection.²⁸⁹ In the event that the pass is not subsequently obtained then this will impact the laytime situation in one of two ways. Either the notice of readiness will be invalidated or laytime will be suspended from the time of the failure until the vessel is ultimately passed for loading. Which of these occurs will be a matter of the terms of the charter party. It is clear that the preferable choice for the operator is to have laytime suspended rather than have the notice of readiness invalidated. One need only consider the situation of a vessel encountering a long berthing delay, and at the same time a long delay between arrival and hold inspection to realize that a great deal of laytime could be lost through the requirement for tendering a new notice of readiness. Therefore, operators should take great care to ensure that their voyage charter allows any laytime used before a hold failure to count. Another result is that by allowing tender of the notice of readiness and subsequently stopping laytime from counting in the event of failure that it can be argued that the voyage charterer will have lost the right to cancel the vessel in the event that the cargo spaces are not clean by the cancelling date. In such a case the charterer would then need to rely on the doctrine of frustration in the event there was a desire to not have the vessel load the cargo, which is much more difficult to achieve than merely cancelling the vessel because she missed her cancelling date.

3.4 TIME CHARTERS: GENERAL LEGAL POSITION OF CARGO SPACE

CLEANLINESS ON DELIVERY

Referring to the NYPE 1946 charter party the owner has an obligation upon delivery to deliver the vessel “ready to receive cargo with clean-swept holds and tight,

²⁸⁹ It would appear at common law that there is no difficulty with tendering a notice of readiness prior to obtaining passes, for example in *Compania de Naviera Nedelka v Tradax International (The Tres Flores)* [1974] Q.B. 264 the courts had no problem with the tendering of the notice prior to the inspection, it was the failure of the hold survey that presented the problem. However, the charter party may include wording that prohibits this.

staunch, strong and in every way fitted for the service”.²⁹⁰ The key point with respect to delivery is the obligation that the vessel must be ready to receive cargo with clean-swept holds.

In addition to this basic obligation the parties will often insert additional wording requiring holds to be cleaned to a specific degree or outlining a specific condition of the holds, in many cases both, with respect to hold condition on delivery.

As noted above the owner has almost invariably has a greater obligation with respect to cleanliness on delivery when contrasted with intermediate cleaning. Essentially, the vessel’s cargo spaces must be clean to a standard that allows the loading of the first cargo.

In the event that the vessel is not ready then the charterer will have recourse under the time charter party. Normally this will involve the vessel being put off hire for the time lost as a result, there is therefore somewhat less risk in this area.²⁹¹ The time charterer will also be able to cancel the charter party if the vessel cannot be made clean prior to the cancelling date, however, in this case the time charterer will not have the right to claim damages under the charter, as there is no remedy other than cancellation if the vessel is not ready in time.

3.5 GENERAL LEGAL POSITION OF INTERMEDIATE CARGO SPACE CLEANING

Intermediate cleaning takes place between voyages while the vessel is on time charter. From an operational standpoint intermediate cleaning is no different from

²⁹⁰ NYPE 1946 at line 22.

²⁹¹ The usual aspects of risks associated with off hire and suspension of laytime would occur here, see chapter 2.

any other cleaning in function, the goal is to make the vessel's cargo spaces clean enough to load the next intended cargo. The difference arises in that at this point the vessel is on time charter, which leads to the question of the division of rights and responsibilities between the owners and charterers with respect to ensuring that the vessel is adequately clean to load the cargo, and in the event that this is not the case then what recourses are available.

A leading decision with respect to intermediate cleaning is that of the Court of Appeal in *The Berge Sund*.²⁹² In this case a tanker was chartered to carry a cargo of butane from Japan to Terneuzen. After completion of discharge the vessel was ordered to proceed to the Persian Gulf, in ballast, for loading of her next cargo. Cleaning of the cargo tanks was undertaken during the voyage between Terneuzen and the load port. However, upon inspection of the holds the vessel was determined to be unable to load the cargo. The reason for the failure was not precisely ascertained, however, one of the possibilities was previous cargo residues. The charterer claimed the vessel was off hire for the 11 days spent cleaning.

The time charterer's claims in *The Berge Sund* were rejected on the basis that cleaning represented the service required by the charterer at the time. In his judgment Slaughter, LJ emphasized that when a vessel is on time charter it is required to clean between voyages and as such cleaning is to be considered a normal activity and the vessel will not be consequentially off hire.²⁹³ However, the decision also made clear that in the event that cleaning is required due to the neglect or

²⁹² *Sig Bergensen DY A/S v Mobil Shipping & Transportation Co (The Berge Sund)* [1993] 2 Lloyd's Rep 453 (CA).

²⁹³ *Ibid* at 460.

breach of contract by the owner then the owner will not be able to claim hire from the charterer for the time so lost.²⁹⁴

The decision in *The Berge Sund* is also noteworthy in that it establishes that in the event that a vessel fails a readiness inspection owing to unfit cargo spaces then the vessel will not be off hire unless there is fault on the part of the owner. This is interesting in that it is a deviation from the usual approach that off hire is determined without reference to fault.²⁹⁵ It is, however, a fair approach in that it is the time charterer making decisions regarding the vessel's employment.

3.6 DIFFERENTIATION BETWEEN CLEANING AND MAINTENANCE

The issue of whether work required in the cargo spaces in order to prepare for loading falls within the realm of cleaning or of maintenance is relevant due to the difference in allocation of liability. Making this distinction is of greater relevance with respect to intermediate cleaning given that inadequate cleanliness on delivery will be the responsibility of the owner and therefore on delivery the distinction is not relevant. As has been illustrated, while intermediate cleaning will generally be at the risk of the time charterer maintenance remains the responsibility of the owner.²⁹⁶ Unfortunately there is little guidance from the courts on where the division between cleaning and maintenance lies.

The decision in *The Bela Krajina*,²⁹⁷ while not specifically establishing the difference between cleaning and maintenance, is useful in illustrating the distinction. This was

²⁹⁴ *Ibid* at 460.

²⁹⁵ See chapter 2, *supra*.

²⁹⁶ Clause 1 NYPE 1946.

²⁹⁷ [1975] 1 Lloyd's Rep 139.

a case that involved a vessel being unfit to load a grain cargo due to the presence of loose rust in the holds. Preparation for loading entailed the removal of the rust over a period of seven days, for which time the charterer claimed that the vessel was off hire. The primary question addressed was whether the crew had provided customary assistance, as required in the charter party, and whether the failure of the holds to be sufficiently clean was a question of maintenance or one of ordinary cleaning.

While *The Bela Krajina* largely relates to the specific facts of the case there are several useful observations that can be derived from the decision as well as some interesting findings of fact.

The key points are in terms of the owner's obligations to provide "customary assistance"²⁹⁸ and keep the vessel in a "thoroughly efficient state".²⁹⁹ Essentially, under a time charter, these relate to the performance of intermediate hold cleaning and the obligation to maintain the vessel in good condition, respectively.

On the specific facts of the case the owner was found to have discharged both of its obligations. In terms of the requirement to render customary assistance it was found that customary assistance does not include operations requiring specialized or sophisticated equipment.³⁰⁰ Scaling operations that required, for example, pneumatic chipping hammers were found to be outside the scope of customary assistance.³⁰¹ If the work cannot be considered customary assistance then, barring some contractual provision to the contrary, the charterer will have to illustrate that the owner did not properly maintain the vessel. In this case, it was found as a

²⁹⁸ NYPE 1946 Clause 8.

²⁹⁹ NYPE 1946 Clause 1.

³⁰⁰ [1975] 1 Lloyd's Rep 139 at 32.

³⁰¹ *Ibid.*

matter of fact that the loose rust in the holds was attributable to the mixing of the chemical properties of two recently carried cargoes (while under time charter) and as such the loose rust was not attributable to lack of maintenance.

A key point that can be derived from *The Bela Krajina* and *The Berge Sund* is that the court will not lightly infer responsibility upon an owner for the failure of pre-loading inspections between voyages. The case is also useful for the context it provides regarding the presence of rust in the vessel's holds. Clearly, the simple presence of rust will not lead to a conclusion of lack of maintenance. The general principle that can be taken away is that customary assistance will only include those services which the crew may perform without special skill or special equipment and without endangering themselves. If the owner fails in these obligations then the time charterer will have a claim. Anything exceeding this will constitute "special cleaning" for which the charterer will have no claim.

The Bela Krajina does not, unfortunately, clearly set out the boundary between maintenance and cleaning. It does, however, indicate that simple loose rust is not likely to lead to a finding of lack of maintenance. The findings of fact in this case were such that the loose rust occurred due to previous cargoes carried and also due to loosening of hard rust through washing of holds. In general it would appear that compelling evidence would be required to move a cleaning operation into the area of maintenance, even in the case of removal of rust, as in general this would appear to be expected to occur over time as a consequence of repeated washing of holds.

However, it must be emphasized that cases such as these will very much be decided on the facts. In an American arbitration it was held in an intermediate hold cleaning

situation that removal of rust was the responsibility of the owner,³⁰² and depending on the circumstances it is quite possible that this would be the finding of an English court.

It is submitted that in general the following test can be applied in intermediate hold cleaning situations. The first stage of the test is see whether the disputed cleaning falls within the ambit of what can be considered customary assistance. If it does, then there is a presumption that it should have been performed by the crew. If the work was not performed by the crew then the time charterer will have a claim against the owner. If the work was performed by the crew, but the time charterer was dissatisfied with the amount of time that it took then it will be a matter of fact as to whether the crew took too long in performing this function. It is submitted that generally ship owners rather than time charterers will receive the benefit of the doubt in such situations, and logically speaking the burden of proof should rest with the time charterer as the party making the claim.

If the work does not fall within what can be considered customary assistance, particularly when necessitated by cargoes carried, then there will be a presumption that cleaning is solely the responsibility of the time charterer. This presumption can only be defeated by the time charterer showing that there is some reason why the owner is at fault or by a contractual provision to the contrary. The primary way in which responsibility of the owner can be illustrated is by proving that the owner is in breach of its maintenance obligation. Once again proving this will be a matter of fact and in general there is little case law distinguishing cleaning and maintenance.

³⁰² American Maritime Arbitration decisions: *The Bjorn Ragne*, SMA 1298 (Arbitration at N.Y. 1979) and *The Pacsea & Pacsun*, SMA 746 (Arbitration at N.Y. 1972).

In the event that the work is necessitated due to breach of the maintenance provision by the ship owner then the time charterer will be in a position to make a claim against the owner.

3.7 TIME CHARTER INTERMEDIATE CLEANING CLAUSES

Virtually all time charter parties include an intermediate cleaning clause which sets out the obligations of the owner with respect to cleaning the vessel's cargo spaces between voyages. Typically, such clauses will contain language that provides that the crew is to clean the holds between voyages using their best efforts, but that the owner is not responsible for the failure of any hold inspection. The Bimco standard clause relating to the cleaning of cargo spaces states as follows:

Hold Cleaning/Residue Disposal Clause For Time
Charter Parties

a) The Charterers may request the Owners to direct the crew to sweep and/or wash and/or clean the holds between voyages and/or between cargoes against payment at the rate of per hold, provided the crew is able safely to undertake such work and is allowed to do so by local regulations. In connection with any such operation the Owners shall not be responsible if the Vessel's holds are not accepted or passed. Time for cleaning shall be for the Charterers' account.

- b) All materials (including chemicals and detergents) required for cleaning of cargo holds shall be supplied by and paid for by the Charterers.
- c) Throughout the currency of this Charter Party and at redelivery, the Charterers shall remain responsible for all costs and time, including deviation, if any, associated with the removal and disposal of cargo related residues and/or hold washing water and/or chemicals and detergents and/or waste as defined by MARPOL Annex V, Section 1 or other applicable rules relating to the disposal of such substances.³⁰³

As can be seen from this clause, while the owner is in general under a charter party obligation to provide customary assistance in cleaning there are certain limitations to this obligation. In particular, the crew is only required to do so when it is safe and when regulations permit. There is also no warranty given that the work will be adequate to ensure the vessel passes subsequent inspections, and the completion of work is contingent upon their being sufficient time between voyages.

However, the owner is required to provide customary assistance and if there is a failure to discharge this obligation is proven then damages will arise. It is submitted however that proving such a failure will be difficult.³⁰⁴

The Bimco clause incorporates the elements that are typically found in an intermediate hold cleaning clause, with the key generally being that the owner does not assume any responsibility for intermediate cleaning.

³⁰³ www.bimco.org

³⁰⁴ *Sig Bergensen DY A/S v Mobil Shipping & Transportation Co (The Berge Sund)* [1993] 2 Lloyd's Rep 453 (CA) and *Bela Krajina* [1975] 1 Lloyd's Rep 139 serve as examples of this difficulty.

3.8 RISKS FOR THE TIME CHARTERER

There are specific risks which arise for the time charterer in relation to vessel cleaning. Under the voyage charter, there is the risk of the vessel not being ready to load the cargo on arrival. The possible consequences in this instance relate to laytime or, ultimately, cancellation of the vessel for loading should she miss the cancelling date in the charter party.

From a time charter perspective the main risk is that the vessel will lose time owing to cleaning and this time will not be recoverable as off hire. Another main risk is the potential cost of employing shore labour to clean the vessel should the crew be unable to accomplish the task.³⁰⁵

It must be recalled that the operator will have contracted simultaneously on both a time and voyage charter. Therefore, the operator will have a time chartered vessel which will be presenting to load a cargo. If the vessel is unfit to load the cargo the results under the voyage charter will be as discussed above, essentially laytime will either not count during the period required for cleaning or the notice of readiness cannot be validly tendered.³⁰⁶ Under the time charter the apportionment of liability between time charterer and owner will vary depending on whether the vessel has just delivered or whether it is an intermediate hold cleaning situation, with generally greater liability for the time charterer in an intermediate hold cleaning scenario.

³⁰⁵ Specialist cleaning companies are often employed in cleaning cargoes such as cement, or when weather conditions would make it difficult for the crew to clean, primarily when there are conditions of extreme cold which would lead to the water being used to wash the holds freezing. See for example: http://www.ems-shipsupply.com/?pk_menu=354 (last viewed December 11, 2013).

³⁰⁶ See section 3.3, *supra*.

Therefore, intermediate and delivery hold cleaning represent unique risk situations from the perspective of the time charterer and each must be approached and managed in different ways.

A related risk that arises is that which was seen in *The Bunga Saga Lima*.³⁰⁷ In this case a vessel was, under the time charter, required to deliver with a specified degree of hold cleanliness. On delivery the vessel was not clean to the required charter party standard, a fact which was known to both parties, but was sufficiently clean to load the first cargo, which was carried without cleaning the holds to the required charter party standard. After completion of the first voyage the vessel was ordered to load grain where she was rejected due to cargo residues from prior to delivery under the time charter, which should have been removed prior to delivery based on the owner's obligations to deliver with clean swept holds. The time charterer was unable to place the vessel off hire for the resulting time lost. The consequences of this decision for time charterers will be examined in detail in a subsequent section.

A final potential risk exists in relation to the concept of readiness under voyage charters relative to that of delivery under time charters. Under the voyage charter there is no concept of delivery, in general terms if the vessel is not ready to load by the cancelling date the charterer has the option to cancel the charter party. The right to cancel the ship is less clear under time charters. Fundamentally, if the owner tenders delivery of a ship that is not in conformity with the obligations under the charter party the charterer has a right to reject delivery. The owner at this point will be required to attempt to bring the vessel into compliance with the delivery obligations.³⁰⁸

³⁰⁷ *The Bunga Saga Lima* [2005] 2 Lloyd's Rep 1.

³⁰⁸ *The Democritos* [1975] 1 Lloyd's Rep. 386, [1976] 2 Lloyd's Rep 149 (C.A.).

3.9 THE BUNGA SAGA LIMA DECISION

The Bunga Saga Lima decision is noteworthy in that it illustrates the risk that a time charterer may face should it accept a vessel that is not clean on delivery,³⁰⁹ the particular risk being that acceptance of the vessel may constitute a waiver of the time charterer's right to later require the owner to correct the deficiency, thereby leading to a situation where the time charterer is required to pay hire while cleaning that should have been done prior to delivery is performed.

The Bunga Saga Lima delivered to the time charterer under a charter party which warranted that on delivery the vessel would be in grain clean condition. The vessel in fact delivered with holds which contained staining and residues from previous cargo and were consequently not grain clean. The vessel was, however, sufficiently clean to load the first cargo, which was iron ore. After completion of the first voyage with iron ore the vessel was nominated to load a grain cargo. The vessel subsequently failed the initial hold inspection for loading grain due to the residues that were present upon delivery.³¹⁰ Cleaning in order to finally pass hold inspection took 8 days.

The charterers proceeded to arbitration, where they claimed for off hire and expenses incurred at the load port on the basis that the owner had failed to conform to the obligation to deliver the vessel with holds ready to load. The arbitrators rejected the claims on the basis that on the proper construction of the charter party the obligation for grain cleanliness was effective only at the port of delivery. The charterers appealed and the court held that the arbitrators were correct in their interpretation of the charter party.

³⁰⁹ *The Bunga Saga Lima* [2005] 2 Lloyd's Rep 1.

³¹⁰ This is illustrative of the varying degrees of hold cleanliness required depending on the cargo in question.

The court held that under the specific wording of the charter and the general charter party warranty regarding clean holds on delivery the obligation was only applicable upon the vessel's delivery or arrival at the first port of loading. It was therefore determined that the time charterer would have been entitled to put the vessel off hire for failing to be grain clean at the first port, but not at subsequent ports. In terms of the claim for damages for breach of the cleanliness obligation on delivery it was held that by accepting the vessel without requiring the owner to remedy the deficiency at the load port the time charterer had waived the breach.

Similarly, in London Arbitration 7/10 a vessel under an NYPE charter successfully loaded a first cargo but was subsequently rejected for loading due to the presence of residues from a cargo carried prior to the charter.³¹¹ As in *The Bunga Saga Lima* the time charterer was unsuccessful in its claim against the owner.

These decisions illustrate both the general tendency for courts to construe cleaning obligations against time charterers as well as the particular risk of accepting delivery of a vessel that is not clean to the agreed standard. The inability to claim damages for the presence of cargo residues from voyages predating the time charter is particularly troubling for time charterers, given the frequently cited rationale for construing intermediate hold cleaning against charterers is that the owner cedes a great deal of control over which cargoes are loaded.

In terms of the time charterer requiring the vessel to undertake cleaning at the first port the commercial reality is that the charterer will usually already have a cargo booked and in the case of major cleaning undertaking the work at this stage may cause the vessel to miss the cancelling date under the voyage charter, potentially resulting in the loss of the cargo. While the time charterer may have an equivalent

³¹¹ Cited from *The Tankvoyager* July/September 2010 at 11.

right to cancel the vessel should she not be clean in time the reality is that the time charterer may need the vessel for commitments beyond the initial cargo.³¹²

Therefore the time charterer may find itself in a situation where the only commercially viable option is to have the vessel load the cargo and put any concerns regarding hold cleanliness for subsequent cargoes aside.

3.10 ASSESSMENT OF RISK AND STEPS THE TIME CHARTERER CAN TAKE TO LIMIT RISK

As illustrated above, the courts generally tend to construe cleaning clauses under time charters against the time charterer. Conversely, under voyage charters the situation is generally that failure to pass a hold inspection will, from a charter party perspective, be the problem of the operator.³¹³ In a situation where a vessel fails an intermediate hold inspection and the vessel remains on hire under the time charter at the same time under the voyage charter laytime will be suspended or the notice of readiness will be invalidated.³¹⁴ On delivery the risk facing the time charterer is less as the owner will generally be liable for lack of fit cargo spaces. The scenario in *The Bunga Saga Lima* represents a serious potential risk for time charterers as well.

Therefore, steps to be taken by the time charterer to manage risk can be addressed broadly under the two main heads of cleanliness on delivery and intermediate hold cleaning. The greater risk lies in the area of intermediate hold cleaning. Also, the situation that arose in *The Bunga Saga Lima* is one of concern to operators and is a key consideration to be examined from a time charter perspective. This is a recently emerging area of risk that has not been largely analyzed or widely considered in

³¹² See chapter 1 for a more complete discussion of the time charterer's rights surrounding cancellation in these circumstances.

³¹³ Or of the time charterer when the time charterer is contracting with the voyage charterer.

³¹⁴ See section 3.8, *supra*.

charter party drafting and can lead to disputes if not addressed in charter party negotiation.

In terms of risk, as noted there will be less risk on delivery which is simply the nature of charter parties. Voyage charterers are indifferent to whether the vessel is on time charter or not, and whether she is delivering or already on charter.

Consequently they are not interested in what contractual terms the owner has with the time charterer with respect to cleaning. Therefore, time charters are generally the focus of dealing with potential risk vis-à-vis cargo space cleaning. However, there remain considerations under voyage charters to be examined.

3.10.1 Delivery

With regard to delivery of the vessel, the essential consideration is that the vessel is ready to load the intended cargo upon arrival at the load port. Most time charters adequately deal with this through the incorporation of a specific term that the vessel is to deliver clean,³¹⁵ and many also incorporate additional phrasing that requires that the vessel be clean to a certain level on delivery.³¹⁶

At a basic level there is not a great deal of risk on delivery, if the vessel is not clean the charterer will not be liable to pay hire for the time lost. At the same time laytime will either be suspended or not commence during the period. While there may be losses that the time charterer may suffer, for example the vessel coming back on hire then waiting for laytime to commence, such losses should generally be minimal.

A major issue with respect to delivery is that of a vessel that is not clean on delivery but the time charterer through words or actions waives the breach, thus relieving the

³¹⁵ See, for example, the NYPE 1946 Time Charter at lines 21-22.

³¹⁶ See, for example, *The Bunga Saga Lima* [2005] 2 Lloyd's Rep 1.

owner of responsibility, which is the situation that arose in *The Bunga Saga Lima*, as outlined above. What can be taken away from *The Bunga Saga Lima* is that often the owner's delivery obligations with respect to cleanliness are only applicable at the first port. The solution to this is theoretically quite easy; the charter party can be amended to state that the charterer by accepting delivery does not waive any rights under the charter party regarding the cargo space condition on delivery and that the owner remains responsible for the duration of the charter for any deficiencies which existed on delivery. Such an open ended phrasing may present some practical difficulties, particularly with regard to very long duration time charters, where an owner may become concerned as to how one differentiates between, for example, coal residues from a previous cargo as opposed to coal residues from a cargo loaded by the time charterer. However, such concerns can be addressed by agreeing wording to the effect that such a warranty is only effective for a limited period of time and only until the time charterer loads the same cargo. Alternatively, the charter party could require that a hold condition survey be performed on delivery with the owner remaining responsible for any issues found in this survey. Such an amendment to present charter party language would allow the time charterer to avoid situations such as that which arose in *The Bunga Saga Lima*. With a properly worded charter party clause the facts of the case would almost certainly lead to a decision that the vessel should have been off hire. In any event it is also prudent for the time charterer to put the owner on notice of any breach and state that the charterer reserves the right to claim for any damages resulting therefrom at any subsequent port. This is relevant because in *The Bunga Saga Lima* the time charterer was found to have waived the breach.³¹⁷ While there is no guarantee that this would be effective in holding the owner liable in every instance it is worth noting

³¹⁷ *The Bunga Saga Lima* [2005] 2 Lloyd's Rep 1 at para 17.

that waiver was considered a factor in *The Bunga Saga Lima*.³¹⁸ It must be noted that waiver occurs through words or actions, and in this case the waiver occurred because the time charterer, while aware of the condition of the ship, loaded the first cargo and never put the owner on notice. Therefore, notification that the time charterer is loading the vessel but reserving all rights to claim in the future should be compelling evidence that there is no intention on the part of the time charterer to waive rights. It also must be noted that waiver, as in *The Bunga Saga Lima*, does require a positive act on the part of the time charterer. *The Democritos* is authority that mere acceptance of non contractual tender does not necessarily result in the loss of the right to claim damages.³¹⁹ However, *The Kanchenjunga* is authority that once there has been a reasonable opportunity to ascertain the condition of the ship the charterer may be deemed to have elected to accept the ship.³²⁰ Therefore, it is advisable for the time charterer to without delay inform the owner of its intention to proceed with the charter on the basis that this does not constitute any waiver of any rights with respect to the condition of the vessel's cargo spaces.

The risk of cancellation of the voyage charter is also one which must be assessed by the time charterer. If the vessel presents and is not ready to load in time the voyage charterer may exercise a right to cancel. Typically, if the vessel is not ready by the cancelling date in the time charter then the time charterer will usually have an equivalent right to cancel. However, in practice, there is the risk that cancelling dates may not be perfectly aligned, in which case the time chartered operator may have a ship but no cargo. There are also other situations in which the operator may not wish to cancel the vessel.³²¹ It also must be noted that there are a variety of

³¹⁸ *Ibid.*

³¹⁹ [1975] 1 Lloyd's Rep 386.

³²⁰ [1990] 1 Lloyd's Rep 391.

³²¹ From a commercial standpoint the time charterer may need the vessel as part of its larger shipping program, or it may already be nominated for a subsequent cargo.

circumstances where the time charterer may be deemed to have accepted delivery of the vessel in spite of the breach, in which case there would be a possible claim for damages, but not the right of cancellation equivalent to that in the voyage charter. In the event that the time charterer is committed to keeping the vessel this has the potential to lead to difficulties, particularly if there is little alternate cargo available. Once the time charterer has deemed to have accepted delivery of the vessel then it is far more difficult to return the vessel to the owner. In order to do so the condition of the cargo spaces would have to be such that it would frustrate the charter.³²²

In order to minimize this risk from a legal perspective the time charterer can, if in doubt, attempt to incorporate a clause that allows the right to cancel the vessel if the vessel is not passed for loading by the cancelling date in the voyage charter. This could present commercial difficulties depending on the precise circumstances surrounding the charter.³²³

3.10.2 Intermediate Hold Cleaning

With respect to intermediate hold cleaning as seen above the time charterer generally assumes virtually all responsibility for failure of pre-loading inspections. While the owner is generally required to provide customary assistance case law suggests that this tends to be strictly interpreted and has not provided charterers with much relief.³²⁴ Notwithstanding a situation such as arose in *The Bunga Saga Lima* the first step in management of risk in this area is from an operational standpoint; it is up to the operator to be aware that certain cargoes have different

³²² Frustration is caused by an unforeseen event that renders performance radically different from that which was contracted: *Davis v Fareham U.D.C.* [1956] AC 696. Generally, frustration requires something major, such as a long delay.

³²³ For example, a vessel ballasting across the Pacific might be less willing to accept such a provision than a vessel located in the same port where the answer would be almost immediate. Also, an owner would be less likely to accept such a provision on a higher market where the owner's bargaining power would be greater.

³²⁴ See the *Bela Krajina* [1975] 1 Lloyd's Rep 139 and section 3.6, *supra*.

cleanliness requirements and at the same time that there are cargoes which are more difficult to clean. This is of course the argument, from the ship owner's perspective, that underpins most intermediate hold cleaning disputes. There are certain steps that operators may take in order to limit their potential loss. Based on the fact that the vessel is on time charter and, as outlined previously, this leads to a different division of operational control and in addition there is a long established historical division of risk it is considered unlikely that ship owners in general will be willing to accept a great deal of responsibility for intermediate hold cleaning. Realistically speaking a time charterer is likely to always have to face a degree of risk in this area.³²⁵ However, certain amendments to the time charter can assist in minimizing risk.

The first amendment that is suggested is the agreement of phrasing which states that the vessel's holds are to be maintained free of loose rust, flaking rust or rust scale. These are common reasons for failure of cargo space inspections and often pose a problem in obtaining loading approval. Rust in particular falls within what is arguably maintenance.³²⁶ The second suggested amendment is wording to the effect that the vessel must be maintained in "Grain clean" condition throughout the duration of the charter, or in the alternative that the vessel must be maintained in a condition suitable for the loading of any permissible cargo. In either case, and in particular that regarding the vessel being maintained in "grain clean" condition, the owner would most likely resist the amendment unless it was also agreed that the charterer remained responsible for any failure resulting from previous cargoes carried. Therefore, if the time charterer loaded a cargo that was injurious to the vessel's holds and as such the paint within the hold flaked then such a situation may

³²⁵ Notwithstanding situations where a vessel is chartered for a single time charter trip with a known commodity and similar situations.

³²⁶ This is suggested in *Bela Krajina* [1975] 1 Lloyd's Rep 139 at 28.

still be within the responsibility of the charterer. If the time charterer is able to restrict the warranty to limit it specifically to failure due to residues from previous cargoes, rather than the wider warranty of all consequences arising from loading of previous cargoes, then flaking of rust and paint due to repeated washing of holds may become the owner's responsibility. The key distinction that must be noted is that it is clearly much more advantageous to the time charterer to limit liability to hold cleaning issues related to cargo residues, as then the only failure for which the owner can decline liability would be where it is specifically attributable to the presence of cargo residues. In the case of a wider clause in which the time charterer accepted liability for all results of previous cargoes carried then the owner could claim for corrosion to holds, possibly paint flaking due to repeated washing and other instances of deterioration of cargo spaces due to the cargoes carried.

A second option for the time charterer may be to negotiate with the owner that the crew have maximum amounts of time to prepare the cargo spaces between voyages depending on the type of cargo carried previously and the type of cargo to be loaded.³²⁷ While this is possible it is considered that this may prove complicated and unwieldy, particularly in the case of a vessel that is expected to perform in a wide variety of trades. This may be feasible in the case of a vessel employed in very limited trades and the limited range of cargoes and ports forms part of the charter party. However, for a vessel involved in general trading it would be a transfer of risk which is normally assumed by the charterer to the owner, and without some incentive it is unlikely that the owner would assume this risk.³²⁸

³²⁷ It would also be wise for the owner to incorporate restrictions on the weather and sea conditions.

³²⁸ It is considered that the feasibility of such an agreement would very much be determined on a case by case basis and may only cover certain specific cargoes out of the range of cargoes that the vessel may carry, and may additionally only cover these cargoes following the carriage of a non injurious cargo.

3.11 EXPENSES RELATED TO CARGO SPACE CLEANING

It is also suggested that in drafting clausings relating to hold cleaning that the time charterer considers, in addition to time lost, expenses that may be incurred resulting from the cargo space being unready.

In terms of expenses that may be incurred due to the failure of hold inspections, costs that the time charterer may wish to specifically cover in the charter party would include cost of subsequent hold inspections,³²⁹ cost of any special equipment employed in cleaning,³³⁰ costs that may be related to the cancellation of shore labour that was standing by to perform cargo operations³³¹ and additional port costs incurred due to extra time spent in the port.³³²

Although some of the costs outlined above may be recoverable without specifying them in the charter terms it is always advisable to do so, otherwise the test will be based on the contractual terms as well as the usual test regarding remoteness and foreseeability of damages.

In terms of the expense of employing shore labour to clean the cargo spaces this will depend generally if it is a delivery hold cleaning or an intermediate hold cleaning situation. In virtually all cases delivery hold cleaning will be the responsibility of the owner, and as such it will be owner's responsibility to pay for any shore cleaning

³²⁹ Vessels will often need to be reinspected, and multiple inspections can lead to an escalation in costs.

³³⁰ Particularly the rental of special equipment.

³³¹ Labour to load the vessel may be standing by and ready to load, and expenses can be incurred should the vessel fail her hold inspection.

³³² Port costs are often charged based on how long the vessel is in port.

required.³³³ As is typical, intermediate hold cleaning is the reverse, the time charterer will generally have to pay for any cleaning necessitated during the voyage.

Therefore, it can be seen that in terms of dealing with risk in this area there are several potential scenarios which can be managed to differing extents through the contractual language.

As well, careful consideration should be given to specifically defining when hire should cease to count and when hire should recommence. As noted in the chapter analyzing off hire, questions regarding suspension of hire relate to the specific charter party terms.³³⁴ With respect to cleaning it is possible to agree that in the event of failure of hold inspection attributable to the responsibility of the owner that time is not to count from, for example, when labour would have commenced loading the vessel until such time when the vessel actually does commence loading. This is a fair solution which from the voyage charterer's perspective avoids having laytime run while the vessel cleans, but at the same time excludes from laytime only that time which is actually used for cleaning.

3.12 REDELIVERY

Cleanliness on redelivery tends not to be a major concern for time charterers because commercial practice is such that it is now generally agreed to be the responsibility of the owner, with the time charterer paying a lumpsum "in lieu of hold cleaning". It is very advantageous to time charterers, as they may load any

³³³ Note will need a small section dealing with delivery hold cleaning and when it can be attributable to the charterer.

³³⁴ See chapter 2, *supra*.

permissible cargo and leave the owner responsible for both the time and expense related to cleaning it.³³⁵

Should the time charterer assume responsibility for hold cleaning on redelivery it is also important to note that such cleaning would be performed while the vessel remained on hire, whereas the practice noted allows the time charterer to redeliver the vessel, thereby relieving the charterer not only of liability for ensuring that the vessel is clean but also the time used in performing the cleaning.

While the above is what is more typical in modern charter parties with respect to cleaning in the event that the topic of redelivery hold cleaning is not addressed then the charterer will, in accordance with the requirement to redeliver the vessel in “like good order and condition” be required to redeliver the vessel with clean holds.³³⁶

The time charterer would therefore be liable for the time used in cleaning the holds as the vessel would not be redelivered to the owner until such time as the holds were in the same condition as on delivery, or in the alternative the owner would be able to claim damages for the time used.

3.13 DUNNAGE AND SECURING MATERIAL

Dunnage is employed on dry cargo vessels in particular when loading unitized cargo, bagged cargo, steel cargo or project cargo. It is employed for a number of reasons, including ensuring the cargo is properly secure and will not shift, that the cargo does not come in contact with the ship's sides or bulkheads, particularly for the purpose of avoiding condensation and moisture, to allow air flow in and around the stowage, and to spread out the weight of heavy cargo or stowages. Dunnage is most often

³³⁵ It should be noted that charter parties will occasionally provide that certain commodities cannot be loaded as the last cargo or for the last loaded voyage under the charter.

³³⁶ NYPE 1946 at line 54.

wood but the material used can vary depending on what is available locally.³³⁷

Securing materials are those materials used in ensuring the stowage of the cargo is safe and can include dunnage and also items such as ropes and chains used in ensuring that the cargo does not shift during the voyage.

Depending on the cargo in question the amount of dunnage used can be significant, the removal of which can be costly. The cost associated with dunnage removal has also risen dramatically as increased environmental concerns over contaminated wood dunnage has led to stricter regulations regarding disposal and has resulted in greater concern over the responsibility for removal of dunnage.

Responsibility for discharge and disposal of dunnage is sometimes provided for in the charter party, but in many instances this is an area lacking in any specific provisions. The first situation to be examined in this section is that where the charter party lacks any specific terms, this will be followed by a consideration of explicit charter party wording.

The 1946 version of the NYPE time charter states that charterers are to provide dunnage as required but makes no allowances for its removal at the conclusion of the charter.³³⁸ While there does not seem to be an English case on point *The Milly Gregos* is an American arbitration decision where a vessel was redelivered with a large amount (about 250 to 300 tons) of dunnage on board.³³⁹ The charter party contained a provision allowing for the redelivery of the vessel with unclean holds, but did not make any specific reference to dunnage. The arbitrators held that removing

³³⁷ For example, in some ports bamboo will be used., see O.O. Thomas, John Agnew and K. L. Cole, *Thomas' Stowage*, [Glasgow, Brown, Son & Ferguson Ltd, 1983] at 28.

³³⁸ At clause 4 the NYPE 1946 calls for redelivery in like good order and condition, which suggests that dunnage removal is the responsibility of the time charterer. At line 43 it is stated that the charterer is to provide dunnage.

³³⁹ S.M.A. 2190.

a large quantity of dunnage from the vessel was outside the scope of the clause and as such the tribunal found in favour of the owner.

In a voyage charter context once again reference is made to an American arbitration decision. In *The Silksworth* it was held that, absent an express provision to the contrary, the voyage charterer was under no obligation to remove dunnage.³⁴⁰ This is consistent with the position outlined in *Voyage Charters* 2nd edition, where it is suggested that even in the event that the cargo is to be loaded, stowed and discharged by the charterer that the owner remains responsible for dunnage removal.³⁴¹ The 1976 version of the Gencon voyage charter, which is still frequently used in the general cargo and steel trades, does not address the question of dunnage removal, therefore leaving it open to dispute should the parties not amend the terms.

The most recent versions of both the NYPE and Gencon charter parties have been revised to make dunnage removal the responsibility of the time charterer and voyage charterer respectively.³⁴² However, it must be noted that standard form charter parties are often subject to amendment and a revision of the printed form does not assure that it will be adopted in practice, in particular given that in the past voyage charterers have often not been liable for dunnage removal. However, this harmonization of terms in two major forms employed in the trades where dunnage is used achieves the result that the time charterer will be seeking, and operators using these forms should seek to leave these terms unamended.

³⁴⁰ S.M.A 398 (1969).

³⁴¹ *Voyage Charters*, 2nd, *supra* note 2 at 8.4.

³⁴² NYPE 1993 time charter at clause 7, lines 97 and 98 (Appendix B). Gencon 1994 Charter Party at clause 5(a) lines 57-59 (Appendix A).

The risks and solutions from the time charterer's perspective with respect to dunnage removal are clear. The problem is easily illustrated through the application of the provisions in the NYPE 1946 and Gencon 1976 forms. In the case of a time chartered operator contracting simultaneously on these two forms, which would not be unusual in the general cargo trades, the operator could be responsible under the time charter to dispose of dunnage with no equivalent provision under the voyage charter. On the balance of probabilities it is considered likely that the operator would be responsible for removal and disposal of the dunnage on board the vessel, which can represent a significant expense.

The revised versions of both the NYPE and Gencon charters make, in each case, the charterer responsible for dunnage removal. This alignment of terms would remove any responsibility from the operator, and it should be an objective of the time charterer in negotiating the charters to arrive at this outcome.

While the question of dunnage removal is relatively straightforward and has not given rise to litigation it is an issue which has been significant enough that Bimco saw the need to draft a standard dunnage removal clauses for time charter parties.³⁴³ This clause clarifies that the time charterer is liable for dunnage removal and disposal throughout the currency of the charter party. Bimco have not issued any specific dunnage removal clause for voyage charters, however there is a "Securing Materials Removal Clause for Voyage Charter Parties", and an equivalent clause for time charters. It is not entirely clear that this clause would apply to dunnage, however the clause does make reference to "lashing, securing and other materials" and makes removal the responsibility of the charterer. It is strongly arguable that dunnage would fall within this definition.

³⁴³ Available at www.bimco.org, last viewed May 15, 2013.

It must be noted that, as illustrated by the fact that Bimco have issued clauses dealing with this issue, that dunnage removal represents an area of disagreement, albeit non-litigated. Notwithstanding this, the question of dunnage removal can be viewed as more of an economic and operational question than a legal one. While the alignment of terms removes the potential for disputes and expense, it is equally feasible for the operator to obtain a quotation for the cost of dunnage removal and disposal prior to the voyage and include that in the rate quoted to the voyage charterer.³⁴⁴ Overall it is concluded that there is little risk that accompanies dunnage removal, and any risk that does exist can be easily managed through the alignment of contractual terms under the time and voyage charters, and in the event that terms cannot be negotiated that pass the expense to either the owner or charterer then the cost related to dunnage disposal is in most cases quantifiable in advance.

3.14 CONCLUSION

In terms of established law cleaning represents an area that is lacking in clarity and one that can potentially breed major disputes. However, most problems in this area are of a minor nature and do not generally end in litigation. Notwithstanding this fact it remains reasonable to take a proactive view and avoid potential difficulties.

Risk to the operator on delivery is minimal, even under typical charter party terms. With respect to delivery the key consideration is not the obligation for the vessel to be clean, most charter parties will provide for this. Given that the time charterer will typically be protected with respect to delivery cleanliness it is important to outline

³⁴⁴ In this sense it is submitted that disputes relating to dunnage removal arise only because of lack of understanding of commercial practice and are easily avoided, it is clear in many cases that dunnage will need to be employed, and yet the parties make no provisions for its eventual removal in either the time or voyage charter.

what damages may be claimed should the vessel not be ready to load, including as noted how off hire may be calculated.

Intermediate hold cleaning is generally a much more significant area of risk for the time charterer. This is due to the fact that traditionally owners and charterers have agreed that the time charterer is to bear responsibility for this and because these clauses tend to be construed against time charterers. Given these realities it is considered unlikely that charterers will be able to effectively eliminate this risk through charter party terms. As noted, from a non legal perspective these risks can be minimized through carefully considering the cargoes to be carried and the sequence in which they are carried. From a legal point of view the charterer can attempt to amend the clause to bring any rust in the holds within the ambit of the maintenance obligation and provide that the owner is to maintain the vessel in grain clean condition. Other possibilities, such as specifying maximum amounts of time for cleaning for certain cargoes are within the realm of possibility but depend on a variety of factors and thus likely to become unwieldy in their complexity and resisted by owners.³⁴⁵

Also with respect to intermediate hold cleaning is the issue raised in *The Bunga Saga Lima*,³⁴⁶ which involves the question of intermediate cleaning of pre-charter cargo residues. It is submitted that this is easily dealt with by agreeing wording that cleaning related to pre-charter cargo remains the responsibility of the owner.

There are also risks that the time charterer must be aware of with regard to cancellation. In many charters, both time and voyage, if the vessel is not ready by

³⁴⁵ For example, cleaning for grain (which requires clean holds) after carriage of a cargo of grain will require less time than cleaning for grain after carriage of a cargo of coal or cement (which both require a much greater degree of cleaning). Also, allowances must be made for weather and sea conditions and in some cases local regulations.

³⁴⁶ See section 3.9, *supra*.

the cancelling date then the charterer will have a right to cancel the ship. In this sense it is necessary to ensure to the greatest extent possible that these obligations run in tandem in order that the time charterer does not run the risk of being cancelled by the voyage charterer without having an equivalent right under the time charter. Furthermore, it is possible that the time charterer may have no choice but to accept the vessel, in which case it is advisable for him to attempt to agree with the voyage charterer that the vessel may tender notice of readiness and any time lost due to unclean holds is to be deducted from laytime. In this sense it becomes more likely that the charterer would be unable to reject the vessel for being unready.

Finally, with respect to dunnage removal, it is submitted that in a combination of time and voyage charters that are silent on the issue that the time charterer will generally be liable for the cost involved. From a legal perspective this is simply solved by aligning contractual terms so that either the ship owner or voyage charterer is responsible for dunnage disposal.

Overall, cargo space cleaning is an area that can be managed to a limited extent through charter party terms. Risk cannot be eliminated entirely but it can be reduced. The key points are clarity (to avoid situations such as that in *The Bunga Saga Lima*), proper drafting of notice of readiness provisions in voyage charters and achieving a clear result with respect to cleaning time and expenses under time charters.

CHAPTER 4

SAFE PORTS AND BERTHS UNDER CHARTER PARTIES

The MV Cumberland is a bulk carrier on Time Charter to Dickson Shipping. Dickson Shipping warrant that the vessel will only trade to safe ports during the currency of the charter. The ship is sub chartered, on voyage terms, to Wilbrod Trading. The vessel proceeds to load 15,000 metric tons of grain in bulk for discharge at a named European port, where Wilbrod Trading warrants that the berth to be used will be safe. At the time the charter is being negotiated there are media reports that a nearby nuclear reactor is experiencing difficulty and there is a strong likelihood that it will suffer a meltdown. Evacuations are already underway in the area. 2 days before arrival at the discharge port radiation leakage has reached a critical level. The level of radiation causes the port to be evacuated and closed for the foreseeable future. All personnel are barred from entering the port for any reason due to safety concerns relating to high levels of radiation. Consequently, the vessel is not permitted to call at the port, and additionally there is no way that cargo operations can be undertaken, nor are the tugs and pilots available to assist with berthing the vessel. The vessel owner claims the port is unsafe in breach of the charter, orders the vessel captain to disregard any order that requires the vessel to enter the port limits, and requests that Dickson Shipping provide alternate orders. Wilbrod acknowledge that the vessel is unable to call the port but do not agree that the port is unsafe within the legal meaning under the charter party, and as such they have no liability. The time charterer is confronted with a situation where the vessel remains on hire but the voyage charterer is claiming that it has no obligation to pay any additional expenses.

4.1 INTRODUCTION

When a vessel is on charter, whether voyage or time, the charterer will frequently warrant the safety of some or all of the locations to be traded, whether these be ports, berths, anchorages and/or “places”.³⁴⁷ The theory behind this type of warranty is relatively simple: as it is the charterer that is determining where the vessel will call it is the charterer that should bear the responsibility of any damages resulting from the unsafety of these places.

As is typical when dealing with charter parties, the wording of safety warranties will vary between time and voyage charters as well as within the subgroups of time and voyage charters. In spite of this, there are many conclusions that can be drawn with regard to the rights and obligations respecting safe ports and berths under charter parties.

This chapter will set the groundwork for detailed analysis by reviewing the legal position with respect to safe berths and ports. The chapter will then undertake a comparison of safe port and berth rights and obligations under time and voyage charters, identify risks that affect the operator with respect to these obligations and recommend various solutions.

³⁴⁷ See, for example, the wording contained in Americanized Welsh Coal Charter at clause 1 line 20, which states that the vessel shall load at “such safe berth” as the charterer directs. Time charter parties are much more expansive with respect to safe port warranties, see for example The Shelltime 4 charter, which employs the term safe places, and then defines place as including ports, docks, wharves, berths, anchorages among other locations. The Shelltime 4, however, only includes a requirement for due diligence. Shelltime 4 clause 4 lines 73-78.

4.2 GENERAL RIGHTS AND OBLIGATIONS WITH RESPECT TO SAFE PORTS AND BERTHS

The classic definition of a safe port is that of Sellers L.J. found in *The Eastern City*:

If it were said that a port will not be safe unless, in the relevant period of time, the particular ship can reach it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship, it would probably meet all the circumstances as a broad statement of the law.³⁴⁸

The Eastern City was a voyage charter party case, however this definition has been applied to both time and voyage charters.³⁴⁹ It had been previously held in *The Houston City*³⁵⁰ and *The Stork*³⁵¹ that the liability of a charterer undertaking to nominate a safe port under a time charter is the same as that under a voyage charter. As noted, subsequent time charter cases have applied the definition in *The Eastern City* to questions regarding safe ports without difficulty, and it is therefore considered that the general definition of safety of ports under charter parties does not vary depending on whether the subject charter is a time or voyage charter. The decision in *The Eastern City* has been approved in many cases, including by the House of Lords in *The Evia (No. 2)*.³⁵²

³⁴⁸ *Leeds Shipping Co. Ltd. v Société Française Bunge (The Eastern City)* [1958] 2 Lloyd's Rep 127 (CA) at 131.

³⁴⁹ *Voyage Charters*, 2nd, *supra* note 2, at 5.63.

³⁵⁰ *Reardon Smith Line v Australian Wheat Board (The Houston City)* [1956] 1 Lloyd's Rep 1.

³⁵¹ *Compania Naviera Maropan v Bowaters Lloyd Pulp and Paper Mills (The Stork)* [1955] 2 Q.B. 68.

³⁵² *Kodros Shipping Corp. v Empresa Cubana de Fletes (The Evia) (No. 2)* [1983] 1 A.C. 763 H.L..

However, while the definition of a safe port is the same under time and voyage charters, there are differences in the general way that time and voyage charters are drafted with respect to if and when this obligation arises under the different charter forms, and this is the area under which risk for a time charterer can arise; if there is an operative safety warranty that the vessel owner can exercise against the time charterer, but there is no equivalent warranty that the time charterer can rely upon against the voyage charterer, then the time charterer will be subject to liability.

There are several issues with respect to safe ports and berths that have the potential for resulting in liability to time chartered operators. The principal area of risk occurs if there is an explicit warranty of safety in the time charter which is not reproduced in the voyage charter, this has the potential to lead to liability for damage to the vessel, or in the alternative, for breach of charter if the vessel fails to call at the port. In such a case, barring an implied warranty, the time charterer will face liability that cannot be passed along the contractual chain. There are also other areas of potential risk that must also be examined.

4.3 COMPARISON OF EXPLICIT SAFETY WARRANTIES UNDER TIME AND VOYAGE CHARTERS

As noted above a safe port warranty under a time charter is equivalent to a safe port warranty under a voyage charter. While this is fine from a theoretical perspective from a practical standpoint time and voyage charters generally do not warrant the same things.

A typical time charter party will provide that the charterer is to trade the vessel between safe ports and places. Clause 5 of the NYPE 1993 form provides that: "The vessel shall be employed in such lawful trades between safe ports and safe places...".³⁵³ The *Baltimex* 1939 contains similar wording: "The vessel to be employed...only between good and safe ports and places".³⁵⁴ The *Shelltime* 4 provides an alternative, requiring only due diligence:

"Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places (which expression when used in this charter shall include ports, berths, wharves, docks, anchorages, submarine lines, alongside vessels or lighters, and other locations including locations at sea) where she can safely lie always afloat."³⁵⁵

It can be seen that, notwithstanding that the *Shelltime* requires only due diligence, that all of the noted charters contain wide ranging safety warranties.³⁵⁶

With regard to typical requirements for safety voyage charters can be divided into three broad categories. The first category is those that involve a voyage from one or several named ports to one or several named ports. The second group would be those which cover a voyage where loading, discharging, or both is at one or more

³⁵³ This is typically amended to explicitly include a requirement that the vessel trade only to safe berths, however the requirement that the vessel trade to safe ports and safe places would encompass berths in any event.

³⁵⁴ "*Baltimex* 1939" Uniform Time-Charter (Box Layout 1974) Clause 2 lines 29-31. With respect to the inclusion of the word "good" in this clause it is now considered that this word has no legal effect, see: *Hill, Maritime Law*, 6th, *supra* note 7 at 179.

³⁵⁵ Lines 73-76 *Shelltime* 4.

³⁵⁶ The difference between the *Baltimex* and NYPE on one hand and the *Shelltime* charter on the other can be attributed to different commercial practices between the dry cargo and tanker shipping sectors. Tanker shipping has been accepting of a requirement of due diligence, which has not been the case with respect to dry cargo chartering.

unnamed ports in a geographic range of ports. Conversely, the third category of voyage charter is when a vessel is chartered to load and/or discharge at one or more unnamed ports to be nominated from a range of ports.³⁵⁷ Effectively, there is no difference between the case where a port is nominated from a range of named ports and when a port is actually named, as long as the terminology does not differ.³⁵⁸ the broader question to be considered is the difference between when a port is named in the charter party and when the port is nominated under a charter where the port is unnamed.

In terms of voyage charters most charters contain an explicit safe berth warranty, the commonly used Gencon charter is an exception.³⁵⁹ From a practical standpoint, however, during negotiations the charter party will usually be amended to include such a warranty. The typical voyage charter which contains a named port will include only (at most) a safe berth warranty. The Norgrain charter includes in the printed text a safe berth warranty,³⁶⁰ as does the Synacomex.³⁶¹ Neither charter contains an explicit safe port warranty.

Safe port or berth wording under voyage charters will normally be expressed in one of a few ways. Examples include the named port: "One safe berth (named port)". In the case of a range of ports the wording will typically be "One safe port Italy", or "One safe berth one safe port Italy".

³⁵⁷ An example would be a voyage charter that calls for a vessel to load at 1 safe berth 1 safe port St. Lawrence River not west of Montreal.

³⁵⁸ This is to say there is no difference between "1 SB Hamburg" or "1 SB at one port out of Rotterdam, Amsterdam or Hamburg".

³⁵⁹ The printed form of the Gencon Charter.

³⁶⁰ North American Grain Charterparty 1973 Amended 1989 lines 14 and 41.

³⁶¹ Continent Grain Charterparty amended 1990 (Code name Synacomex 90) at lines 10 and 23.

In terms of a comparison between time and voyage charters, it can be said that in general terms that voyage charters will commonly include a safe berth warranty but will not usually contain a safe port warranty, however situations will arise when the port will be warranted as being safe, and less commonly where neither the port nor the berth is warranted as safe. Conversely, time charter parties will in the majority of instances warrant both the safety of ports and berths.

For the time chartered operator the risk lies in the lack of parallel safety warranties. If there is a safe port warranty under the time charter but no safety warranty under the voyage charter and an incident occurs which is attributable to unsafety the operator will be liable to a claim from the vessel owner under the time charter but have no corresponding entitlement to an indemnity from the voyage charterer.

In the situation where there is no explicit safe port warranty the primary question that arises, from the time charterer's perspective, is whether the operator can claim an implied warranty of safety under a voyage charter. By extension, the question of whether an implied warranty can also be claimed under a time charter will be examined.

4.4 COMPARISON OF SAFE PORT WITH SAFE BERTH WARRANTIES

In their simplest and most typical form (from one named port to another named port) voyage charters will most often contain a safe berth warranty but rarely a safe port warranty, while time charters will ordinarily contain both.³⁶² Therefore, if an action arises wherein a claim is made by the vessel owner for unsafety of a port that succeeds under the safe port warranty time charter, but is not claimable by the time

³⁶² A safe berth warranty will be implied in a time charter owing to the safe port warranty.

charterer under the safe berth warranty in the voyage charter then the time charterer will incur liability that cannot be passed along. This risk will depend, however, on the legal effect of the safe port warranty and the safe berth warranty being different. It is clear that there is a distinction between a safe port and safe berth, in that the berth warranty is not as wide ranging.³⁶³ A safe berth warranty only applies within the port, while the safe port warranty encompasses the approaches to the port.³⁶⁴ Also, a safe berth warranty only applies to the extent that the conditions at one berth are different from those at other berths.³⁶⁵

The definition of a safe port, from *The Eastern City*,³⁶⁶ has been given above. It essentially lays out the following criteria: That the port must be free from any danger which is not abnormal and cannot be avoided by good seamanship at the relevant time.

The definition of a safe berth is the same, as noted above the earlier decision in *The Stork*.³⁶⁷ Therefore, a safe berth can be described as one that the ship can reach and return from without danger, in the absence of any abnormal occurrence which cannot be avoided by good seamanship.

Essentially, the safe port warranty is adapted to berths, however it is vital to note that while in many cases a safe berth and safe port warranty will achieve the same

³⁶³ *Akins HA International of Vaduz v Islamic Republic of Iran Shipping Lines (The APJ Priti)* [1987] 2 Lloyd's Rep 37.

³⁶⁴ Michael Wilford, Terence Coghlin, John D. Kimball, *Time Charters* 3rd ed, (London, LLP, 1989), 152-153 [*Time Charters 3rd*] and *Voyage Charters*, 2nd, *supra* note 2, at 5.9.

³⁶⁵ *Akins HA International of Vaduz v Islamic Republic of Iran Shipping Lines (The APJ Priti)* [1987] 2 Lloyd's Rep 37.

³⁶⁶ *Leeds Shipping Co. Ltd. v Société Française Bunge, (The Eastern City)* [1958] 2 Lloyd's Rep 127 (CA) at 131.

³⁶⁷ *Compania Naviera Maropan v Bowaters Lloyd Pulp and Paper Mills, (The Stork)*, [1955] 2 Q.B. 68.

end result there does exist a real possibility that they will not, with the result that risk to the operator may arise.

4.5 SAFE PORTS & BERTHS UNDER TIME CHARTERS

As noted above the actual obligation with regard to safety of the port as defined in *The Eastern City* is the same under both time and voyage charters. However there are differences in the obligations and rights regarding what happens when a port is unsafe, equally, there are differences in when and if a warranty of safety may be implied.

The Evia (No. 2) established that under a time charter in the event that there is an explicit safe port warranty then a charterer has a two tier obligation.³⁶⁸ The first of these is that the time charterer must issue an order for the vessel to call at a port that is prospectively safe. Safety of the port is an obligation that must be complied with while the ship is in port, but can be prospectively judged at the time the order to call at the port is given.³⁶⁹ This is to not say that the port need be safe at the time the order is given, however it must be anticipated at the time of giving the order that the port will be safe during the time when the vessel will be at the port. Prospective safety does not in any way remove the obligation for the port to actually be safe during the time while the vessel is in port.

The time charterer's second obligation arises if the port subsequently becomes unsafe. While it has been noted that there is no obligation for a port to be safe except at the time when the vessel will be there if the port becomes "prospectively

³⁶⁸ *Kodros Shipping Corp. v Empresa Cubana de Fletes (The Evia)* (No. 2) [1983] 1 A.C. 763 H.L..

³⁶⁹ *Ibid.*

unsafe", in other words if it appeared impossible the port could be safe at the required time, then the charterer has an obligation to issue an alternative order.³⁷⁰ It must be noted that the requirement to issue an alternative order seems to be limited to time charters; the court in *The Evia (No. 2)* declined to explicitly extend this obligation to voyage charters. Whether there exists an equivalent obligation under voyage charters will be explored in the appropriate section.³⁷¹

In accordance with *The Evia (No. 2)* if the port becomes unsafe at the time the vessel is actually at the port, and if the danger is avoidable by the vessel leaving the port then the time charterer must order the vessel to leave.³⁷² On the facts in this case no such obligation arose because the vessel was unable to leave the port.

Therefore, it can be seen that in general terms when the time charter party contains a safe port warranty a time charterer has an obligation to nominate a prospectively safe port as well as an obligation to call at a safe port. Failure to do so can lead to a claim against the time charterer should the vessel sustain damage.

In charters where the charter party contains only a requirement that the charterer exercise due diligence then liability will accrue only in the event that the charterer failed to meet the requirement of due diligence. In the event that the charterer met this requirement then actual safety will be irrelevant. If the charterer failed to meet the requirement of due diligence then it will be liable in the event the vessel was

³⁷⁰ This could occur if, for example, there was the occurrence of a significant event that had the result of rendering the port unusable and this deficiency could not be remedied prior to the vessel's anticipated port call.

³⁷¹ Section 4.6, *supra*.

³⁷² It can be noted that although *Kodros Shipping Corp. v Empresa Cubana de Fletes* [1983] (*The Evia*) (No. 2) 1 A.C. 763 H.L. is authority for this proposition in *The Evia (No. 2)* no such obligation arose.

damaged due to unsafety.³⁷³ The obligation to exercise due diligence is extended to those for whom the charterer is responsible or to whom the nomination of the port is delegated.³⁷⁴

While it is generally the case that time charters incorporate safe port and berth warranties the situation where there is no explicit warranty of safety will be briefly examined.

In the event that a time charter does not contain a safe port provision it remains possible that there may be an implied term as to the safety of ports called. In *The Evaggelos Th* the court implied a safe port warranty in the absence of an explicit warranty.³⁷⁵ *The Evaggelos Th* was a time charter case wherein it was stated (obiter) that in the situation where a charterer is given the right to nominate a port but there is no express qualification as to safety then, in this case, the court would have no problem in finding such a warranty. It was stated that this was both for reasons of common sense and business efficacy as well as in line with the weight of authority. In this case it was held that the implied warranty of safety is only that the port must be prospectively safe at the time of nomination, if the port is unsafe at the time of arrival the owner has the right to refuse to enter the port but there is no breach of the charterer's duty. Although a time charter case this seems equally applicable to voyage charters, where the reasoning that only a port that is sufficiently identified as to allow the owner to carry out investigations as to its safety should not be subject to a safe port warranty.

³⁷³ The requirement for only due diligence is more common in tanker voyage charters, for example the Shellvoy forms.

³⁷⁴ *Dow Europe v Novoklav Inc.* [1998] 1 Lloyd's Rep 306.

³⁷⁵ *Vardinoyannis v The Egyptian General Petroleum Corp, (The Evaggelos Th)* [1971] 2 Lloyd's Rep 200.

In accordance with the decision of the Court of Appeal in *The APJ Priti* a safe port warranty will only be implied into a charter party if it is necessary to give business efficacy to the charter party.³⁷⁶ Although this is a voyage charter case there is no reason why this would not also apply to time charters. It is submitted, however, that the requirement for business efficacy is more likely to be satisfied in a typical time charter as compared to a typical voyage charter, based on the general role and functioning of the different types of charters. The fundamental reason is noted by Bingham L.J. in *The APJ Priti*, that being that under a time charterparty the vessel may be ordered to a wide range of ports. As noted under the terms of a typical time charter the charterer has the right to order the vessel to virtually any port within the trading area, and it is unreasonable to expect the owner to verify the safety of every potential port of call, particularly if the vessel is chartered for a wide trading area. Therefore, there is without a doubt a greater need for safe port warranties in the context of a time charter, and a greater need to imply such warranties into time charters in order for these types of charters to function efficiently with the market place, which speaks directly to the need for business efficacy.

The logic behind the implication of a safe port warranty into time charters is related to the general nature of the charters. Under a time charter the owner yields a large degree of commercial control of the vessel to the charterer. The charterer has wide ranging powers in terms of giving orders regarding employment including, most notably for the purposes of this discussion, ports to be called. Given the wide scope of the time charterer's ability to choose ports of call it is unrealistic to expect that the owner be knowledgeable regarding the safety characteristics of every potential port

³⁷⁶ *Atkins International HA v Islamic Republic of Iran Shipping Lines, (The APJ Priti)* [1987] 2 Lloyd's Rep 37 (CA).

to which the vessel may trade, particularly when a vessel may be on time charter for a period of several years. Therefore, in the instance a vessel calls at an unsafe port which is not named in the charter party it is submitted that, in general terms and within limits, there will be an implication of a safe port warranty.

However, the question arises of whether the naming of a port in the charter party affects the obligation of safety. It can be argued that when a port is named in the charter party that this has given the owner notice of the port to be called and opportunity to ascertain if the port is safe for the ship in question. If the ship is chartered between specific ports and the owner is informed of the time charterer's intention to call certain ports prior to fixing then it has been argued that prior knowledge of the port to be called will supersede the safe port warranty in the charter party. An English time charter arbitration held that express naming of the port in the time charter party overruled the express warranty of safety in the charter.³⁷⁷ This must now be considered wrongly decided in light of the recent decision in *The Livantia*.³⁷⁸ In this case a vessel was chartered for a time charter trip via St. Petersburg, Russia, and wording to this effect was contained in the charter party. The safe port warranty contained in the printed form of the charter was deleted, but replaced by additional wording requiring trading between safe ports. The vessel loaded steel coils at St. Petersburg in January and upon sailing from the port was damaged by ice (which would normally be expected in January). It was held that the charterer was liable for damage to the vessel under the safe port warranty, and that the warranty was not inconsistent with naming of the port in the charter party.

³⁷⁷ (1986) 181 L.M.L.N. 18/86.

³⁷⁸ *STX Pan Ocean Co. Ltd. v Ugland Bulk Transport A.S.* [2007] EWHC 1317 (Comm).

In terms of safe berths under time charters this is a little examined area. Charter parties will often be amended to include an explicit safe berth warranty.³⁷⁹ However, in instances where there is no safe berth warranty but there is a safe port warranty it must be noted that when a safe port warranty exists then the berths within that port will be impliedly safe, as when a port is safe then the berths within that port are by extension equally warranted as safe.³⁸⁰

4.6 SAFE PORTS AND BERTHS UNDER VOYAGE CHARTERS

Voyage charters can be broadly divided into three categories: those which specify the port or ports to be called, those which give the charterer the option to load or discharge at a specific port out of a range of named ports and those where the port is not named but to be nominated from a range of ports.

A voyage charter which names a port of loading or discharge will typically not contain a safe port warranty but will usually warrant the safety of berths,³⁸¹ the situation is generally the same with respect to an optional port to be nominated from a specific list of ports, in such a case typically only the safety of berths is warranted. A voyage charter which specifies port nomination from a range of ports, that is when it is said that the vessel will call at an unnamed port within a specific geographical range will generally warrant the safety of the ports (for example, 1 safe port Italy). Conceptually the reason for this is that when dealing with a specific named port or a port to be named from a specific list of ports it is considered reasonable to expect the owner to verify the safety of the port in question. In the case of a charter which

³⁷⁹ As noted previously, time charters will frequently include the amendment that the vessel is to trade via safe ports, safe berths and safe places.

³⁸⁰ *Atkins International v Islamic Republic of Iran Shipping Lines, The APJ Priti* [1987] 2 Lloyd's Rep 37.

³⁸¹ See section 5.3, *infra*.

simply specifies a geographical range then it is considered unrealistic for an owner to verify the safety of each specific port within that range for the vessel in question. In terms of the contractual language involved when a port is to be nominated from a limited list of ports it will typically be “one safe berth, one safe port out of Montreal, Quebec and Baie Comeau”. In the alternative the wording could be “one safe berth, one port out of Montreal, Quebec and Baie Comeau”. The omission of the word “safe” in the second example can have a significant impact. In terms of the phrasing which includes the word “safe” this has the effect of putting into effect a safe port obligation with respect to the named ports, this is in accordance with the decision in *The Livantia*,³⁸² noted above.

In terms of safety warranties of ports and berths, a charter party may contain an express warranty of safety, an implied warranty of safety or no warranty of safety.

The express warranty of safety is the most straightforward, in such a case a berth will generally be described as, for example, 1 safe berth Vancouver, or a port will be described as 1 safe port St Lawrence River.

However, potential complications occur when safety of a port or berth is not expressly guaranteed as this leaves open the question of whether a warranty may be implied. In *The Aegean Sea* Thomas J accepted that it was possible that a warranty of safety could be implied.³⁸³

As with a time charter, under a voyage charter a nominated port must be prospectively safe, which is to say safe at the period of the vessel's visit. Therefore,

³⁸² *STX Pan Ocean Co. Ltd. v Ugland Bulk Transport A.S.* [2007] EWHC 1317 (Comm).

³⁸³ *Aegean Sea Traders Corporation v Repsol Petrolea SA (The Aegean Sea)* [1998] 2 Lloyd's Rep 39 and see also discussion in section 4.5, *supra*.

the actual conditions at the time the order is given are not conclusive in determining safety of the port.

One key point that has not been judicially decided is that of renomination after supervening unsafety under a voyage charter. Under a time charter *The Evia* (No. 2) established a two tier test, the first tier being that the charterer must nominate a prospectively safe port, and the second being that if the port becomes unsafe the charterer must nominate a alternative port.³⁸⁴ The question that arises with respect to voyage charters is whether a voyage charterer is under the same obligations.

With respect to nomination there is no question that, under the appropriate circumstances, a charterer has an obligation to nominate a safe port, the question arises with regard to the second step, which is nomination of an alternative port in the case of unsafety.

This issue is one of great relevance to ship operators, owners and charterers. From a voyage charterer's standpoint it is important to know whether an alternate nomination can be made, and whether the owner is required to proceed to the alternative port. Conversely, the ship owner will want to know if compliance with an alternate order is required. The operator's point of view is even more complicated, in addition to concerns about potential damage to the vessel and rights and obligations under the voyage charter the time charterer is also confronted with concerns about what impact an alternate port for example an alternate port nominated may be outside the agreed trading or redelivery range of the vessel or may put the vessel in breach of provisions regarding the chartered period. Furthermore, the time charterer may be obligated (under the decision in *The Evia*

³⁸⁴ *Kodros Shipping Corp. v Empresa Cubana de Fletes (The Evia)* (No. 2) [1983] 1 A.C. 763 H.L..

No. 2) to nominate an alternate port to the owner but not have a right to require such a nomination from the voyage charterer.

In terms of whether the two tier test applies to voyage charters the first point to note is that in *The Evia* (No. 2) it was clearly stated that the reasoning did not necessarily apply to voyage charters. Lord Roskill suggests in *The Evia* (No. 2) that the time charterer has a continuing right and obligation with respect to giving the vessel orders, whereas under a voyage charter once a nomination is given it becomes irrevocable and there is no right of renomination. There are a number of cases which support the view that once given a nomination under a voyage charter is final.³⁸⁵ *The Jasmine B* states that once a nomination is made under a voyage charter that the charter party is thereafter treated as though the nominated port was originally written into the charter party.³⁸⁶ It would therefore seem that the two stage test is unlikely to apply to voyage charters, as a nomination is irrevocable. However, it must be noted that there is no case directly on point and it may be that a case may be distinguished on its facts.

4.7 CIRCUMSTANCES THAT MAY LEAD TO LEGAL UNSAFETY

There are many circumstances which may lead to a port or berth being found to be unsafe. The existing literature in this area broadly divides unsafety into physical factors (examples would include high winds, layout of the port facility or navigational hazards) and political factors (which is generally warlike conditions or other hostilities). A potential third category of unsafety may be regulatory, when a port has not implemented rules or regulations, or is failing to properly adhere to the

³⁸⁵ For example: *Reardon Smith Line v Ministry of Agriculture, Fisheries and Food* [1962] 1 Q.B 42 (C.A.).

³⁸⁶ *Bulk Shipping v Ipco Trading* [1992] 1 Lloyd's Rep 39.

standards encompassed by specific rules or regulations. A primary example of this would be the ISPS Code.³⁸⁷ It is not entirely clear what impact regulatory requirements may have on port or berth safety, and this question will also be explored in this section.

In terms of unsafety the overriding considerations are that the risk must be more than negligible, and that the occurrence must not be abnormal. An exceptional occurrence will not render a port unsafe. For example, in *The Evia (No. 2)*, the vessel was to be employed only between “good and safe ports”. In this case the vessel arrived at Basrah to discharge her cargo, and while she was at the port hostilities broke out between Iran and Iraq. By the time the vessel completed discharge the vessel was unable to leave. The owner claimed that the charterer was in breach of the safety warranty under the charter party. The House of Lords held that the claim for unsafety could not succeed because the port was safe at the time of nomination and arrival, and that while the port was unsafe the unsafety arose due to an unexpected and abnormal event.

This section will undertake an overview of some situations that may lead to port or berth being deemed unsafe.

4.7.1 Physical Unsafety

There are physical factors that may lead to unsafety, but not all physical impediments will necessarily lead to a finding that a port or berth was unsafe. As

³⁸⁷ International Ships and Ports Facility Security Code, which sets out guidelines that must be adhered to with respect to security. The ISPS code is now part of the Safety of Life at Sea Convention, and is mandatory for all nations that are signatories to the convention. As of May 3, 2011 there are 159 signatories. See www.imo.org.

noted above, in accordance with the definition of safety in *The Eastern City*, a port will only be unsafe if there is a hazard that is abnormal and that could not be avoided by good navigation.

In general terms weather conditions will not lead to unsafety: *Leeds Shipping Co. v Societe Franaise Bunge*.³⁸⁸ However, ice seems to fall outside the definition of weather in this sense as in *G.W. Grace and Co. v General Steam Navigation Co.* it was found that a port was unsafe due to the presence of ice.³⁸⁹ The recent case of *The Livantia* also involved a port which was unsafe due to ice.³⁹⁰ The key differentiating factor between ice and weather as navigational factors appears to be the amount of time the hazard is expected to impede navigation in that a storm will be of a more limited duration than ice. While weather itself may not lead to unsafety it has been found that a berth may be considered unsafe if there is no means of ascertaining weather conditions.³⁹¹ This is an issue that speaks not so much to physical as administrative safety, and will be explored further in the section relating to regulatory unsafety.

While, as noted, weather will not typically lead to unsafety it may do so if it satisfies the criteria set out in *The Eastern City*, which is to say that the occurrence must not be abnormal and must not be avoidable by good seamanship, but must prevent the vessel from reaching or departing from the port. However, weather conditions are typically temporary, and as severe weather tends to arrive unexpectedly it will often be considered unexpected and abnormal, thereby relieving the charterer of responsibility.

³⁸⁸ (1958) 2 Lloyd's Rep 127.

³⁸⁹ (1950) 2 KB 383.

³⁹⁰ *STX Pan Ocean Co. Ltd. v Ugland Bulk Transport A.S. (The Livantia)* [2007] EWHC 1317 (Comm).

³⁹¹ *Tage Berlund v Montoro Shipping Corp. (The Dagmar)* [1968] 2 Lloyd's Rep 563.

In terms of tide and swell conditions it has been noted that as these are normally ascertainable in advance that they will not in general lead to a finding of unsafety.³⁹² In *Carlton S.S. Co v Castle Mail Packets Co.* the House of Lords held that a shipowner was presumed to know the draft of his ship and should be expected to consult tide tables as required, and therefore the tidal conditions present at the port did not render it unsafe.³⁹³

If a vessel requires tug assistance and tugs are not available this may lead to a finding of unsafety.³⁹⁴

In a general sense it is noteworthy that a port, in order to be safe, need not necessarily be safe for uninterrupted use and a port may be safe even if, under certain circumstances, the vessel may be required to leave.³⁹⁵ This may be modified by wording in the charter party to a different effect, if a charter contains wording that a vessel must be able to remain at a port safely then this would take precedence.

It should also be noted that the safety of a port is not a general concept in the sense that a port is either safe or unsafe, safety will be contingent upon the characteristics of the vessel relative to the port in question. In *Brostrom v Dreyfus* the vessel was calling at a port that had in the past only been used for smaller vessels. In this case

³⁹² J. Bond Smith Jr., "Time and Voyage Charters: Safe Port/Safe Berth", Tulane Law Review, Volume 49, Number 4, May 1975.

³⁹³ (1898) AC 486 (HL).

³⁹⁴ *Axel Brostrom v Louis Dreyfus* (1932) Com Cas 79.

³⁹⁵ *Smith v Dart* (1884) 14 QBD 105.

it was found that while the port was both suitable and safe for smaller vessels for the ship in question the port was unsafe.³⁹⁶

The duration of the obstacle is also a consideration in determining safety of the port. An obstruction of limited duration will not lead to a finding of unsafety. In *The Hermine* a port on the Mississippi River was found to be safe when, as a result of fog and silting, a vessel was delayed 21 days. In this case Roskill LJ rejected the proposition that a commercially unacceptable delay would lead to a finding of an unsafe port. The test instead was found to be the same as that for frustration, which is not to say that such a delay will frustrate the charter, only that a delay which under the appropriate circumstances will be one that frustrates the charter.³⁹⁷

While the amount of time required will be decided on the facts of every case it has been suggested that the time required under a voyage charter will be less than that under a time charter.³⁹⁸ This inconsistency leads to potential impact on the time charterer as the timing of frustration may not be the same. This will be examined under the appropriate heading.

4.7.2 Political Unsafety

As noted above the principal example of political unsafety is related to hostilities. This was the case in *The Evia*. In *The Evia*, which ultimately involved a finding that the charterer was not liable, there was no question in the decision that the port became unsafe while the vessel was berthed, and the unsafety in question was attributable to the hostilities between Iran and Iraq in 1980. However, as noted the

³⁹⁶ (1932) 38 Com. Cas. 79.

³⁹⁷ *Unitramp v Garnac Grain Co Inc (The Hermine)* [1978] 2 Lloyd's Rep. 37.

³⁹⁸ *Wilson, Carriage of Goods 4th, supra* note 85 at 29.

charterer was not legally liable for the unsafety of the port in the instant case, because the hostilities fell within what could be considered an abnormal occurrence.

In *Ogden v Graham* a vessel was to proceed to a safe port in Chile. A permit was required to call at the port in Chile, but unknown to either party the Chilean government had suspended the issue of permits to the port in question because of rebellion. The port was navigationally safe, but the vessel was liable to confiscation if she proceeded to the port. This case is generally advanced as an example of political unsafety, as it is considered that the port would not be safe for the vessel if the vessel was liable to confiscation.

Equally, a port may be unsafe when there is a epidemic that would lead to the vessel being denied entry at subsequent ports. This would render the vessel unseaworthy, which therefore leads to a conclusion that the port is unsafe.³⁹⁹

Political safety is largely related to war and warlike conditions, and in this way tend to overlap in a sense with physical unsafety. However, *Ogden v Graham* illustrates how a non physical threat to the vessel can render a port unsafe.

4.7.3 Regulatory Unsafety

As noted in *The Khian Sea* a port that lacks proper systems can be held unsafe. It is therefore clear that there is a theoretical underpinning for the proposition that a port can be considered unsafe from a systemic standpoint. However, the more difficult point is whether a port can be unsafe for lacking proper certification. Simply put, when a port has inadequate systems to ensure safety then the port is clearly unsafe.

³⁹⁹ *Sidemar v Apollo Navigation (The Apollo)* [1978] 1 Lloyd's Rep 200.

However, when a port lacks certification it may or may not be unsafe. In many cases, lack of certification will not have any bearing upon safety for the vast majority of vessels, as the certification may only represent a contingency against an unlikely to happen circumstance.

There are two aspects to this issue. The first is if a port is not in compliance with some aspects of an international code or regulation, for example the ISPS code,⁴⁰⁰ and as such does not have certification. The second would be where the port is required to be certified and is not, but is in reality compliant with the standards of the code.

The first point above is easily disposed of. Even if a port is geographically safe the port will be considered unsafe if it fails to comply with administrative or regulatory requirements. This is clearly consistent with the case law.⁴⁰¹ Therefore, using as an example the ISPS code a port that was non compliant could be unsafe.

However, the situation where a port is geographically safe and administratively safe yet non certified is another issue. In this situation it may be argued that the compliant port is in every way safe. This position has not been judicially considered, but it is submitted that based on such facts the port would not be safe. If the country in which the port is located is a signatory to an international convention and the port is not certified as being compliant then it can be argued that the owner is entitled to assume that a non certified port is non compliant. This seems a reasonable argument when one considers that the process involved in validating a port is invariably involved and lengthy, and assuring that a port is compliant does

⁴⁰⁰ Chapter XI-2 International Convention on the Safety of Life at Sea.

⁴⁰¹ For example, the requirement for having adequate systems in place in *Islander Shipping Enterprises v Empresa Maritima Del Estado (The Khian Sea)* [1979] 1 Lloyd's Rep 545.

not in any way fall within what could be reasonably expected of the ship owner or master, either in terms of actually undertaking such an audit or having the necessary skill and expertise to perform such a function. This rationale is also consistent with the approach taken to seaworthiness where, under certain conditions, a vessel may be unseaworthy if she is out of class, irrespective of the actual quality of the vessel.

4.8 IMPLICATIONS FOR THE TIME CHARTERER

There are two distinct areas of risk for the operator. The first is the possibility that the vessel will encounter a port that may be considered unsafe under the time charter but not under the voyage charter, and consequently have an obligation to call at the port under the voyage charter but not have an equivalent right under the time charter. This will leave the operator open to a claim from the charterer for non performance should the vessel refuse to proceed to the port.

The second risk is that a vessel proceeds to a port where she sustains damage, and it is subsequently determined that the port was unsafe under the time charter, incurring a liability on the part of the time charterer to the owner, but that the port was either not legally unsafe under the voyage charter or in the alternative there was no applicable safety warranty.

The key consideration in this is the issue of equivalencies of warranties. As noted above the definition of a safe port does not change between a voyage and time charter, but from a practical standpoint in general terms time and voyage charters will contain different warranties.

Addressing the question of warranties as typically agreed in charter parties, as noted previously time charters will almost invariably contain a safe port warranty, something that is more unusual in voyage charters. In practical terms there exists a strong likelihood that a vessel operating under a time charter, which contains typical phrasing requiring trading to safe ports, will be sub chartered on voyage terms to call a port under a charter which only contains a safe berth warranty, which is the typical voyage charter.

While this may give the illusion that safety is warranted under both charters it must be noted that a safe berth warranty has neither as wide a scope as a safe port warranty nor is it precisely equivalent in terms of how it is operative.

A safe berth warranty does not encompass any approaches to the port.⁴⁰² This is a major consideration because many incidents occur either during arrival or departure, for example in *The Mary Lou* the vessel was on a voyage to New Orleans and while en route to New Orleans she grounded at South West Pass. South West Pass is not within the port limits of New Orleans, it is the channel which leads to the Mississippi River, upon which New Orleans lies, about 100 miles distant. A vessel the size of *The Mary Lou* has no choice but to transit South West Pass travelling to or from Mississippi River ports. In this case it was determined that in order for New Orleans to be safe the river and access to the river must be safe as well and were included under the safe port warranty. Therefore, there is clearly a risk involved for a time charterer. If, in a hypothetical scenario, a time chartered vessel sub chartered on voyage terms, where the charter party contained only a safe berth provision, were to ground in an approach channel to a port then liability could arise on the part of the

⁴⁰² *Atkins International v Islamic Republic of Iran Shipping Lines, (The APJ Priti)* [1987] 2 Lloyd's Rep 37.

time charterer if the port were found to be unsafe, because the time charterer would clearly not be able to pass liability for this to the voyage charterer, as the safe berth provision does not provide any warranty with respect to approaches to the port.⁴⁰³

A second distinction between safe ports and safe berths where liability can accrue occurs in the sense that a safe berth is only considered unsafe to the extent that the conditions in that berth vary from the other berths in the port. In contrast, a safe port warranty exists in a vacuum, the safety of a port is not considered relative to the safety of other ports, it is simply a question of fact. The effect of this is that an operator who is bound by a safe port warranty under the time charter and nominates a given port under the time charter will not be able to rely on a safe berth warranty if the port or berth proves to be unsafe, but not to a different extent than the other berths in the port. Given that the safe port warranty functions in a different way, in comparison to the safe berth warranty there is no comparative factor, this difference means that a safe port warranty may well be operative even if a safe berth warranty is not. If, for example, a vessel is operating under a time charter which warrants the vessel is only to be trade to safe ports, and the vessel is then sub voyage chartered to call at a named port with a warranty as to safety of the berth. and arrives at the port where all berths are subject to the same extent to a specific hazard (low water levels or hostilities, for example) then the port may be deemed unsafe. However, under the voyage charter the port is not warranted to be safe, and since all the berths are affected to the same extent the berth is not unsafe, it is the port that would be considered unsafe. Only if there is a difference between characteristics at different berths will the safe berth warranty be operative. It must, however, be noted that in many cases a safe berth warranty will provide equivalent protection to

⁴⁰³ *Ibid.*

safe port warranty. In cases where an incident occurs within the port limits a safe berth warranty will often be indistinguishable from a safe port warranty.

Another potential difference between time and voyage charters which may be relevant to time charterers occurs when, due to an impediment in the approach to the port, the vessel is unable to transit either to or from the port. This delay can lead to a finding of unsafety.⁴⁰⁴ However, as noted above, there is a potential difference in time and voyage charters in this respect. In the case of delay the test for unsafety will be the same as that for frustration,⁴⁰⁵ and as pointed out the length of time required to frustrate a voyage charter and time charter may be different,⁴⁰⁶ it has been suggested that in general terms it may take longer for a time charter to be frustrated (which in this scenario would mean the port was found to be unsafe).⁴⁰⁷ In other words, it would take longer for a port to become unsafe due to delay under a time charter than under a voyage charter. If it is accepted that in the case of a delay unsafety will generally occur first under the voyage charter, then there will be no exposure to legal risk from the operator's standpoint with respect to the approach to the port. If in such a case the vessel was delayed en route to the port then unsafety would occur first under the voyage charter, however it would be up to the time charterer to actually declare unsafety under the voyage charter. The operator would be able to wait on the vessel owner to declare the port unsafe under the time charter or until the impediment disappeared. If the owner was successful in arguing that the delay made the port unsafe under the time charter then the time charterer would be able to claim unsafety under the voyage charter. However, there still remains potential commercial difficulty given that under a period time charter

⁴⁰⁴ As noted above, see also *Transoceanic Carriers v Cook Industries (The Mary Lou)* [1971] 2 Lloyd's Rep 272.

⁴⁰⁵ *Wilson, Carriage of Goods 4th*, *supra* note 96 at 28-29.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

unsafety of the port will mean that the time charterer is expected to give alternative orders, while under the voyage charter it may well mean that the charter cannot be performed. If there is no cargo on board and the vessel was on her way to the port of loading this may entail the operator finding a replacement cargo, and potentially leave the operator with a claim for damages, the extent of recoverability of these damages will depend on the normal rules relating to damages, in particular those regarding remoteness. The difficulty for the time charterer is that there may have been a significant voyage in ballast to the loading port, and there may be a significant ballast to the alternative loading port. While an examination of the quantum of damages is beyond the scope of this work it is possible that the time involved in the both ballasts would not fall within what would reasonably be expected and as such may be considered too remote.⁴⁰⁸ It must also be noted that with respect to delays precipitated by obstructions or unsafety relating to the approaches to the port that such delays will not be within the scope of a safe berth warranty, and as such the preceding is only applicable in the event that the voyage charter warrants the safety of the port. If there has been no warranty (explicit or implicit) with respect to the safety of the port then the time charterer will face liability with no possibility of passing it along.

It has also been observed that the obligation in the two tier test with respect to time charters is not applicable to voyage charters. Under this test in the event that a port is not safe under a time charter then an alternate port must be nominated. This provides clarity with respect to time charters. However, the issue of what outcome occurs in the event that a port is unsafe, and cannot be called at, in a voyage charter

⁴⁰⁸ The landmark case on remoteness is *Hadley v Baxendale* (1854) 9 Exch 341. In this case Alderson B. held that only damages that were within the reasonable contemplation of both parties should be awarded. This case involved a loss of profit due to late delivery of a required piece, and the loss of profit was considered to be too remote. Equally, a shipowner would have difficulty successfully claiming that a loss of profit due to a falling market was not too remote.

remains. Clearly, if there is cargo on board the vessel, it must be discharged, and if it cannot be discharged at the agreed port then an alternative arrangement must be made. If the port is unsafe then liability will rest with the charterer. Under the time charter the time charterer has not only a right but an obligation to nominate an alternative port, however no such right or obligation exists under the voyage charter. Therefore, the time charterer will wish to nominate an alternative port without delay in order to avoid a loss of time. Under the voyage charter the situation is not clear, and this can lead to risk for the time charterer as if the port is unsafe under the time charter the vessel will remain on hire while waiting for new orders. If the port is safe under the voyage charter but unsafe under the time charter the time charterer will not have a right to call at the port and the vessel will remain on hire while making alternate arrangements. If the port is unsafe under both the time and voyage charters then the vessel will remain on hire under the time charter and the time charterer will have a claim for time lost against the voyage charterer. However, it must be noted that not all time may be recoverable, as discussed above rules regarding remoteness will impact this, and this is an area that is worth addressing from an operator's standpoint, as significant time can be lost, the recoverability of which may be uncertain. In general, damages such as loss of a subsequent cargo or late redelivery will be more likely to not be recoverable, due to the requirement for foreseeability.⁴⁰⁹ Whether it is possible to contractually reduce or eliminate these risks will be examined in the following section.

If the vessel was already in the port and a temporary obstacle led to an inability on the part of the vessel to depart the port then once again there may be a claim for

⁴⁰⁹ In accordance with the rule established in *Hadley v Baxendale* (1854) 9 Exch 341. See footnotes 419, *supra* and 636, *infra*.

unsafety of the port. In this situation, it will purely be a question of damages.⁴¹⁰

The vessel will already have loaded or discharged the cargo and will be waiting to leave. In either instance, the vessel will remain on hire as between the owner and the time charterer.⁴¹¹ The time charterer will have potential claim against the voyage charterer for delay relating to the unsafety of the port, the viability of such a claim will depend on what warranties exist in the charter party and the facts of the case.

It is worth noting that although the test used to determine safety is the same as the test for frustration the doctrine of frustration is distinct from that of safe ports and berths. The doctrine of frustration provides that if a contract cannot be performed without the fault of either party then the contract comes to an end.⁴¹² The operation of frustration in a shipping context can be seen with regard to the closure of the Suez Canal. In *The Eugenia* a vessel was chartered under a time charter to carry a cargo of metals from Odessa to India.⁴¹³ After loading the cargo the vessel proceeded to Port Said.⁴¹⁴ Despite the outbreak of hostilities the time charterer ordered the vessel to proceed on her voyage via the Suez Canal. During transit the Suez Canal was closed, and the vessel consequently remained trapped in the canal for over 2 months. When the vessel was permitted to exit the canal she was required to proceed back to the Mediterranean, returning the way she had come. The charterer claimed that on this basis the charter party was frustrated on the basis that the voyage to India proceeding around the Cape of Good Hope was fundamentally different than that contemplated. This argument was rejected by the

⁴¹⁰ With respect to safety of the port. The charter may become frustrated if the delay is long enough.

⁴¹¹ As noted, the time charterer cannot claim off hire as the obligation to nominate a safe port rests with the time charterer.

⁴¹² It must be noted that the contract is not frustrated *ab initio*, but only with respect to future obligations.

⁴¹³ [1964] 2 Q.B. 226.

⁴¹⁴ Port Said is the entrance to the Suez Canal from the Mediterranean.

Court of Appeal, which held that performance via the Cape of Good Hope was not radically different. This illustrates that it will take a substantial delay to frustrate a charter. This case, however, does not address the issue of safe ports directly as there was an alternative route to the discharge port. If there had not been an alternative route available then it is likely that the charter would have been frustrated. However, it is applicable to the question of safe ports as the test for delay with respect to safe ports is the same as frustration and this case illustrates that a long delay or a voyage that is not what was commercially expected will not result in a finding of frustration or, by extension, of unsafety.

It has been noted that the test for unsafety due to delay is that of frustration. For sake of clarity it must be emphasized that this does not mean that the charter is frustrated, unsafety and frustration are two distinct concepts and it is only the test for frustration that is being “borrowed”. In the event of a long delay for which neither party is at fault there is the possibility that the time and/or voyage charterer may be able to claim that the charter is frustrated and as such is at an end. At this point the question moves past the issue of safe ports into frustration. Frustration may occur earlier under voyage charters, and this may result in some financial exposure to the time charterer, but relative to the large amounts potentially at stake the exposure should be relatively small. However, it again must be noted that frustration is not an argument that is available when there has been a determination that a port is unsafe, as self induced frustration is an exception to the doctrine.⁴¹⁵ What is relevant to the question of unsafe ports is that the test is the same as for frustration, which makes clear that a port cannot be held unsafe merely because a delay is commercially unpalatable.

⁴¹⁵ See for example *J Lauritzen v Wijsmuller, (The Super Servant Two)* [1990] 1 Lloyd’s Rep 1.

4.9 THE RELATIONSHIP BETWEEN SAFE PORTS, OFF HIRE AND LAYTIME

One key consideration is the recourse that exists when a port is unsafe. Damages due to unsafety are in general either related to damage to the vessel or time lost. In the case of time lost under a time charter, depending on the circumstances, the most usual compensation for damages is off hire. In the specific case of an unsafe port there will be no off hire as it is the time charterer that is in breach of the charter party. If the owner were to incorrectly allege that a port was unsafe and delayed calling at the port on this basis then the time charterer may be able to claim the time lost as off hire.

In a voyage charter context if a port is unsafe it will be a breach of charter and therefore the charterer will be liable to a claim from the owner or operator for this unsafety. Generally, in the context of time lost at ports it is viewed as a question of laytime. However, in the case of an unsafe port the applicability of laytime would appear to depend on when the unsafety occurs relative to the vessel's stage in the voyage. The occurrence of the unsafe conditions relative to laytime can be examined in the following contexts:

1. Unsafety occurs prior to arrival at the port
2. Unsafety occurs after arrival at the port but before berthing /
commencement of cargo operations
3. Unsafety occurs during cargo operations or after completion of cargo
operations but before departure, and inhibits the vessel's departure from the
port.

The above points involve a degree of overlap and common themes. One of the major points in terms of this overlap is whether the voyage charter in question is a berth charter or a port charter. In the case of a port charter, the vessel may be able to tender notice of readiness irrespective of unsafety (depending on the exact circumstances and nature of the unsafety). In the case of a berth charter if the vessel cannot reach the berth then no notice of readiness will be able to be tendered. In such a case laytime will not be able to commence.

In either a port or berth charter when the unsafety arises before the vessel's arrival at the port and in such a way that the vessel's arrival at the port is prevented then laytime cannot commence to count as the notice of readiness has not been tendered. This is illustrated by the case of *The Timma*.⁴¹⁶ While not a safe port case *The Timma* involved a dispute regarding the failure by the charterers to nominate a discharge port which resulted in a delay to the vessel. The owner claimed demurrage or detention. It was held that the demurrage claim failed because the vessel was never an arrived ship, which is a condition precedent of the commencement of laytime.⁴¹⁷ The same logic would apply to a vessel that cannot reach port due to unsafety; the vessel would be unable to tender a notice of readiness and become an arrived ship. In the case of *The Timma* the owner was successful in claiming detention for the time lost.

However, it may happen that the port will become unsafe after the port has arrived and tendered notice of readiness, but prior to the commencement of cargo operations. Or, the unsafety of the port may be such that the vessel may reach the port but not the berth. In such a case it may be possible that laytime will run. The

⁴¹⁶ *Zim Israel Navigation Co. Ltd v Tradax Export SA (The Timma)* [1971] 2 Lloyd's Rep 91 (CA).

⁴¹⁷ *Wilson, Carriage of Goods 4th, supra* note 96, p. 56.

general principle is that a claim for detention arises when a vessel is delayed by the fault of the charterer or those for whom he is responsible. However, if the delay occurs after the vessel reaches her destination then under certain circumstances laytime may be set off against the delay.⁴¹⁸

As noted this is merely the general rule. The first point to be clarified is that there will be no damages payable if the port becomes unsafe during discharge, but only to the extent that the vessel would not be able to depart from the port, and this unsafety is resolved prior to sailing. In other words, damages are only claimable to the extent that damages actually occur.

However, if something causes the port to become unsafe and this delays the vessel's departure then, assuming that as a matter of fact that the port was unsafe and as a matter of law the charterer is found liable for breach of the safe port provision in the charter, the charterer will be liable for damages for the breach of the safe port provision. Once cargo operations are completed the owners of a vessel delayed owing to unsafety of the port will be able to claim against the voyage charterer. However, the question of whether such a delay should be calculated as part of laytime or detention must be answered. This is an extremely relevant question, as illustrated by the case of *Owners of the Steamship Nolisement v Bunge and Born*⁴¹⁹. In this case the vessel completed loading her cargo with a substantial amount of laytime remaining. After completion of loading the vessel waited 3 days for cargo documents and orders regarding discharge port. It was held that despite the fact that not all laytime was used the charterers did not have a right to delay the vessel after loading was completed. It was further held that the charterer was under an

⁴¹⁸ Schofield, *Laytime 2nd*, *supra* note 190, at 365.

⁴¹⁹ *Nolisement (Owners) v Bunge y Born, (The Nolisement)* [1917] 1 K.B. 160.

obligation to provide cargo documents and orders within a reasonable time, and as such they were liable to pay detention.

In terms of delay in berthing and whether this would count as laytime or detention there are issues to consider. The first point is whether a valid notice of readiness can be tendered at an unsafe port where berthing is an impossibility.

Based on the general requirements of tendering a notice of readiness there does not seem to be any restriction on tendering a notice of readiness at an unsafe port.

From a practical standpoint it must be noted that it will often be uncertain on arrival how long a delay will be and it will sometimes be only in retrospect that it is clear that a delay was sufficient to render a port unsafe. Therefore it would appear that there is no restriction on tendering the notice of readiness.

However, it may be more favourable from the shipowner (or time charterer's) perspective to calculate damages for detention rather than laytime. For example, laytime in a typical modern dry bulk charter may be less favourable financially, as prior to the vessel going on demurrage laytime must expire, which in the majority of cases involves various excepted periods as well as time waiting for laytime to commence counting. From the voyage charterer's perspective laytime will generally be preferable, for the opposite reasons.

The use of laytime in an unsafe port situation is problematic in particular in relation to a berth charter under a voyage charter. While a vessel, depending on charter party terms, may be able to tender notice of readiness from the usual waiting place in the event the berth is occupied a vessel being able to tender because the berth is

unreachable is, generally, not possible. Therefore, there is no mechanism whereby laytime can commence to count.

It is submitted that the better approach from both a legal and practical perspective is to calculate any delay under the principle of damages for detention. If a vessel is delayed berthing as the result of an unsafe port situation then in order to commence laytime some type of legal fiction may need to be employed. Furthermore, this approach is considered more consistent with that taken in cases where the vessel is delayed after discharge.⁴²⁰ It is difficult to see why delay due to an unsafe port after discharge should be treated as a detention situation, whereas delay prior to discharge should count against laytime. It can be argued that the presence of cargo on board distinguishes the situation, however, it is submitted that this is not a factor that should be determinative. *The Hermine* has been cited as authority that delay due to an unsafe port should count as laytime,⁴²¹ however, the court in *The Count* considered *The Hermine* as authority for nothing more than the principle that a port is safe if a vessel can enter, use, and depart from it without any unsafety (barring abnormal circumstances).⁴²²

From a practical standpoint calculating a delay as detention rather than demurrage is generally advantageous for a shipowner or operator. Negotiated demurrage rates will sometimes not reflect the actual market value of the ship and represent a composite of the value of the ship and the expected time in port.⁴²³ Therefore, particularly in the case where the demurrage rate is lower than the market rate of

⁴²⁰ For example: *Nolisement (Owners) v Bunge y Born, The Nolisement*, [1917] 1 K.B. 160.

⁴²¹ *Baughen, Shipping Law 3rd*, *supra* note 168. p. 247.

⁴²² *Independent Petroleum Ltd v Seacarriers Count Pte* [2006] EWHC 32222.

⁴²³ Demurrage rates are often lowered below the market rate in cases where the shipowner is liable to pay despatch when a vessel is more quickly discharged. A shipowner anticipating that despatch will be payable will often lower the demurrage rate in order to lessen the anticipated despatch payment.

the ship, it will be advantageous to the owner to have a detention rate different from the demurrage rate.

4.10 STEPS THE TIME CHARTERER MAY TAKE TO REDUCE RISK

The primary risk in this area arises from a lack of consistency between terms contained in voyage charters and time charters, specifically when a safe port is warranted in the time charter but not in the voyage charter.

The most straightforward way to address this risk is by negotiating parallel wording with respect to safe ports. As illustrated in *The Livantia* describing a port as 1 safe port (named port) has the effect of putting in place a guarantee of safety of the port in spite of the fact that the port is named.⁴²⁴ From an operator's standpoint this will relieve much of the risk as there will now be consistency between the warranties contained in both charters, and in accordance with case law there is no difference in meaning between safe ports under time and voyage charters.

This would essentially eliminate the most serious risk associated with sub voyage chartering, as it would remove the issues associated with having a voyage charter warranty of a safe berth while a time charter warranty of a safe port, and the resulting situation where the berth under the voyage charter being legally safe and the port under the time charter being legally unsafe. From a legal standpoint this is a simple enough solution. Whether this is manageable from a commercial standpoint is another consideration, voyage charterers will in many cases be unwilling to expand their liability, particularly in terms of warranting the safety of an entire port when

⁴²⁴ Note that there were arbitrations that did not agree with this that must now be considered wrongly decided.

they can argue, logically, that issues related to navigation and approaches to the port are the responsibility and domain of the owner, who is meant to be the specialist in this area. However, in the final analysis the viability of negotiating a safe port warranty in a voyage charter will most often be a function of the relative bargaining strength of the parties. In general terms this is considered to be a solution that is both viable and realistic. Many charterers use the same ports repeatedly and will be confident in warranting their safety.

Even if the situation regarding safety is satisfied there remains the potential problem of different periods of time being required before a port is considered unsafe under a voyage charter versus under a time charter. A potential solution to this problem would be to simply agree in both charters that a specific number of days delay is required to render a port unsafe. This solution is workable in theory, however, from a practical standpoint there exists the risk of being unable to agree the same time in both charters. This could lead to the situation of being bound to a specific number of days in one charter but having the other charter as being open ended, or in a worse case scenario having a longer time under the voyage charter than under the time charter. From a commercial standpoint it appears that it will be difficult to employ this as a viable solution, even though it is perfectly workable from a legal viewpoint.

It would, however, represent a useful tool for the shipping industry to add to charter parties, in that it would remove uncertainty about how long a delay was required for a port to be declared unsafe. The achieving of certainty is in the interest of all contracting parties and a definitive answer to the amount of time required to render a port unsafe would be of universal benefit.

It would also be useful for either the judiciary or the contracting parties to clarify the position with respect to the two tier test and its relationship to voyage charter parties. As it stands now, the court in *The Evia (No. 2)* was clear that the two tier test applied to time charters and that voyage charters represent a different form of charter and the court made no pronouncements upon the applicability of the two tier test to voyage charters.⁴²⁵ Furthermore, under a voyage charter a port will either be named or nominated from a range, and precedent makes clear that once made a nominated port is treated as though it was written into the charter party.

In the case of time charters it is logical and fair for the charterer, as the party in breach, to nominate an alternative port. The vessel is on time charter and the owner is receiving hire irrespective of the port called. Furthermore, the time charterer has commercial control of the vessel and is the one who has selected the port of call. In most cases, the vessel will not be on her final voyage under the time charter and as such whether the vessel calls a specific port will not be of paramount concern to the owner.

However, when dealing with a voyage charter, the port called may be important to the contracting owner, as the specific port to be called may have been a major factor in selecting the voyage.⁴²⁶ If the named port is unsafe then clearly an alternative port must be used, however, it would be unjust to give the voyage charterer unilateral authority to nominate the alternative port when it is the charterer that was in breach of the charter.⁴²⁷ At that same time, it is unrealistic to expect the owner to

⁴²⁵ *Kodros Shipping Corp v Empresa Cubana de Fletes, The Evia (No. 2)* [1983] 1 AC 736 (H.L.).

⁴²⁶ For example, and owner may quote a lower rate on a cargo when the owner already has a cargo booked from the same port of another nearby port.

⁴²⁷ It is considered fair under the time charter but unfair under the voyage charter for the charterer to have the right to unilaterally nominate an alternative port because of the nature of the charter party. Under a voyage charter the owner has contracted to send the vessel to specific ports, under the time charter the

unilaterally choose and nominate the alternative port, as there are many factors that are beyond the owner's knowledge and control. For example, some commodities require specialized forms of discharge that are not always available at all ports, costs of cargo handling vary widely between ports. Voyage charterers may have other reasons, including import duties and restrictions, customs clearances or inland infrastructure, for needing to avoid certain ports or countries. In terms of fairness and common sense, it is submitted that while it is logical and fair for the charterer under a time charter to nominate an alternative port the same is not the case under a voyage charter. Under a time charter the owner has elected to cede commercial control of the vessel to the charterer, the ports to be called can vary and the time charterer has agreed to this. Under a voyage charter the owner has elected to call at specific ports, it is difficult to justify why a voyage charterer should have the right to change ports without consultation with the owner. Therefore, a reasonable conclusion would seem to be an adapted two tier test, which would allow for an alternative nomination on the part of the voyage charterer, contingent upon the owner's approval (in the case where the vessel was on time charter, the time charterer's approval), which not to be unreasonably withheld. The voyage charterer should additionally be liable to pay for all time lost and all additional costs incurred.⁴²⁸

It is therefore submitted that given both the legal and practical considerations involved the logical solution under a voyage charter is to agree a clause which allows the voyage charterer to nominate an alternative port should the nominated port be unsafe. However, the owner under this clause would have the right, acting

owner has ceded commercial control of the vessel and has accepted that the vessel may trade to various ports.

⁴²⁸ Typically this would include any deviation, including additional time involved in sailing to the next port, any additional port costs, any additional fuel consumed and other, similar costs.

reasonably, to reject such an alternative nomination. When operating under a time charter it may be prudent to include additional wording in the voyage charter which states that reasonable grounds for declining include terms of the time charter party, however a voyage charterer would want such wording to be limited. The main reason for such wording would be to avoid a situation where the voyage charterer nominated an alternative port in a country or area that was excluded under the time charter. It would therefore be reasonable to include in the clause that the charterer is entitled to reject on port on the basis that the port is not included under the head charter party. Other terms which may be prudent to include would be that the port should be as nearby as practically possible, that the charterer is liable for any decrease in speed of cargo operations, that the charterer is liable for non availability of the berth and any increased port costs, as well as additional steaming time.

The key from the operator's standpoint is to reduce risk. This is only achieved if the contractual terms provide certainty and do not allow for greater risk in the time charter. If the operator can be bound under the voyage charter to discharge at a specific alternative port then this is inferior to the present situation, which is that there is no legally binding method determining what happens if a port is unsafe. If the voyage charter is modified to impose specific rights and responsibilities on the parties in the event there is an unsafe port it is of paramount importance that these amendments take into consideration the existence of the time charter. It must be emphasized that the objective is to achieve risk reduction through consistency of contractual terms. In general terms increasing certainty in the voyage charter is advantageous but only to the extent that it does not create possible conflict with the obligations under the time charter. In such an instance the time charterer would be better off with a situation whereby there is no fixed mechanism and a solution must be negotiated. In a situation where there is no mechanism it maintains uncertainty.

While uncertainty is not desirable it is preferable to the time charterer than agreeing to terms which are clearly in conflict as this serves to increase risk. In other words, under an uncertain situation the time charterer can at least resist any instruction that the voyage charterer may attempt to give that is inconsistent with the time charterer's rights and obligations under the time charter.

4.11 SPECIAL CIRCUMSTANCES

4.11.1 Time Charter Trips

It has been noted that time charter trips are a sort of hybrid charter. Under a trip charter the owner does not give over the same degree of commercial control, simply because the voyage to be undertaken is known by the owner to a far greater extent. The parameters may be somewhat wider than the typical voyage charter but will be more comparable to a voyage charter than a time charter. The actual form is a time charter form, however duration will be shorter and the trading range will be more limited. In a case such as this it is arguable that the safe port situation is modified. It is submitted that this is not likely to be the case. Most time charters, whether they are trip charters or for a longer duration, contain a warranty that ports will be safe. In accordance with *The Livantia*,⁴²⁹ a safe port warranty is effective even in the circumstance of a named port. Therefore, there is no difference with respect to the warranty itself. In terms of renomination in the case of unsafety, the time charterer will have the same obligation vis-à-vis the owner as under a conventional time charter.⁴³⁰ In terms of the voyage charter as a sub charter under a time charter trip little would seem to change as well. In the case where the vessel was on

⁴²⁹ *STX Pan Ocean Co. Ltd. v Ugland Bulk Transport A.S. (The Livantia)* [2007] EWHC 1317 (Comm)

⁴³⁰ In the circumstance where redelivery is to be made at a specific port then redelivery would have to be done passing that port.

charter to an operator then the same considerations and concerns as outlined in the previous section would apply

4.11.2 Liner Terms

Liner terms charters, in the dry cargo trades, are those where the owner is responsible for making arrangements and paying for cargo operations. From the operator's perspective this would mean that it is the operator that is liable for choosing the stevedore and making load or discharge arrangements, including choice of berth within the port. In such a case there will invariably not be a safe berth warranty and generally not a safe port warranty.⁴³¹ In which case, risk accrues to the time charterer, because any unsafety of the port will almost certainly not be claimable from the voyage charterer. This is essentially unavoidable from a legal perspective, it is a commercial risk which must be assumed by the time charterer and the most practical avenue is for the operator to carefully verify the conditions in the port.

4.12 CONCLUSION

Risk in this area mainly arises due to a divergence between time and voyage charters in terms of the warranties given by the charterer in terms of safety. Voyage charters more often warrant only the safety of berths, whereas time charters warrant the safety of berths and ports. This fundamental difference in the warranties between the two types of charter leads to potential liability if there is vessel damage that occurs under a time charter and the operator has warranted safety of the port

⁴³¹ In general, the charter party will state, for example, liner terms load, loading owner's berth (named port).

but has no equivalent warranty of safety from the voyage charterer. The other principle risk is that the shipowner will refuse to call a port which is legally unsafe under the time charter while the operator will have no right to refuse to call the port under the voyage charter. This can potentially leave the operator in breach of the voyage charter party.

The recommended solution is for the operator to attempt to negotiate parallel warranties under the time and voyage charters, which can include warranting the safety of even a named port. This is risk that can easily be managed through amendment of the voyage charter terms.

CHAPTER 5

TIME CHARTERED OPERATORS AND BILLS OF LADING

The MV Turcot is on time charter to Thompson Shipping, who under the charter party have the right to issue bills of lading on behalf of the master in accordance with the mate's receipts. The vessel loads a cargo of steel coils, which are rust covered and suffering many minor nicks and scrapes. An independent surveyor appointed by the owner's insurer issues a report noting these imperfections, and the mate's receipt for the cargo incorporates the notations from the survey report. The voyage charterer, however, requires a clean on board bill of lading for banking purposes. The voyage charterer accordingly prevails upon the time charterer to issue bills of lading on behalf of the master without the notations noted on the mate's receipt. In exchange for complying with this request the voyage charterer issues a letter indemnifying the time charterer for any consequences which may result. After delivery of the cargo, which has been resold in transit, the ultimate buyer of the cargo claims against the vessel owner, relying on the description in the bill of lading for diminished value of the cargo, which is in the same condition as when it was loaded on board. The ship owner in turn claims against the time charterer for issuing bills of lading not in conformity with the mate's receipt, and the time charterer claims under the letter of indemnity against the voyage charterer. The voyage charterer, however, is insolvent. The time charterer's insurer refuses cover for damage to the cargo on the basis that the bills of lading were not issued in accordance with the mate's receipt.

5.1 INTRODUCTION

The bill of lading represents one of the most important instruments in international trade and there exists a significant amount of literature both on the subject of bills of

lading and the relationship between bills of lading and charter parties.⁴³² This chapter expands upon that literature by considering the specific risks and difficulties encountered by the time chartered operator in terms of bills of lading. These will include the right of the time charterer to demand that the bill of lading be issued on a specific form and the charterer's rights in terms of demanding the bill of lading be signed that do not conform with the actual cargo condition.

Also to be examined is the allocation of risk when a bill of lading is inaccurate in some manner; the most prevalent inaccuracies are with respect to the date and description of cargo condition. The questions of when the inconsistency is intentional and when it is unintentional will be considered. This leads to the issue of letters of indemnity (LOI), which have not been previously considered in the literature either from the specific perspective of the time charterer or in an exhaustive general sense. This will form the major part of this chapter.

The structure of this chapter will be to set out as way of background information and context the general function of the bill of lading within the shipping industry and the relationship between the bill of lading and the time charterer. This will be presented from the perspective of the time charterer, which represents an original point of view.⁴³³ Of particular concern to the time charterer are questions including when the time charterer will be liable under the bill of lading, are the terms of contract found in the bill of lading or the charter party and when the time charterer will be the carrier. Also of importance to the time charterer is whether there exists a right for

⁴³² See for example: *Gold et al*, *supra* note 9, p 425, *Girvin, Carriage of Goods*, *supra* note 67, p 137.

⁴³³ The issuance of clean bills of lading for damaged cargo is considered in *Time Charters 3rd*, *supra* note 375 at p. 265-266 but there is no analysis of possible risk management techniques and no consideration from the perspective of the operator. *Girvin, Carriage of Goods*, *supra* note 67 also deals with the issue of indemnities at 6.27 - 6.32. Like *Time Charters* the two pages given over to this question address neither the particular role of the time charterer nor any potential risk management strategies.

the time charterer to issue bills of lading which do not conform with the mate's receipt, and the consequences if they do not.

Once this foundational information has been outlined the chapter will then turn to the key questions of the types of orders that the time charterer is permitted to give relative to the bill of lading. Particularly to be considered is whether the time charterer is entitled to issue bills of lading that do not reflect the actual cargo condition and the consequences if they do so without permission of the vessel owner. This leads to the focus of this chapter which is the question of letters of indemnity issued in exchange for an omission or change in the bill of lading, although letters of indemnity for discharge without presentation of the original bill of lading will also be examined.

This chapter will examine the risks that the time charterer faces in the mis-issuance of bills of lading and the extent to which these risks can be passed along to the vessel owner or the voyage charterer. This chapter represents a significant contribution to the literature in that it considers bills of lading and their relationship to charter parties from the perspective of the operator, and more significantly it considers letters of indemnity from the specific point of view of the time charterer.⁴³⁴ Beyond this it also develops a series of recommendations for time charterers in relation to dealing with letters of indemnity, which constitutes a specific and original contribution to the literature in this area.

⁴³⁴ *Ibid.*

5.2 THE BILL OF LADING

The bill of lading is among the most widely used transportation documents and also one with the longest history.⁴³⁵

Bills of lading continue to play an important role in international trade and maritime transportation. The bill of lading's unique characteristic is that it is potentially negotiable.⁴³⁶ It is this negotiability which makes the bill of lading particularly useful but it is also the root cause of the difficulties that will be examined in this chapter.

The bill of lading in general has three main functions,⁴³⁷ which are:

1. As receipt for goods shipped
2. As evidence of the contract of carriage
3. As (a negotiable) document of title

The three main roles of the bill of lading require some brief discussion, but given that they are generally well documented they will be reviewed in outline only, and as applicable their relationship to charter parties will be highlighted.

The role as receipt is clear, essentially the bill of lading is given in exchange for the goods and in general terms the holder of the bill of lading is entitled to collect the cargo at the port of discharge.⁴³⁸ This fundamental role of the bill of lading does not bear any special relationship to the time charterer. The key point to be examined

⁴³⁵ *Gold et al, supra* note 9, p. 408-409.

⁴³⁶ *Gold et al, supra* note 9, at 409.

⁴³⁷ See generally Richard Aikens, Richard Lord, Michael Bools, *Bills of Lading* [London, Informa, 2006] Chapter 1.

⁴³⁸ John F. Wilson, *Carriage of Goods by Sea* 5th edition, (Harlow, Pearson Longman, 2004), [*Wilson, Carriage of Goods, 5th*] p. 118.

later in this chapter is when a cargo is delivered without presentation of the original bill of lading at the request of the operator.

The second function, which is serving as evidence of the contract of carriage, is inapplicable as between the time chartered operator and the voyage charterer, as the voyage charter constitutes the contract of carriage between the two parties.⁴³⁹ This is not to say that its contractual function is irrelevant. The bill of lading will become the contract between the holder of the bill of lading and the carrier, which will often be the actual ship owner. In this sense this quality of the bill of lading will be preserved when a time chartered ship is operating under a voyage charter. The bill of lading, when transferred, will also be conclusive evidence of the terms of the contract between the carrier and the transferee.⁴⁴⁰ Therefore, the bill of lading as contract remains relevant, but not necessarily between the time charterer and the holder as this is dependent upon whether the time charterer is considered the carrier under the bill of lading. In general any disputes between the holder of the bill of lading and the carrier will be governed by the bill of lading.⁴⁴¹ This situation serves to illustrate the unique position of the time chartered operator, who may be liable under the voyage charter, the bill of lading or the time charter, or quite possibly under more than one of the documents. Who is liable under which document is very important given that each contract will have different parties. For example, a third party holder of a bill of lading will only be able to take suit under the bill of lading against the carrier, which may or may not be the time charterer, and the time charterer will wish to avoid being the carrier under this document for this reason. For

⁴³⁹ *Girvin*, 2nd *supra* note 3, 12.03.

⁴⁴⁰ *Leduc v Ward* (1888) 20 QBD 475 (CA).

⁴⁴¹ An exception occurs where the carrier is the time charterer and the cargo interest (bill of lading holder) in question is the voyage charterer.

this reason it's important ascertain what liabilities the time charterer faces under each of these contracts.

The final function of the bill of lading is as a document of title. Not all bills of lading operate as documents of title, they will only do so if they are drawn "to order", which is a bill of lading which states that the carrier agrees to deliver the goods to either a named consignee or to his "order or assigns",⁴⁴² or often just "to order". A bill of lading drafted in this manner is effectively a negotiable document, which permits the cargo to be sold (in some cases multiple times) while the goods are in transit. This is clearly very useful from an international trade standpoint. However, it must also be noted that these transactions are premised upon the buyer purchasing goods that they have never seen, and as such they must rely on the description contained in the bill of lading, and it is for this reason that accuracy of the bill of lading is particularly important when the bill of lading is negotiable. If a bill of lading makes mention only of a named consignee then it lacks this negotiable quality as it cannot be transferred. However, the fact that the bill of lading is not negotiable does not alter the fact that the buyer may be relying on the description of the cargo in the bill of lading.

As noted above it is the negotiable quality of the bill of lading which distinguishes it from other carriage documents. It is also this which is a key element relating to bills of lading being issued without reflecting the actual condition of the cargo. Given that the bill of lading is transferable the description takes on a unique value as the cargo has the potential to be transferred multiple times to unanticipated buyers, whose only knowledge of the cargo condition will come from the description on the bill of lading. In the event that the ultimate buyer is misled as to the condition they will

⁴⁴² For example the cargo would be consigned to "XYZ Company or his order or assigns".

want to recover any losses. The time charterer is clearly among the candidates against whom to pursue an action for damages.

5.3 CLEAN AND CLAUSED BILLS OF LADING

The bill of lading's role as a negotiable document can be traced back to the case of *Lickbarrow v Mason*.⁴⁴³ The essential commercial function of the bill of lading when it is drawn to order is that it permits the trading of goods while they are in carriage while they remain in the carrier's custody.⁴⁴⁴, which from a practical standpoint allows the owner of the goods to sell them while in transit and they are to be delivered to the ultimate holder of the bill of lading.

In outline, the bill of lading is the document of title against which banks will make payment for the goods.⁴⁴⁵ When a cargo is loaded on board a vessel, the vessel issues a bill of lading as receipt for the goods shipped. The bill of lading will give particulars of the cargo including the date of loading, the quantity loaded and the condition of the cargo. All of these facts are important to the buyer, the condition and quantity are important primarily due to the fact that the buyer will have bought a cargo of certain specifications and will expect that condition and quantity to accord with what has been purchased. The date is important because in some cases the commodity price will be settled based on the market price on the date of shipment, in other cases the buyer will need the cargo and as such will want it shipped by a specified date. The description is particularly important to the extent that in a typical international trade transaction the buyer will not have inspected the cargo prior to shipment and will therefore be placing reliance upon the bill of lading for

⁴⁴³ (1787) 2 TR 64.

⁴⁴⁴ *Gold et al*, *supra* note 9, p. 413.

⁴⁴⁵ *Wilson, Carriage of Goods 5th*, *supra* note 449, p. 133-135.

details concerning the cargo.⁴⁴⁶ At the same time the price for the goods will be paid through a letter of credit, whereby the bank will obtain the bill of lading from the carrier, and if the bill of lading conforms to the requirements in the sales contract the bank will transfer funds on behalf of the purchaser to the seller and will transfer the bill of lading to the buyer, and the buyer will use this bill of lading to collect the cargo at the port of discharge. The difficulty in this process sometimes arises in that the sales contract, and by extension the bank, will require a bill of lading that does not contain any reservations regarding the condition of the cargo. A bill of lading which is issued without reservations as to the condition of the cargo (called clausings) is called a clean bill of lading. In such a case the bank, barring amendment to the letter of credit, will not be able to disburse funds to the seller against a claused bill of lading. While this would appear to be straightforward some cargoes are routinely shipped in imperfect condition and the buyers are aware of this prior to shipment.⁴⁴⁷ However, the requirement for clean bills of lading continues to exist in spite of this reality. In such cases the voyage charterer will sometimes put pressure on the time charterer (who is issuing the bill of lading, often on behalf of the master) to omit any remarks from the bill of lading in order to obtain a clean bill, in spite of the actual condition of the cargo. Typically, the voyage charterer will issue a letter of indemnity which serves as a promise to the party issuing the bill of lading that they will hold them harmless for the issuance of a clean bill of lading and indemnify them should any other party take action against them. The validity of

⁴⁴⁶ In accordance with Art 3(3) of the *Hague-Visby Rules* the carrier must issue a bill of lading that accurately reflects the condition of the cargo. The *Hague-Visby Rules* apply by force of law in Canada under the *Marine Liability Act* S.C. 2001.

⁴⁴⁷ For example, certain types of steel cargoes are routinely shipped with rust spots or other forms of minor damage, the bills of lading covering these shipments may or may not be claused depending on the terms of the letter of credit.

such letters of indemnity is questionable and will be discussed later in this chapter.⁴⁴⁸

5.4 BILLS OF LADING UNDER CHARTER PARTIES

One significant distinction in shipping is between regularly scheduled liner trades, now dominated by container ships, and tramp shipping, which is primarily dry bulk carriers and tankers. The fundamental differences in these trades results in the bill of lading assuming a slightly modified role in the bulk trades. The bill of lading form used under a charter party tends to include less contractual language, which is a result of the fact that it is not intended to evidence the contract.⁴⁴⁹

In the liner trades the bill of lading will generally represent the written form of the contract, with the cargoes in these trades being primarily finished good or specialized cargo. Large bulk shipments will usually be shipped under a charter party, however, a bill of lading is still generally issued in exchange for the goods. In these circumstances the bill of lading will serve as receipt for the goods but will not evidence the contract of carriage as between the time and voyage charterers.⁴⁵⁰

The contract between the time chartered operator (as the owner) will continue to be governed by the charter party.⁴⁵¹ This is noteworthy in that it means that the *H* Rules do not apply by force of law to a bill of lading in the hands of the voyage charterer.⁴⁵² Effectively this means that if a cargo claim were to be pursued under

⁴⁴⁸ *Girvin, Carriage of Goods*, *supra* note 67 at 6.28-6.29.

⁴⁴⁹ Examples of Liner and Tramp bills of lading are found in appendix C.

⁴⁵⁰ Charles Debattista in *Maritime Law* 2nd edition, edited by Yvonne Baatz, London, Sweet & Maxwell, 2011, p. 222.

⁴⁵¹ *Rodocanachi v Milburn* (1886) 17 QBD 316.

⁴⁵² *Girvin 2nd*, *supra* note 3 at 12.03 and *Hague-Visby Rules* Art 1(b).

the charter party the rights and obligations of the *Hague-Visby Rules* would not bind the parties. The non applicability of the *Hague-Visby Rules* is affirmed in the Canadian case of *Canada Steamship Lines v Desgagnes*.⁴⁵³ However, it must be noted that many modern charter parties incorporate the Rules into the charter party.⁴⁵⁴

While it is clear that any disputes that arise as between the time charterer and voyage charterer will be regulated under the terms of the voyage charter party, questions do arise when the bill is in the hands of a third party. In such cases the issues are twofold, the first being the issue of identification of the proper carrier under the contract (the correct party to sue) and the second being determination of which party is the carrier. Therefore the time charterer will be concerned about whether a relationship exists under the bill of lading and with whom such a relationship exists, this is a question which is largely addressed in the following section.

5.5 IDENTITY OF THE CARRIER

In the event of a situation arising where a third party bill of lading holder needs to take suit against the carrier then it is clearly vital for the holder of the bill of lading to be able to identify the correct party against which to take an action.

⁴⁵³ [1967] 2 Ex. C.R. 234.

⁴⁵⁴ The effect of incorporating the Rules into a charter party is examined in *Wilson, Carriage of Goods 5th*, *supra* note 449 at 210-215. In brief incorporation of the rules into a charter party impacts the seaworthiness obligation, the common law obligation to provide a seaworthy vessel is strict while the *Hague-Visby Rules* require the exercise of due diligence. The incorporation of the Rules also leads to the incorporation of the 12 month time bar in Art 3 Rule 6. Finally, the carrier is entitled to take advantage of the exceptions in Art IV of the Rules.

A main difficulty occurs in that bills of lading frequently do not clearly identify the carrier,⁴⁵⁵ and under English law the normal rule is that only one party is liable as carrier under any carriage contract,⁴⁵⁶ however under Canadian law there would seem to be no such limitation.⁴⁵⁷ It must be noted that the concept of having multiple carriers is useful given that many maritime voyages include several potential carriers.⁴⁵⁸ The key question from the perspective of the time charterer is whether it is the carrier vis-à-vis a holder of the bill of lading. If the time charterer is the carrier then the potential exists for direct liability to the bill of lading holder in the event of a claim. However, if the ship owner is the carrier then the operator will typically not have to face a direct claim from a third party bill of lading holder. It must be noted that Professor Tetley argues that it should be possible to have multiple carriers under a single bill of lading, and that both a ship owner and charterer should be jointly and severally responsible.⁴⁵⁹ In support of this point of view he cites in particular the American case of *The Quarrington Court*.⁴⁶⁰ In this case a bill of lading signed by the charterer's agent on behalf of the master in accordance with the authorization to sign bills of lading was found to bind both the charterer and owner. However, Professor Tetley cites several additional cases which illustrate that this area of law is as yet unsettled,⁴⁶¹ and in particular there does not

⁴⁵⁵ William Tetley, *Marine Cargo Claims*, 3rd ed (Cowansville, Yvon Blais, 1988) at p. 231.

⁴⁵⁶ *Wilson, Carriage of Goods 5th*, *supra* note 449 at 235.

⁴⁵⁷ William Tetley, *Marine Cargo Claims*, 3rd ed (Cowansville, Yvon Blais, 1988) at p. 242. It must also be pointed out that in liner trades the shipping line will often have their name on the bill of lading (see appendix C), which makes it more likely, but not definitive, that they are the carrier. In the tramp shipping trades the bills of lading tend not to identify the carrier in an obvious fashion.

⁴⁵⁸ While the potential carriers will depend on the actual circumstances some of the possibilities are the head owner, the time charterer, any other time charterers (if the vessel is operating under a chain of time charters) and the ship manager.

⁴⁵⁹ William Tetley, *Marine Cargo Claims*, 4th ed (Cowansville, Yvon Blais, 2008), at 565 footnote #2 and p 566-567, William Tetley, *Marine Cargo Claims* 3rd ed (Cowansville, Yvon Blais, 1988) [*Tetley, Marine Cargo Claims 3rd*] at p. 242. However, as noted the English position seems clear that there can only be one carrier, see: *Wilson, Carriage of Goods 4th*, *supra* note 96, p 231.

⁴⁶⁰ 36 F. Supp. 278; 1940 AMC 1546 (S.D.N.Y. 1940), cited in Tetley, *Marine Cargo Claims 3rd*, *supra* note 440 at p. 242.

⁴⁶¹ *United Nations Children's Fund v S.S. Nordstren* 251 F. Supp. 833 (S.D.N.Y. 1966), *Hasbro Industries v St. Constantine* 705 F.2d cited in Tetley, *Marine Cargo Claims 3rd*, *supra* note 470 at p. 243.

appear to be any English precedent that the owner and charterer are jointly responsible as carriers, however, in *Hiram Walker & Sons v. Dover Navigation* there were obiter comments that the owner could have been found liable in tort and the charterer in contract had there been a lack of exercise of due diligence to make the vessel seaworthy.⁴⁶² While interesting this is clearly different than the owner and time charterer both being carriers, in that an action in tort is based on a breach of a duty of care which is separate concept than that of the carrier. Having said this, it is illustrative of the way in which a time charterer can be pursued outside of the context of carrier.

In general terms when a vessel is on time charter the bill of lading will frequently be issued by the time charterer (or the time charterer's agent) on behalf of the vessel owner. This is provided for in the NYPE charter party at clause 8 which states that the Captain is to sign bills of lading in conformity with the mate's or tally clerk's receipts. The charter party will often provide that the charterer is able to sign the bill of lading on behalf of the master.⁴⁶³ In such a case the bill of lading will normally be signed "for and on behalf of the master" and this signature will bind the owner as if the master had signed the bill of lading personally.⁴⁶⁴ Bills of lading issued in this manner are binding on the ship owner, and the owner will be the carrier in such circumstances.⁴⁶⁵

A key point in this is that the time charterer is to sign bills of lading in accordance with the mate's receipt, which is to say that the time charterer is to issue, or cause

⁴⁶² (1949) 83 Ll. L Rep. 84.

⁴⁶³ *Girvin*, 2nd *supra* note 3, 12.09.

⁴⁶⁴ For authority that the charterer signing will bind the owner see *Tillmans v Knutsford* [1908] AC 406, for authority that an agent signing binds the owner see *The Berkshire* [1974] 1 Lloyd's Rep 185.

⁴⁶⁵ *Wilson, Carriage of Goods 4th*, *supra* note 96, p 236.

to be issued, bills of lading that are accurate.⁴⁶⁶ Whether an inaccurate bill of lading binds the owner will be examined in a later section.⁴⁶⁷

While the focus thus far has been on the owner as carrier it must also be noted that the time charterer can also assume the role of carrier.⁴⁶⁸ Whether the time charterer has done so will be a matter of fact. Professor Tetley states that the charterer can primarily assume this role in two ways, the more obvious of these ways is by issuing bills of lading in his own name.⁴⁶⁹ A second way which Professor Tetley points out is when the charterer accepts some of the responsibilities of the carrier under the *Hague-Visby Rules*, an example of which would be sub-chartering to a party which then issues bills of lading in their own name.⁴⁷⁰ An alternative method of the time charterer assuming the role of carrier is providing in the time charter that the master is to sign the bills of lading on behalf of the charterer.⁴⁷¹ In the circumstance where the time charterer has assumed the role of carrier then they will be the correct party against whom to pursue an action under the bill of lading.

Some bills of lading will also include identity of carrier clauses, which specify which party is the contractual carrier. These clauses will often be inserted in the bill of lading stating that the contractual carrier is the shipowner, with the goal of relieving the time charterer of liability to the extent for claims against the carrier under the bill of lading. The validity of these clauses is considered questionable and they will not necessarily be determinative of the identity of the actual carrier,⁴⁷² in particular because it can be viewed as an attempt by the charterer to avoid responsibility under

⁴⁶⁶ Girvin, 2nd *supra* note 3, 12.09.

⁴⁶⁷ Section 5.10, *infra*.

⁴⁶⁸ *Hague-Visby Rules* Art 1(a).

⁴⁶⁹ Tetley, *Marine Cargo Claims 3rd*, *supra* note 470 at p. 240.

⁴⁷⁰ *Ibid*.

⁴⁷¹ Girvin, 2nd *supra* note 3, 12.10.

⁴⁷² Tetley, *Marine Cargo Claims 3rd*, *supra* note 470 at p. 258-259.

the Hague/Visby Rules, which contravenes art. 3(8). The actual carrier is a question of fact taking into account the surrounding circumstances.⁴⁷³ In the Canadian decision of *Canficorp v Cormorant Bulk Carriers* the Federal Court of Appeal held that the time charterer was the carrier in spite of an identity of carrier clause stating the contrary.⁴⁷⁴ In this case the time charterer had sought to avoid liability as the carrier by the insertion of a clause stating that they were not the carrier and that the terms of the booking note were to be superseded by those in the bill of lading. This was found to be invalid by the Court of Appeal insofar as they relieve the time charterer of responsibility as the carrier. However, in the Canadian context it has been opined that the argument that identity of carrier clauses are generally invalid has lost favour.⁴⁷⁵

From a time charterer's perspective identity of carrier clauses are very useful as a device to keep risk with the owner, however, it is clearly not that easy and the actual carrier will not be determined merely through the reading of the identity of carrier clause but also taking into account the surrounding circumstances.

5.6 TERMS OF THE CONTRACT

When the bill of lading is in the hands of a third party the question arises of which document governs the terms of the contract. In the case of a vessel on time charter which has been sub chartered on voyage terms and then loaded a cargo for which a bill of lading has been issued, from the perspective of the time charterer there are three potentially relevant contracts, these being the bill of lading, the voyage charter

⁴⁷³ Sir Guenther Treitel and F.M.B. Reynolds, *Carver on Bills of Lading*, 3rd ed, (London Sweet & Maxwell 2011), 4.032-4.033.

⁴⁷⁴ (1984) 54 N.R. 66.

⁴⁷⁵ Sir Guenther Treitel and F.M.B. Reynolds, *Carver on Bills of Lading*, 3rd ed, (London Sweet & Maxwell 2011), see also *Union Carbide Corp v Fednav Ltd (The Hudson Bay)* (1997) 131 F.T.R. 241.

party and the time charter party. It must be recalled that in the hands of a third party the bill of lading will provide prima facie evidence of the terms of the contract of carriage.⁴⁷⁶

With respect to the charter parties, it is clear that although a third party may be aware of the existence of a charter party he will be unaffected by its terms.⁴⁷⁷

Shipowners (and by extension time charterers) will often wish to incorporate terms of the charter party into the bills of lading. This can be done, but the courts tend to apply a strict interpretation when it comes to the incorporation of charter party clauses given that the third party shippers are unlikely to have seen the charter party in question. In general explicit language will be required to incorporate a specific charter party provision.⁴⁷⁸ There are three conditions which must be met in order for a charter party clause to be incorporated in a bill of lading. The first is that the words of incorporation must be found in the bill of lading, and not just in the charter party.⁴⁷⁹ The second is that any clause that is to be incorporated must be sufficiently described, there are many cases in this area and the courts have varied in how strictly they apply this requirement.⁴⁸⁰ Fundamentally the position is that a mere reference to the charter party on the face of the bill of lading will be insufficient, there will generally need to be some description of the specific clause.⁴⁸¹ The third requirement is that the terms to be incorporated from the charter party must be consistent with the terms in the bill of lading and in the case of any conflict the terms of the bill of lading will prevail.⁴⁸²

⁴⁷⁶ *The Ardennes* [1951] 1 KB 55.

⁴⁷⁷ *Wilson, Carriage of Goods 4th*, *supra* note 96, 239.

⁴⁷⁸ *Federal Bulk Carriers Inc v C Itoh & Co. Ltd (The Federal Bulker)* [1989] 1 Lloyd's rep 103.

⁴⁷⁹ *The Varena* [1983] 2 Lloyd's Rep 592.

⁴⁸⁰ *Girvin*, 2nd *supra* note 3, 12.22 – 12.26.

⁴⁸¹ *TW Thomas & Co Ltd. v Portsea Steamship Co. Ltd.* (1912) AC 1.

⁴⁸² *Miramar Maritime Corp v Holborn Oil Trading Ltd (The Miramar)* [1984] 1 AC 676.

Therefore, broadly speaking, the time charter will regulate relations between the vessel owner and time charterer, the voyage charter party between the time charterer and the voyage charterer and the bill of lading between the shipper or holder of the bill of lading and the carrier. The exception with respect to the bill of lading is if the shipper or holder is the voyage charterer and the carrier is the time charterer, in such a case the voyage charter is the contract. However, in the case that the voyage charterer is the holder of the bill of lading and the carrier is the actual owner then the terms of the bill of lading will evidence the contract between the carrier (the ship owner) and the holder (the voyage charterer).

5.7 THE TIME CHARTERER'S RIGHT TO GIVE ORDERS RELATING TO THE BILL OF LADING

There are several issues that arise with respect to bills of lading which are generally related to the role of the bill of lading as an instrument of international trade.

Upon completion of loading the cargo the bill of lading should be issued in accordance with the cargo condition noted on the mate's receipt. However, for reasons outlined above,⁴⁸³ the voyage charterer may desire a bill of lading that is noted as clean on board. In such a case it must be determined whether the voyage charterer has a right to require such a bill from the time charterer, and in turn whether the time charterer has a right to require such a bill of lading from the owner.

Once a bill of lading is issued the party wishing to claim the cargo at the port of discharge will be required to surrender the bill in exchange for the cargo. This gives

⁴⁸³ Section 5.3, *supra*.

rise to the issue of what happens if the bill of lading is not available at the discharge port and whether the time or voyage charterer can give a legitimate order requiring discharge without presentation of the original bill of lading.⁴⁸⁴

These issues lead to the question to the extent to which the charterer has a right to give orders with respect to bills of lading.

The first concern to be addressed, and one of the riskiest from the perspective of the owner and time charterer, is the omission of the notation of any defects on the bill of lading in exchange for a letter of indemnity. This is a controversial practice which has been described as fraudulent.⁴⁸⁵ However, the issuance of incorrect bills of lading against letters of indemnity remains a continuing practice.⁴⁸⁶

This issue is complicated by the fact that the bill of lading may be transferred to a third party, and that in many cases the clean bill of lading will be issued on behalf of the owner. Therefore, this is an issue that must be considered both from the perspective of a "to order" bill of lading and a non negotiable bill of lading.

The first question to be examined is whether the time charterer has a right to order the master to sign a bill of lading which is not representative of the actual cargo condition.

⁴⁸⁴ This practice involves risks relating more to the financial standing of the party issuing the letter of indemnity and is not considered a fraudulent practice, see *Girvin, Carriage of Goods*, *supra* note 56 at 10.19.

⁴⁸⁵ In *The Saudi Crown* [1986] 1 Lloyd's Rep 261 the issue of backdated bills of lading resulted in a finding of fraudulent misrepresentation. In *The Hector* [1998] 2 Lloyd's Rep 287 the issue of bills of lading that were backdated and issued without notations from the mate's receipt were considered fraudulent. See also William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004) , 287, p. 299. A bill of lading showing the shipment date is required under the *Hague-Visby Rules* at Art III section 7.

⁴⁸⁶ William Tetley, *ibid*, at 293.

Despite phrasing requiring the master to sign bills of lading “as presented”⁴⁸⁷ there is clearly no right to require a master to sign a bill of lading which is inaccurate, as is made clear in several cases.⁴⁸⁸ As required required by the *Hague-Visby Rules* at article III section 3 and affirmed in *Cia Naviera Vasconzada v Churchill & Sim* the master should clause the bills of lading to accurately reflect the condition of the cargo,⁴⁸⁹ and as per *The Boukadoura* the same is true with regard to the cargo quantity loaded.⁴⁹⁰ As per *The Nogar Marin* the master must check the cargo and clause the bills of lading even if the charter party requires that the bills of lading be issued as presented.⁴⁹¹ Therefore, there clearly exists no right on the part of the time charterer to order the master to issue a bill of lading which is not consistent with the actual condition or details of the cargo.

Given that there is no inherent right on the part of the time charterer to issue non conforming bills of lading the issuance of these bills will involve risks, the question which arises is the nature of these risks, to which party they accrue and the ways in which these risks can be avoided or minimized.

In the view of ship operators and voyage charterers the issue of clean bills of lading is one of commercial convenience, the frequently cited logic is that both the buyer and seller are aware of the actual cargo condition and as such the omission of actual cargo condition from the bill of lading is therefore not fraudulent but merely

⁴⁸⁷ NYPE Time Charter Party 1993 at line 308.

⁴⁸⁸ This is also made clear in the clause itself, which specifies that the bill of lading is to be issued in accordance with mate’s and tally clerk’s receipts, *ibid* line 309.

⁴⁸⁹ [1906] 1 KB 237.

⁴⁹⁰ [1989] 1 Lloyd’s Rep 393.

⁴⁹¹ [1988] 1 Lloyd’s Rep 412.

commercially expedient and a byproduct of an inflexible system of international trade.

The opposing view is that bills of lading will frequently be transferred to third party buyers who are relying on the description provided in the bill of lading. In such an instance it is possible that the buyer, who is relying on the bill of lading description, will not be aware of the actual condition of the cargo allowing an unscrupulous seller to take advantage of the unclausal nature of the bill of lading. Alternatively, an unscrupulous buyer may use the clean bill of lading to pursue an action for damages even when the cargo condition is what was expected.

A further complication which arises is that in addition to the preexisting damage that should have been noted on the bill of lading there is additional damage that occurs during carriage and confusion may result as to which damage was pre-shipment and therefore subject to the letter of indemnity and which damage occurred during shipment.⁴⁹²

Therefore it can be seen that that incorrectly clausulating bills of lading can lead to consequences which range from commercial confusion to outright fraud and as such significant risks arise. If the time charterer acts without the authority of the owner in taking this type of action then it is possible that they will be confronted with the risk of significant liability, and as such the time charterer's specific position in this contractual chain must be considered.

⁴⁹² William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004) , 287, p. 302 the author undertakes a discussion of Letters of Indemnity and subsequent damage, noting that distinguishing between pre-existing damage and subsequent damage can present difficulties and that the courts have dealt harshly with subsequent damage cases when LOIs have been issued: *Copco Steel & Eng Co. v S.S. Alwaki* 131 F. Supp. 332 1955 AMC 2001 (S.D.N.Y. 1955).

5.8 ANTEDATED BILLS OF LADING

A variation of incorrect bill of lading is the antedated bill of lading. This occurs when the bill of lading is dated to reflect an earlier date than that upon which the cargo was actually shipped.⁴⁹³ This arises because often the sales contract stipulates that the cargo must be shipped by a certain date, and if the bill of lading is dated after this date then the buyer will have a right to reject the documents and consequently the cargo.⁴⁹⁴

The two concerns most often associated with the antedated bill of lading are the possibility that the purchaser will reject the cargo or alternatively that the price will be influenced by the bill of lading date.

The issue of the potential impact of bill of lading date on the price of the goods clearly illustrated in *The Almak*.⁴⁹⁵ The vessel loaded both gasoline and gas oil. The gas oil was loaded primarily on June 21 and 22, with a small final quantity being loaded on June 27. The bill of lading was incorrectly dated June 22, rather than being dated the final day of loading on June 27. The price payable for the gas oil was to be calculated on the bill of lading date. In this case the price of gas oil fell by USD 7.00 per ton between June 22 and June 27. This resulted in an overpayment for the gas oil of approximately USD 230,000. A claim was brought against the time charterer for the loss. This case is complicated by the fact that the vessel is on time

⁴⁹³ The bill of lading is supposed to be dated the day upon which the cargo covered by that bill of lading completes loading.

⁴⁹⁴ In this regard see *Rudolf A Oetker v IFA Internationale Frachagentur AG (The Almak)* [1985] 1 Lloyd's Rep 557 and *Standard Chartered Bank v Pakistan National Shipping Corp.* [2002] UKHL 43.

⁴⁹⁵ *Rudolf A Oetker v IFA Internationale Frachagentur AG (The Almak)* [1985] 1 Lloyd's Rep 557.

charter to an operator, then on sub time charter to the cargo interest. It was held that a time charterer had not impliedly warranted to ensure the correctness of the date to a sub time charterer. The case does seem to suggest that had the claim been brought by a voyage charterer it would have been successful.

The Almak clearly illustrates the risks of incorrectly dating the bill of lading. In this case it was held that a term could not be implied that the time charterer was under an obligation to ensure that the bill of lading tendered to the master for signature would contain only accurate details. This however does strongly imply that in the case of a bill of lading signed by the time charterer on behalf of the master that the owner would have a valid claim against the time charterer. When this is considered in conjunction with the implied indemnity contained in time charters it is a virtual certainty that an owner would be entitled to an indemnity from the time charterer.

The other key issue related to the date of the bill of lading is that of rejection of the documents by the buyer. In the case of *The Saudi Crown* the vessel loaded a cargo of Indian ricebran extractions.⁴⁹⁶ Under the sales contract the bills of lading were to be dated latest July 15 failing which the buyer had a right to reject the documents. As it transpired loading only completed on July 26. Irrespective of this fact bills of lading were dated July 15. The plaintiff accepted the documents and authorised payment without realizing that the bills were wrongly dated. The plaintiff subsequently was required to buy additional product to meet commitments when it became clear that the vessel would not arrive in time. The plaintiff then commenced an action against the vessel owner for misrepresentation as to the date of the bill of lading, contending that the documents would have been rejected had the bill been

⁴⁹⁶ (1986) 1 Lloyd's Rep 261.

correctly dated. The court held that there was a right to recover damages from the vessel owner for the loss of the right to reject.⁴⁹⁷

Therefore, should a time charterer choose to incorrectly date a bill of lading this is done at his own peril, and the vessel owner will have the right to an indemnity. It should also be noted that although this section has dealt with the issue of antedated bills of lading, the less common situation of a post-dated bill of lading would logically give rise to similar rights and remedies.

5.9 PACKAGE LIMITATION

In the case that an inaccurate bill of lading is issued a significant concern which may from the perspective of both the time charterer and the vessel owner is the issue of whether they can benefit from the limit per package imposed by the *Hague-Visby Rules* Art IV(5)(a) in the event of a cargo claim.⁴⁹⁸ The reason that this is significant is that the package limitation typically leads to a lower level of liability for the liable carrier and as such it is advantageous that the package limitation be in force. It may be argued that the limitation does not apply in light of Art IV(5)(e) which states that the limitation on liability will be lost in cases where it is proven that the damage resulted from a reckless act, or one done with intent to cause damage. However *The Nea Tyhi*, is also useful in this context.⁴⁹⁹ In this case the bills of lading were issued incorrectly describing cargo as being loaded under deck when it was in fact loaded on deck. Notwithstanding this inaccuracy in the bill of lading the owner was able to

⁴⁹⁷ *Kwei Tek Chao v. British Traders & Shippers Ltd* [1954] 2 Q.B. 459 is a case involving an antedated bill of lading where despite having disposed of the goods the buyers had a claim in damages for the loss of the right to reject the documents.

⁴⁹⁸ The *Hague-Visby Rules* are incorporated into English Law by the Carriage of Goods by Sea Act 1971 and into Canadian Law under the Marine Liability Act 2001.

⁴⁹⁹ [1982] 1 Lloyd's Rep 606.

benefit from the package limitation. This finding can be viewed as analogous to a failure to clause a bill of lading correctly, in which case the benefit of the package limitation would not be lost by failure to properly clause the bills of lading. The situation is not entirely certain as the American case of *American Industries Corp v Margarite* is authority that in the event that the condition of the cargo is misstated with the knowledge of the carrier then the protection of the package limitation will be lost. However, in the event that the ship owner is the carrier and the time charterer issues a clean on board bill of lading without the knowledge of the ship owner even in the American context it is possible that the actual owner will still benefit from the package limitation. In such a case it is possible that the holder of the bill of lading may have an action in tort against the time charterer. While Professor Tetley argues for the loss of the package limitation in the case of false bills of lading,⁵⁰⁰ he also notes that the package limitation will be lost only under extraordinary circumstances.⁵⁰¹ On the balance of probabilities it would seem that an incorrectly clausued bill of lading would still allow the carrier to benefit from the package limitation.

Also worthy of note is the more recent case of *The Elpa*⁵⁰² where it was held that the "Inter-Club Agreement"⁵⁰³ was applicable in the case of defective bills of lading; the judgment stating that the Interclub Agreement would have only been inapplicable had the protection of the *Hague-Visby Rules* been lost. Therefore, this case suggests that a defective bill of lading does not eliminate all protection for the owner under

⁵⁰⁰ Tetley, *Marine Cargo Claims 4th*, *supra* note 470, p. 2028.

⁵⁰¹ *Ibid*, p. 2195.

⁵⁰² (2001) 2 Lloyd's Rep 596.

⁵⁰³ The Inter-Club New York Produce Exchange Agreement (known as the "Inter-Club Agreement") is an agreement between Protection and Indemnity Insurers allocating the division of cargo claims between the owner and the time charterer.

the *Hague-Visby Rules*, and it is therefore arguable that this is authority that the carrier can retain benefit of the package limitation.

Additionally, in the case of *The Kapitan Petko Voivoda* the Court of Appeal held that where the owner breached the terms of the voyage charter party by stowing cargo on deck that had been agreed for under deck stowage that the owner could still benefit from the package limitation in the Hague Rules.⁵⁰⁴

Under Canadian law there does not appear to be any decided cases on this point, however Professor Tetley has advanced the opinion that a carrier who issues inaccurate bills of lading should not be able to benefit from the package limitation.⁵⁰⁵

It is therefore concluded that failure to properly clause the bills of lading will not result in loss of the protection of the package limitation found in the *Hague-Visby Rules*.

5.10 LETTERS OF INDEMNITY FOR CLEAN BILLS OF LADING UNDER TIME CHARTERS

The issues to be addressed in this section are the question of whether the actual owner is required to accept a letter of indemnity, whether the time charterer is required to accept a letter of indemnity and the enforceability of such an indemnity. Also to be considered is the impact of different phrasing under the charter party and

⁵⁰⁴ *Daewoo Heavy Industries v Klipriver Shipping Ltd. (The Kapitan Petko Voivoda)* [2003] EWCA Civ 451. Under the contract the cargo was for carriage to Turkey, which had enacted the Hague Rules, which were also applicable under the general paramount clause, but not the *Hague-Visby Rules*. However, there is an applicable package limitation in both and the principle established would apply to the *Hague-Visby Rules*.

⁵⁰⁵ Tetley, *Marine Cargo Claims* 3rd, *supra* note 470, p. 828.

whether an indemnity foreseen in the charter party is enforceable under that document.

In terms of whether an owner can be required to accept a letter of indemnity there is no basis in law or practice that would obligate a ship owner to issue an incorrect bill of lading in exchange for such an undertaking. Time charters might sometimes include a provision that clean bills of lading are to be issued against a letter of indemnity, although this is unusual and a time charter party will more often include phrasing stating that bills of lading are to be issued in accordance with mate's receipts with the time charterer accepting liability for all consequences arising from failure to comply with this provision.⁵⁰⁶ The implications of such clauses are two fold, the first being whether these imply that the owner has acquiesced to the issuance of non conforming bills of lading and as such may then assume additional liability and second whether these clauses give the time charterer an enforceable right against the owner to force the issue of clean bills of lading. In a situation where the owner has agreed to the release of a clean bill of lading in exchange for a letter of indemnity then the owner will not be able to argue that such a bill was drawn without his consent.

In order to properly examine the remaining issues the question of whether letters of indemnity are legally enforceable will first be examined. This will be followed by a consideration of whether a party can be compelled to issue incorrect bills of lading including the scenario where it has been agreed in the charter party that such bills are to be issued.

⁵⁰⁶ See NYPE 1993 at clause 30 and Shipping Federation Course Notes "Commercial & Contractual Aspects of Shipping" Lecture 3, section 2, available at: http://www.shipfed.ca/new/eng/original/Training/Lectures/4CommercialContract/Lecture3/CC_Lecture3_Notes.pdf

It has already been established that there exists no right for the time charterer to order the owner to issue a non conforming bill of lading, and that furthermore the owner has an obligation to issue a bill of lading that correctly represents the condition of the cargo. It has further been noted that in a great many time charters the owner will delegate authority to issue bills of lading on behalf of the vessel to the time charterer.

The general view is that letters of indemnity issued in exchange for clean on board bills of lading are legally unenforceable.⁵⁰⁷ However, this being said they remain in wide commercial use to the extent that a standard wording can be found on the website of a major Protection and Indemnity Association.⁵⁰⁸

This unenforceability must be examined in the context of the exact wording of the letter of indemnity, given that letters of indemnity are typically considered unenforceable as they are often thought to be a contract to perform an illegal act,⁵⁰⁹ the question will arise as to whether this point can be avoided through the use of specific wording in the letter of indemnity. In other words, if the contract is no longer tainted with illegality it should be valid.

⁵⁰⁷ See the comments regarding the issue of mis-dated bills of lading in *Girvin*, 2nd *supra* note 3 at 11.06. See also the case of *United City Merchants (Investments) Ltd. v Royal Bank of Canada* [1983] 1 AC 168, where bills of lading were fraudulently issued without the knowledge of the carrier. In this case, involving an international sales contract and letter of credit, the fraud exception under a letter of credit was limited to cases where the beneficiary had knowledge of the fraud. This is further examined in: Dr. Hang Low, "Confusion and difficulties surrounding the fraud rule in letters of credit: an English perspective" 17 JIML (2011) at 462-480.

⁵⁰⁸ http://www.eastpandi.com/_images/uploads/downloads/Letter_of_Indemnity_against_clean_BL.doc viewed July 10, 2012.

⁵⁰⁹ *Girvin, Carriage of Goods*, *supra* note 67 at 6.29-6.30.

While there is a widely held belief that letters of indemnity are legally meaningless this assumption is not based on a large body of case law. The logic generally applied is that the issuance of a clean bill of lading for damaged goods in exchange for a letter of indemnity is a fraudulent practice and as such it is unenforceable because it is an illegal contract.⁵¹⁰ Therefore, the prevailing opinion is that letters of indemnity are meaningless not only as against third parties, but also as between the contracting parties, with the effect being that it is up to the issuer whether or not to honour the indemnity.⁵¹¹

However, it must also be noted that it has been suggested that letters of indemnity may be enforceable when there is a legitimate dispute as to the condition of the cargo.⁵¹² The key differentiating factor seems to be the presence of an absolutely false representation in the bill of lading. In the Canadian case of *Cormorant Bulk Carriers v Canficorp (Overseas Projects) Ltd* there was the issue of a bill of lading for a cargo destined for Iraq.⁵¹³ However, at that time cargo for Iraq needed to be transshipped via Kuwait. There arose various difficulties and the owner required that a letter of indemnity be issued due to the cargo being in transshipment to Iraq rather than destined for Kuwait. Ultimately additional costs were incurred which the owner claimed for under the indemnity. The argument was advanced that the letter of indemnity was not legally enforceable, which was rejected and the case was distinguished from *Brown Jenkinson v Percy Dalton* on the basis that there was no false representation made in the bill of lading.⁵¹⁴

⁵¹⁰ *Brown, Jenkinson & Co., Ltd v Percy Dalton*, [1957] 2 Lloyd's Rep 1, and see generally Tetley, *Marine Cargo Claim 3rd*, *supra* note 470 chapter 38 generally and in particular pages 821, 823-824.

⁵¹¹ *Girvin, Carriage of Goods*, *supra* note 67 at 6.29-6.30.

⁵¹² William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004), 287, p. 294.

⁵¹³ *Canficorp v Cormorant Bulk Carriers* (1984) 54 N.R. 66.

⁵¹⁴ *Ibid.*

This appears to be the key element and distinction, that in the event that a bill of lading contains a false representation then a letter of indemnity issued pursuant to those false representations will be invalid, and that the carrier is estopped from enforcing the letter of indemnity.

It is also arguable that cases regarding letters of indemnity and bills of lading will be decided on their facts.⁵¹⁵ Those accepting letters of indemnity may argue that there was a dispute with respect to the specific remarks suggested and for this reason a letter of indemnity was required.⁵¹⁶ However, from a practical standpoint reservations that should be incorporated in a bill of lading will often be based on a report prepared by an independent surveyor which would make this a more difficult argument given that the condition has been assessed by an third party expert who has recommended the notations. Furthermore, it is considered that the courts would be skeptical of a party's assertion that a letter of indemnity was required due to a legitimate dispute regarding bill of lading clausings when there was little resistance to the noted reservations. In the event of a bona fide dispute regarding condition one would expect consultation with surveyors and possibly insurers as well as an extensive dialogue with the voyage charterer and ship owner. In the case of a legitimate dispute one would expect that there would be no pre-existing agreement to issue a letter of indemnity, that the cargo interest would be informed of the notations to be placed on the bill of lading and then steps would be taken to resolve the situation. Therefore it is submitted that while in theory it is possible for the

⁵¹⁵ Stephen Girvin raises the suggestion that an indemnity may be valid with no intention to defraud, see *Girvin, Carriage of Goods*, *supra* note 67 at 6.31, and *Brown, Jenkinson & Co., Ltd v Percy Dalton*, [1957] 2 Lloyd's Rep 1 where it is suggested that a letter of indemnity may be acceptable when the matter is trivial or where there is a "bona fide" dispute as to the condition of the cargo.

⁵¹⁶ There is a possible argument that in the case of a bona fide dispute regarding condition that a letter of indemnity may be legitimate. This is a suggestion that is inferred from Professor Tetley's arguments regarding letters of indemnity, see footnote 503. It is far from certain that this argument would be effective.

owner or time charterer to advance the argument that there was a disagreement with respect to the clausings that the court would set a high threshold with respect to proof. Also, even though it is considered possible that a letter of indemnity would be accepted by the courts in the situation of a bona fide dispute Professor Tetley suggests that it is preferable to find another alternative.⁵¹⁷ Given the general history of LOIs and the probably resistance of the courts to allowing them to be enforced it would seem that finding an alternative solution is the preferable approach.

The argument can also be made that, for certain cargoes, that notations that are regularly included on the mate's receipt do not represent an actual diminution in the value of the cargo or the notations constitute a condition of the cargo which could be reasonably expected and therefore these remarks should not be included on the bill of lading. While this line of thinking is not without merit it would again be judged on the facts of the case. An example of the application of this argument is in trades involving steel cargoes. Those involved in the issue of bills of lading may argue that certain conditions associated with steel cargoes, such as surface rust, are normally to be expected and should therefore not be included on the mate's receipt. While there may be validity to this suggestion a better solution is to establish specific standard notations for bills of lading that can be used and are deemed acceptable for letter of credit purposes, because while certain imperfections may commonly occur as long as there is the potential that cargo is shipped without any defects then the notation "clean on board" must be reserved for cargo without imperfections,⁵¹⁸ whether these are commonly occurring or whether they represent a legitimate diminution in value.

⁵¹⁷ William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004), 287, p. 294.

⁵¹⁸ Returning to the example of surface rust on steel as long as it is possible for steel to be shipped without surface rust then such notations may be placed on the bill of lading. While it may be common for steel cargoes to be shipped with surface rust it is speculative to assume that all buyers are indifferent to this fact.

There are variations on the wording contained in letters of indemnity which may try and make it clear no fraud is intended. However the strong preponderance of opinion is that as long as the goal of the letter of indemnity is to misrepresent the condition of the cargo, irrespective of the intended purpose, that the indemnity will be unenforceable. Given that this is fundamental, it essentially does not matter what specific provisions are contained within the letter of indemnity because it will be unenforceable and the specific terms of the contracts cannot cure this initial defect.

As noted above, the East of England P & I Club include on their website a copy of a letter of indemnity to be given in exchange for the omission of remarks on a bill of lading.⁵¹⁹

5.11 LETTERS OF INDEMNITY FOR CLEAN BILLS OF LADING UNDER VOYAGE CHARTERS

As in time charter parties there is no right for a voyage charterer to demand that the owner or operator issue bills of lading that do not reflect the actual condition of the cargo,⁵²⁰ and in fact the owner is under an obligation to accurately describe the condition of the cargo.⁵²¹

There is, however, a great incentive for the voyage charterer to obtain clean on board bills of lading as they are typically involved in some aspect in the sales transaction and thus relying on obtaining clean on board bills of lading in order to secure payment for the merchandise shipped. Therefore the voyage charterer will be

⁵¹⁹ <http://www.eastpandi.com/>.

⁵²⁰ *Girvin*, 2nd *supra* note 3, 6.38 and see *Derry v Peek* (1889) 14 App Cas 337. This is also in accordance with the *Hague-Visby Rules* at Art III(3).

⁵²¹ *Girvin*, 2nd *supra* note 3, 6.37-6.38 and *Hague-Visby Rules* at Art III(3).

eager to have the time charterer accept a letter of indemnity in exchange for omitting remarks on the bill of lading.

An issue that must be addressed is whether an operator who has agreed under the voyage charter to issue inaccurate bills of lading in the voyage charter has a duty to issue such bills of lading based on the agreement in the voyage charter. It is considered clear that such a provision is effectively unenforceable as it is a provision to, fundamentally, perform a fraudulent act and as such the voyage charterer cannot claim damages arising from the operators failure to perform such an act.⁵²²

5.12 INCORRECT BILL OF LADING: IDENTITY OF THE CARRIER

Given that the emphasis of this work is on risks and relationships related to charter parties the issue of who is the carrier is a subsidiary topic that, while important in the context of this topic in a larger sense, is one that is of less direct relevance, but it must nevertheless be briefly explored.

When a ship is on time charter the carrier can be either the time charterer or the owner. The identity of the carrier is important as any claims for damage to cargo will generally be directed to the carrier,⁵²³ and under English law there can be only one carrier,⁵²⁴ while under Canadian law it appears that multiple carriers is possible.⁵²⁵

⁵²² It goes without saying that this would, however, be commercially unwise.

⁵²³ It is very important from the claimant's perspective to sue the correct party as under the *Hague-Visby Rules* III(6) any cargo claim must be brought within 12 months.

⁵²⁴ *Girvin*, 2nd *supra* note 3 12.08.

⁵²⁵ See section 5.5. *supra*.

The general rule under English law is that the owner will be the carrier, as the owner remains responsible for management of the vessel. This is made clear in *Wehner v Dene Steamship Co.* which stated that a bill of lading will usually form a contract between the sub-charterer (the voyage charterer) and the vessel owner.⁵²⁶

It is possible, however, for the time charterer to be the carrier, as provided for in Article I(a) of the *Hague-Visby Rules*. This can be achieved by the master signing the bill of lading “for and on behalf of the charterer”, by the charterer issuing bills of lading in his own name, or by signing bills of lading without indicating that he is signing on behalf of the owner.⁵²⁷ It must be noted that this determination will only be made by a construction of the documents as a whole and thus it will very much be a question of the facts.⁵²⁸

A question of further relevance is whether the time charterer, by issuing non conforming bills of lading, assumes the role or responsibilities of the carrier from the owner even if the bills of lading that are issued are owner’s bills of lading. There are essentially three issues, these being whether the owner remains responsible as carrier even in the case of a mis-issued bill of lading, if the owner is relieved of responsibility entirely or whether the charterer owes the owner an indemnity. The distinction between the owner having no responsibility and being indemnified by the time charterer is one that is more significant to the owner than the charterer. If the owner is completely relieved of any responsibility for the claim by mis-issuance of the bill of lading then the claimant will only have recourse against the time charterer, which is of course the owner’s preferred position. If the owner and time charterer are jointly liable, or if the owner is liable and the time charterer owes the owner an

⁵²⁶ [1905] 2 KB 92.

⁵²⁷ *Girvin*, 2nd *supra* note 3 12.11.

⁵²⁸ *Ibid.*

indemnity then in either case the owner is relying upon the solvency of the time charterer. Conversely, if the time charterer is ultimately responsible for claims arising due to the issue of the letter of indemnity there will be less concern for whether liability arises either directly or through an indemnity. From a practical standpoint involving the owner in the claim at least gives the time charterer better access to evidence, information and facts that the owner may have concerning the vessel and cargo.

The following sections will examine the issues of which party is responsible when bills of lading are mis-issued.

5.13 MASTER'S MIS-ISSUANCE OF BILLS OF LADING

An alternative scenario occurs when the vessel's master erroneously issues bills of lading that do not conform to the actual description of the goods, resulting in the question of whether the time charterer or the owner will bear the responsibility for such an error. A leading case in this regard is the *The Nogar Marin*.⁵²⁹ In this case the vessel loaded a cargo of wire rod in coils. The charterer tendered to the master a mate's receipt without any remarks which was signed on behalf of the owner. The cargo was in reality rusty, a fact which the master should have noted on the mate's receipt.⁵³⁰ The agent then issued clean bills of lading in accordance with the clean mate's receipt. It was held that the time charterer was not liable to indemnify the owner for the resulting claim due to the fact that the bill of lading conformed to the mate's receipt. This reasoning is also in line with The *Hague-Visby Rules* at Art III(4) to the extent that the bill of lading serves as *prima facie* evidence that the goods are

⁵²⁹ (1988) 1 Lloyd's Rep 412.

⁵³⁰ It was held in the decision that the master had acted negligently in not adding notations regarding the condition of the cargo to the mate's receipt.

in the condition as described therein. However, as it is *prima facie* it can be rebutted by evidence to the contrary. Once transferred, the condition of the cargo in the bill of lading can no longer be rebutted and the carrier is estopped from showing evidence to contradict that conditions in the bill of lading.⁵³¹

However, it has been established in *The Arctic Trader* that the time charterer has no recourse against the owner should the owner fail to correctly clause the bill of lading.⁵³² There is no implied obligation on the part of the owner to inform the time charterer of the condition of the cargo, as it is expected that the time charterer will have such knowledge through the voyage charterer.⁵³³

Therefore, in the case of the master erring in the issue of bills of lading such an error will not result in the owner owing an indemnity to the charterer. Equally, the owner will be unable to claim an indemnity from the time charterer for such an error. The inability of the time charterer to claim an indemnity from the owner constitutes another risk for the time charterer. This arises in the sense that the owner may incorrectly issue a bill of lading, however the voyage charterer may claim against the time charterer under the voyage charter for cargo damage. If the cargo damage is pre-shipment which was not noted on the bill of lading then the time charterer will most likely be liable, liability which could have been avoided had the bill of lading been properly cloused. However, the time charterer will be unable to claim an indemnity from the owner. Consequently, a vessel's master should not be relied upon completely to issue bills of lading, the time charterer should make inquiries as to cargo condition and confirm that the master is acting prudently.

⁵³¹ *Trade Arbed Ltd v MV Swallow* 688 F. Supp. 1095 at p. 1106, 1989 AMC 2218 at p. 2222 (E.D. La. 1988). The Canadian case of *Canastrand Industries v The Lara S* [1993] 2 F.C. 553 is authority that when a buyer takes up a clean bill of lading there is a presumption that reliance has been place on it.

⁵³² (1996) 2 Lloyd's Rep 449.

⁵³³ *Ibid.*

A simple solution for the time charterer in dealing with this unusual situation is to incorporate a clause in the time charter which states that the master is responsible for verification of the condition of the cargo and that the owner indemnifies the time charterer should any bill of lading that is issued in accordance with a mate's receipt give rise to a claim due pre-loading damage that was not noted due to neglect, negligence or error of the master or his servants. The clause should further provide that the master undertakes to inform the time charterer as to the accurate condition of the cargo.

5.14 POTENTIAL RISK MANAGEMENT APPROACHES FOR TIME CHARTERERS

Clean bills of lading and letters of indemnity (LOIs) represent difficult areas for time charterers and ones which involve balancing of legal considerations and commercial realities. At the most basic level any owner or operator can entirely eliminate the issues surrounding letters of indemnity by simply refusing to agree to any charter party granting the flexibility to issue a bill of lading in a form other than one including all remarks, however in certain trades this approach will prove difficult. This balance between commercial and legal considerations is clearly the driving force behind a P & I Club featuring wording for a letter of indemnity on its website.⁵³⁴

The ideal solution to the issue of the need for clean bills of lading is to address the root cause which would involve a change in the banking system. This could be achieved by developing, for specific trades, standard bill of lading notations that

⁵³⁴ Section 5.10 and refer to footnote 530, *supra*.

would be acceptable for letter of credit purposes.⁵³⁵ In such a case the owner or operator could instruct the vessel to only accept for loading that cargo which would fall within the defined limits set within the letter of credit. This would further assure the owner that the buyer would be aware of the cargo condition and make claims less likely.

This, however, is not a solution which is available for negotiation at the contractual level and furthermore represents a significant shift from current practices. While owners and operators may be able to influence change through resistance of letters of indemnity practically speaking any efforts in this area are likely to be undermined by owners and operators who are willing to issue clean bills of lading for imperfect cargo, this willingness will disadvantage owners competing with them. There are certain instances where the decision will arise for time charterers to either accept that a letter of indemnity will be necessary or concede that they will most likely be unable to conclude an agreement with the charterer. While it is simple to suggest that an owner or operator should simply refuse to do business on these terms it is often difficult to do so from an economic perspective. Also, given that in the vast majority of instances letters of indemnity are not claimed under, and in those cases where they are called upon they are generally honoured there is a temptation to accept them.⁵³⁶ In spite of this there exists a great economic risk, as the party issuing the indemnity may become insolvent, or simply refuse to honour the guarantee. Furthermore, there is always the possibility that the business practice of omitting information regarding the true condition of the cargo can be used towards unscrupulous ends. Therefore, while a shift in banking practices may be desirable it

⁵³⁵ For example, in the steel trades remarks such as “wet before loading” and “some surface rust” could be acceptable on bills of lading. In such a case the buyer would be aware specifically whether or not these were existing conditions on loading the cargo.

⁵³⁶ *Mocatta et al, Scrutton 19th, supra* note 25 at page 112, footnote 57.

is beyond the scope of what the parties can achieve in one contractual negotiation and accordingly beyond the scope of this chapter.

With regard to charter party risks and remedies specifically from the perspective of the time charterer the main risks are that they will effectively assume the role of the carrier as the owner will be relieved of liability, while at the same time losing the cover of their P & I club.⁵³⁷ Under these circumstances it can be seen that the time charterer potentially assumes a great deal of risk.

As noted this risk can be eliminated through simply refusing to issue a clean bill of lading in exchange for an LOI. However, based on the continued practice of issuing clean bills of lading against letters of indemnity this solution would in some instances appear to be commercially unrealistic. Therefore, while noting that issuing bills of lading that do not accurately reflect the condition of the cargo is fraught with potential danger, may be considered fraudulent and should be avoided there are a number of steps that the time charterer can take to minimize the associated risk.

Prior to considering the acceptance of a letter of indemnity the time charterer should first examine all the surrounding circumstances and make any enquiries to ensure to the best of their ability that they are not a party to a fraud.

From a practical standpoint the first step that any time charterer should take is ensuring that the party issuing the LOI is an established company with a good reputation and strong financial position. In short, the time charterer should be comfortable that the signatory has the financial means to honour the commitment,

⁵³⁷ See for example, Gard Club, Rule 34.1 (ix) (www.gard.no) (last viewed September 15, 2013) and Standard Club, Rule 20.21 (v) (e) (www.standard-club.com) (last viewed September 15, 2013).

as well as a reputation for standing by its obligations and the time charterer should in an overall sense be confident that the guarantor can and will honour the commitment. The requirements in this area will not be explored further as this is not a legal consideration, but a business one. A second non legal recommendation is the incorporation of a bank guarantee. The enforceability of a bank guarantee issued in relation to a letter of indemnity is questionable in the same way that the letter of indemnity is, however, from a practical standpoint it is submitted that a bank is less likely to refuse to honour a guarantee given the value that banks typically place on their reputation.⁵³⁸ Additionally, in the event that the letter of indemnity is found to be valid then an attendant bank guarantee will also likely be valid, in which case it could be of great value in the event of insolvency of the LOI signatory. Therefore, the incorporation of a bank guarantee is strongly recommended.

From a legal perspective the clear goal of the operator in accepting a LOI in exchange for a clean bill of lading is to avoid liability for cargo damage that occurred prior to loading. The purpose of the LOI is to leave the time charterer and ship owner in the same position as if the bill of lading had been claused, which is to say with no liability for pre-shipment damage. In terms of where the liability is allocated the time charterer may prefer that liability is correctly attributed to the voyage charterer but the primary goal is to see that liability accrues to another party. As discussed above, letters of indemnity are non binding on third parties and unless the third party had some knowledge of the damage there is virtually no chance that the risk can be passed to them. Therefore, the main focus is on if and how risk can be

⁵³⁸ Having said this, when called upon to pay under letters of undertaking parties will sometimes refuse to pay for a variety of reasons. For a case involving refusal to pay under a P & I letter of undertaking see: *Canmer International Inc v UK Mutual Steamship Assurance Association (Bermuda) Ltd. (The Rays)* [2005] EWHC 1694 (Comm).

managed through shifting responsibility to the owner or voyage charterer, or increasing the likelihood that the risk would be so shifted.

The first step to be considered is with respect to authority to issue the bills of lading. In the event that the time charterer issues a bill of lading on behalf of the owner that is not consistent with the actual cargo condition then liability will accrue to the time charterer. The time charterer also faces potential liability because of the existence of an indemnity from the time charterer to the owner.⁵³⁹ Once the owner has delegated authority for issue of the bill of lading to the time charterer the time charterer will have a primary obligation to issue bills of lading in accordance with the mate's receipt. Should they fail to do so they will owe the owner an indemnity should the owner be found liability for any resulting claims due to the mis-issued bill of lading.⁵⁴⁰ On the other hand, there is no equivalent indemnity under the voyage charter except the indemnity which arises under the LOI, which is of dubious enforceability.

The solution to this is to create the same type of warranty between time charterer and voyage charterer as exists between time charterer and vessel owner., which is to say an indemnity flowing from the voyage charterer to the time charterer in the event that bills of lading are mis-issued. The issue, given the differing nature of time and voyage charters, is how to create this type of indemnity. Clearly the voyage charterer is not in a position to give orders in the same way as the time charterer and this accordingly precludes any type of broad implied warranty arising, as exists in time charters, which would give the time charterer a right of indemnity from the voyage charterer. However, this does not preclude the possibility of explicitly

⁵³⁹ This is the implied warranty in time charters. See, for example, *Girvin*, 2nd *supra* note 3, 33.92, 33.93.

⁵⁴⁰ Generally under the wording of a clause to sign bills of lading or under a specific clause in the charter party.

agreeing to a warranty, which for these purposes would be less limited in scope but could achieve, with regard to bills of lading, the required result. The recommended solution is therefore to delegate signing of bills of lading to the voyage charterer on the same terms as exist under the time charter party. This delegation would take place through a clause in the voyage charter on the same terms as that in the time charter, with the aim being to make the voyage charterer the last link in the chain of parties authorized to issue bills of lading. This should effectively give the time charterer a position equivalent to that of the owner with respect to incorrectly issued bills of lading and would mean that the voyage charterer would have to indemnify the time charterer under the voyage charter party in the event that the bill of lading was issued in an incorrect manner. The objective in this is to affirm the time charterer's place in the contractual chain as a party that can pass claims either to the owner or to the voyage charterer.

This is considered as a potentially very effective method of ensuring that risk remains with either the voyage charterer or the owner. In such a case the voyage charterer assumes responsibility for issuing the bill of lading. It is possible that, given the differing natures between voyage and time charters, that a court would find that rather than having delegated the authority to the voyage charterer in the same manner as the owner delegates the authority to the time charterer that the voyage charterer is still acting on behalf of the time charterer as the time charterer's agent. In such a case this may not improve the time charterer's position. On the balance of probabilities it is considered that the courts would find that the voyage charterer was liable for the issue of the bill of lading, as in such a case the time charterer is not party to actually drafting, approving or issuing the bills of lading and had no control over the failure to properly clause the bills of lading and as such is not liable for their mis-issue. The point of view that the time voyage charterer can cause

bills of lading to be issued and be liable for the consequences relating to bills of lading is found in the recent case of *The Jag Ravi*.⁵⁴¹ While this case involved letters of indemnity for non presentation of bills of lading one of the points made in the case was that a voyage charterer was sufficiently engaged with the bill of lading to receive a letter of indemnity for non presentation of bills of lading. Following this logic, it would also stand to reason that a voyage charterer would also be able to issue bills of lading. In line with this approach it is also suggested that the time charter party include specific wording that the time charterer is permitted to delegate authority to a sub-charterer, whether time or voyage.

A second possibility is incorporating a clause in the voyage charter whereby the voyage charterer expressly indemnifies the time charterer for any consequences arising from the time charterer issuing incorrect bills of lading at the voyage charterer's request. The only advantage that this approach has over the pure letter of indemnity is that the court, reading the entire voyage charter, may find that this constitutes an indemnity similar to the general indemnity in the time charter, whereas the separate letter of indemnity has a strong likelihood to be found as unenforceable. It is, of course, possible that the court will find that the specific clause of the charter party is to have no effect. However, this is still considered less likely than the letter of indemnity being found to be unenforceable. It would be recommended that this be a separate provision from any clause requiring that a letter of indemnity be issued, as it is considered that if the letter of indemnity is ruled to be invalid there is a greater likelihood of a clause giving effect to the letter also being deemed invalid, whereas a separate indemnity clause is considered less likely to be found to be of no effect. Overall this is not considered to be a

⁵⁴¹ *Far East Chartering Ltd and Binani Cement Ltd v Great Eastern Shipping Company Ltd (The Jag Ravi)* [2012] EWCA Civ 180. For a detailed examination of this case see James R. Wereley, "Third Party Enforcement of Letters of Indemnity for Non-Presentation of Bills of Lading", 18 JIML (2012) at 338-342.

particularly effective method of minimizing risk. Unlike the indemnities contained in time charters this indemnity would be from the charterer to the owner (the role assumed by the time charterer under the voyage charter) for issuing the bill of lading incorrectly, whereas the indemnity under the time charter is the charterer indemnifying the owner for something the charterer is doing.

The third recommendation is one that is viewed as supplementary to other methods, which is to contractually require that the voyage charterer warrant that all subsequent transferees will be informed of the accurate condition of the cargo prior to transfer of bill of lading.⁵⁴² This is an important approach as if a transferee is aware of the actual cargo condition he may be estopped from taking action against the carrier.⁵⁴³ Ideally this provision would include a warranty that the cargo condition is normal for the trade and what the buyer would expect for a clean on board bill of lading. In the event that the voyage charterer failed to inform the subsequent transferees of this provision then the courts may indemnify the owner for the charterer's failure to discharge this obligation. This is based on the fundamental fact that letters of indemnity are generally presumed to be void because they are a device involved in inaccurately representing the condition of the cargo in order to deceive. If the other party is aware of the condition of the cargo prior to concluding the purchase then the condition has not been misrepresented. If the voyage

⁵⁴² This would preferably include the third party receiving a copy of any survey report showing the precise condition of the cargo.

⁵⁴³ The condition on the bill of lading is only prima facie proof as against the carrier that the goods were shipped in that condition in accordance with the *Hague-Visby Rules* at Art 3(4). This is rebuttable and therefore any evidence that the charterer was aware of the condition of the cargo would enable the carrier to avoid liability even if the bill of lading was incorrectly issued clean on board. It must be noted, however, that in the hands of a purchaser for value then they become conclusive evidence as to the condition, see: *Compania Naviera Vascongada v Churchill & Sim* [1906] 1 KB 37. Having said this it is still submitted that such a transferee must act in good faith and that in the event that the transferee agreed to the condition of the cargo then they would not have a right of action. This is also considered to be likely since one of the conditions in *Compania Naviera Vascongada v Churchill & Sim* was that the claimant had relied on the statements to their detriment, which would not be the case should they be aware of pre-shipment damage.

charterer agreed that any subsequent transferee of the bill of lading was to be informed then there has been no intention on the part of the operator to misrepresent the condition of the cargo. The requirement for notification would be clear proof of the owner's intention to not engage in fraud, and would, as noted, presumably assist in showing the existence of an indemnity in the event of failure by the voyage charterer to comply with this provision.

In addition to the steps outlined above and voyage charter should include the following elements, these being that first it should be warranted by the voyage charterer that the remarks are only being omitted from the bill of lading for commercial means and that there is no intention to commit fraud involved. The second element should be that all transferees of the bill of lading should be notified of both the existence of the letter of indemnity and of the actual precise cargo condition. The third element to be warranted is that the cargo as loaded is, in spite of any reservations made regarding cargo condition, in "normal" condition and should in any case warrant clean on board bills of lading.

In terms of the actual letter of indemnity there are three particular steps that can be taken to increase their potential effectiveness. The approaches to be examined are with respect to jurisdiction, the obtention of a bank guarantee and counter signature by the buyer of the cargo.

If it is assumed that a letter of indemnity is likely to be found to be unenforceable then it is logical to have the letter of indemnity governed by a system of law that is more likely to allow that it be enforced. While an exhaustive examination of the approach toward letters of indemnity under different legal systems is outside of the scope of this work it can be noted that generally they attract a dim judicial view

under the common law systems.⁵⁴⁴ It appears, however, that letters of indemnity may have a better chance of enforcement under civil law systems; Tetley has noted that generally letters of indemnity have effect under the civil law as between the parties, but not against third parties.⁵⁴⁵ Professor Tetley further notes that a letter of indemnity may be used by a third party against the issuer.⁵⁴⁶

While it is far from certain that letters of indemnity are enforceable under civil law systems, and it would be irresponsible to suggest that all civil systems will follow the same approach, the general approach of civil law systems appears more accepting of letters of indemnity. Tetley notes in particular the civil codes of France and Belgium,⁵⁴⁷ where letters of indemnity are considered counter letters and have effect between the contracting parties.⁵⁴⁸

The third step is to have the letter of indemnity counter signed by the buyer of the cargo. In the situation where the bill of lading is not to order and the named receiver countersigns the letter of indemnity then it is difficult to argue that a fraud has taken place as the buyer will not be able to argue a lack of awareness of the actual condition of the cargo and it is settled law that if the buyer was aware of pre-shipment damage then it cannot be claimed for.⁵⁴⁹ If the bill of lading is to order the

⁵⁴⁴ See for example: William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004), 287, p. 297 where he describes letters of indemnity as an illegal act. Also see for example the English case of: *United Baltic Corp v Dundee Perth & London Shipping Co.* (1928) 2 Ll.L. Rep 272 and the Australian case of: *Hunter Grain Pty. V. Hyundai Merchant Marine Co Ltd.* (1928) 1 ALR 507 (Fed Ct. Austr).

⁵⁴⁵ Tetley, *Marine Cargo Claims 3rd*, *supra* note 470 at 824.

⁵⁴⁶ William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004) , 287, p. 296, where he cites the Italian Civil Code at Art 1415 second paragraph.

⁵⁴⁷ William Tetley, "Letters of Indemnity at Shipment and Letters of Guarantee at Discharge", ETL (2004) , 287, p. 296.

⁵⁴⁸ However, it must be noted that even in view of this each case will be decided on its own facts and the examination of different legislative and judicial approaches represents an area for potential further study.

⁵⁴⁹ It is important to note that this only applies to the buyer, the shipowner will be estopped from contradicting the bill of lading against third parties who have acquired the bill of lading for value.

counter signature of a consignee or notify party is less useful, but still may be of value on a number of levels.⁵⁵⁰ The first is in the event that the letter of indemnity is found to be valid then this signature gives an additional party against which to enforce a judgment should one party fail to honour its obligations.⁵⁵¹ Secondly, it may transpire that the initial buyer (assuming that this initial buyer is the counter-signatory) does not resell the cargo, in which case the buyer will not be able to argue that they were unaware of the condition of the cargo. A third point is that, if the letter of indemnity incorporates an obligation that all transferees be informed of the existence and terms of the letter of indemnity, as well as the condition of the cargo, then the initial buyer will be bound by the obligation and the time charterer may have a right to proceed against the voyage charterer or the first buyer (in the case that the first buyer countersigned the LOI) should there be a failure to inform a subsequent transferee. Whether this would ultimately provide any recourse to the time charterer is uncertain but does give the operator an additional point under which to claim.

Finally, there are various strategies that the time charterer can employ under the time charter party in order to potentially minimize exposure. The first of these, and the best in terms of passing the risk to the owner, is an explicit agreement in the time charter party that the owner is willing to accept that the bills of lading be issued clean on board and that the owner is willing to accept the voyage charterer's LOI in this regard.

This approach would establish a direct contractual relationship between the voyage charterer and the owner, and also illustrate that the owner has acquiesced to the

⁵⁵⁰ Particularly since the consignee or notify party will sometimes be the original buyer.

⁵⁵¹ Even if the letter of indemnity is not legally enforceable there is an additional party who will potentially honour the letter.

bills of lading being issued clean on board and consequently making it highly unlikely that the owner will be able to decline all related responsibility. While there still exists the possibility the owner could claim an indemnity from the time charterer this is seen as far less likely as if the owner has accepted responsibility for the letter of indemnity then it is suggested that the owner remains the carrier and as such will be liable for consequences of cargo claims. The owner may still be able to claim against the time charterer under the Inter-Club Agreement.⁵⁵² However, this is considered unlikely as being available to the owner in the case of pre-shipment damage which the owner consented to exclude from the bill of lading as the agreement is only meant to cover damage that occurs during the carriage of goods by sea.

An alternative which is considered likely to be less effective is incorporating wording which allows the time charterer to issue bills of lading that are not in conformity with the mate's receipt. In this event the time charterer can argue that there is authorization on the part of the owner and in such a case the owner should be liable. However, in such a case it is likely that the owner would require an explicit indemnity from the time charterer, and even lacking such an explicit indemnity it is considered that this would be caught under the implied indemnity under the time charter.

In all circumstances it is wise for the time charterer to obtain a statement from the voyage charterer to the effect that all the parties are aware of the actual condition of the cargo, and that any future transferees are already aware or will be made aware of both the actual condition of the goods and of the existence and terms of the letter of indemnity. It should further be stated that the condition of the goods is representative of that which is typically expected in exchange for a clean on board

⁵⁵² As noted above the Inter-Club Agreement is an agreement between P & I Clubs on the apportionment of cargo claims which arise during the carriage of goods.

bill of lading and as such a clean on board bill of lading is appropriate, and that the defects in questions do not diminish the value of the cargo. Finally, there should also be a clear representation by the voyage charterer that the issuance of the bills of lading in this manner is not in any way to misrepresent the condition of the cargo but is only for commercial convenience and is customary in the trade in question.⁵⁵³

This statement may be assistance to the time charterer in the sense that the invalidity of the letter of indemnity is based on the concept that it is void for illegality. Obtaining a statement outlining the above has as its goal countering the arguments for invalidity.

Overall, a two headed approach is suggested to dealing with the requirement for and risk associated with clean on board bills of lading. The first head is ensuring that the risk lies with a different party in the contractual chain, be this the owner, the voyage charterer or another party (in the case that a counter signature is obtained on the LOI). The second head is making the letter of indemnity valid. Fundamentally these approaches should be employed in parallel; with the goal being that either one of them will prove effective in ensuring that the time charterer does not assume risk for a claim.

It is submitted that the best approach is for a time charterer to employ both strategies when issuing clean on board bills of lading. Since letters of indemnity have been judicially frowned upon and cases are always decided on their specific facts, and given that bills of lading may be transferred to third parties, it is very

⁵⁵³ While reference is made to statement by the charterers this could equally take the form of a clause in the charter party.

difficult to be certain that any specific approach will find favour and for this reason multiple plans are recommended.

The approaches outlined above vary both in their projected effectiveness as well as in their likely acceptability to counterparties. However, by employing multiple approaches the chances of one succeeding increase and some are more likely to be effective when used in combination. For example, it will never be harmful to the time charterer to have a warranty from the voyage charterer that the damage does not represent a diminution in the value of the goods and that all transferees are to be informed of the actual condition and the existence of the LOI. This should assist in supporting the charterer's argument that there was no intention to engage in fraudulent behaviour. Equally, however, the court may find that such wording is a sham and of no assistance to the time charterer.

As noted, the approaches can be divided into three categories, those which are of a non legal nature, those related to steps which are taken in the context of the charter parties and those which are related to the letter of indemnity. Non legal approaches consist of carefully assessing the commercial risk involved, including the reputation and financial stability of the party issuing the LOI and trying to obtain a bank countersignature of the LOI. Legal approaches related to the charter party are divisible into time and voyage charter issues. The most interesting approach under the time charter is agreeing that the owner will accept a LOI directly from the voyage charterer for issuing clean on board bills of lading, however, it is considered that it will be commercially difficult to obtain such a concession from the owner.⁵⁵⁴ What is

⁵⁵⁴ The reason for this is that it is considered that an owner will be reluctant to give the time charterer such a right without knowing details of the voyage and the voyage charterer in advance, which the time charterer will not know when chartering a vessel for a long period. Once a vessel is on time charter there is little incentive for the owner to assume the extra risk involved in accepting such a letter. An owner may be

considered the best overall solution for operators is delegating the authority to sign bills of lading to the voyage charterer on the same terms as in the time charter. This should allow the time charterer equivalent arguments to the owner should the bill of lading not be issued in accordance with the actual facts. This is also a concession that a voyage charterer should generally be willing to make.

It must be noted that while steps to reduce the appearance of fraud are recommended the effectiveness of this strategy is dubious considering that courts are likely to approach protestations of innocence with skepticism and are apt to assume that such strategies are more or less transparent attempts to avoid the consequences of an illegal contract.

5.15 CONCLUSION

It is clear that the issuance of clean bills of lading in exchange for letters of indemnity remains an area of great potential risk for time charterers.

Fundamentally, from a commercial perspective letters of indemnity are still in frequent use and very few disputes arise from their issue for the reason that in general they are used to facilitate trade and not defraud, and in most cases the buyer of the cargo is aware of the actual condition. However, from a legal perspective the issue of letters of indemnity remains fraught with peril. When accepting a letter of indemnity it is vital for the time charterer to recognize that they may effectively be assuming the role of insurer of the cargo with respect to of any pre-shipment damage. In the case of a time charterer this means it will be without insurance and without recourse against the voyage charterer, except under a

willing to accept such a letter along with an indemnity from the time charterer, but in such a case the time charterer remains liable and has gained little.

potentially unenforceable letter of indemnity and without any liability on the part of the vessel owner. Therefore, while claims are unusual it is worth noting that this is still an area of major risk given the high value of many cargoes shipped and the resulting potential for very costly claims. When this is combined with the likelihood of the letter of indemnity being invalid it can be seen that the acceptance of a letter of indemnity continues to constitute a major commercial risk.

In brief, the major risk for the time charterer in accepting the letter of indemnity is the potential for accepting liability for all pre-shipment damage while potentially waiving any recourse against either the owner or voyage charterer, at the same time acceptance of a LOI will void the time charterer's insurance cover.⁵⁵⁵

A better strategy is to avoid letters of indemnity. However, this approach has not gained wide commercial acceptance therefore, without suggesting that acceptance of bills of lading is advisable, a time charterer is advised to take a multipronged approach, including steps both within and outside the charter party. While this chapter has outlined a number of prospective strategies the most promising is considered to be the delegation of signing of bills of lading to the voyage charterer. It is also suggested that irrespective of whether the voyage charterer agrees to issue bills of lading under the authority of the master the voyage charter should contain a clause that warrants that the buyer is fully aware of all defects in the cargo and that subsequent transferees will be made aware of it as well.

In view of the reality that letters of indemnity continue to be used developing strategies to better manage the associated risks is long overdue. As discussed in

⁵⁵⁵ See, for example, Skuld Rule 5.2.5 which states that a member who issues an incorrect bill of lading does so at his own risk. (www.skuld.com).

this chapter the approaches taken with respect to clean bills of lading can be divided into subgroups involving both steps taken in the charter party and steps with respect to the letter of indemnity.

There are potentially effective remedies in all approaches; however the most promising is considered to be delegation of authority to sign and issue bills of lading to the voyage charterer as this has the potential to have the voyage charterer assume liability for issuing bills of lading in the form in which he requires without the necessity of the time charterer possibly becoming liable for the voyage charterer's commercial considerations.

CHAPTER 6

ISSUES REGARDING REDELIVERY

The MV St Laurent is on time charter to Fauteux Shipping for a 1 year period. The final date for redelivery under the time charter is March 15. On February 10 the vessel arrives in Montreal to discharge a cargo. Fauteux Shipping calculate that they have adequate time remaining under their time charter to fix a cargo of wheat from Quebec City to Amsterdam, which they proceed to fix and advise the owner of the St Laurent accordingly. Due to inclement weather discharge at Montreal proceeds slowly, and on February 20 the St Laurent is free of cargo and ready to proceed to Quebec City to load. However, due to an ice jam in the St Lawrence River the vessel is delayed in departing for Quebec City. While waiting for the river to become navigable, it becomes clear that the vessel can no longer complete the chartered voyage by the final date for redelivery. The owner has advised Fauteux that the voyage cannot be completed by the final date under the time charter party and they are unwilling to entertain completing the voyage to Amsterdam. The owner is requesting alternate instructions for the vessel. However, the voyage charterer has been awaiting the vessel and has advised Fauteux that they expect the St Laurent to present for loading in Quebec City.

6.1 INTRODUCTION

This final chapter will explore issues related to the redelivery of the vessel with a particular focus on the relationship between redelivery and final voyage orders. Redelivery is a concept that is exclusive to time charters and is the point in the charter where the vessel ceases to be at the commercial disposal of the time charterer and the obligation of the time charterer to pay hire terminates.

Redelivery is covered in all time charters. The Asbatime (the 1981 revision of the New York Produce Exchange Form) provides representative wording at lines 102-104: "...hire shall continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted...".⁵⁵⁶

6.2 PRIMARY ISSUE: THE RELATIONSHIP BETWEEN LATE REDELIVERY AND FINAL VOYAGES UNDER TIME CHARTERS

The key risk in this area is that the time charterer will fix employment for the vessel near the end of the time charter period, and due to unforeseen circumstances the vessel will be unable to complete the final voyage charter within the remaining time charter period. The main potential legal consequences which arise from this are the possible refusal of the owner to perform the final voyage or in the alternative a claim for additional hire if the voyage continues past the final date of the charter. If the owner refuses to perform the final voyage, it must be recalled that there is a voyage charterer who has contracted with the operator. The voyage charterer, however, is not concerned with the terms of the time charter between the head owner and the operator; the voyage charterer has entered into a contract with the time charterer and will expect the vessel to present for loading. Under usual voyage charter terms, the contractual owner (in this case the time charterer) has an unavoidable duty to present the vessel for loading.⁵⁵⁷ Even should the vessel fail to meet the cancelling date in the voyage charter it must be noted that failure to meet the canceling date does not confer the right to cancel upon either party to voyage charter; this right is

⁵⁵⁶ See appendix B.

⁵⁵⁷ *Moel Tryvan Ship Co. Ltd. v Andrew Weir & Co.* [1910] 2 K.B. 844. This concept is also present in American Law see *The Samuel W. Hall*, 49 F. 281 (S.D.N.Y. 1892), see also Nicholas Healy Jr., "Termination of Charter Parties", *Tulane Law Review*, Vol .49, No. 4 at p 845 and French Law: *Remond-Gouilloud*, *supra* note 35, 488.

exclusively that of the charterer.⁵⁵⁸ To summarize this situation from the time charterer's perspective: the time charterer has sub chartered the vessel on voyage terms to the voyage charterer to perform a voyage with a named vessel, however unexpected circumstances dictate that if the vessel undertakes the voyage charter the vessel will be redelivered late. Barring a term in the time charter to the contrary the operator does not have a right to use the vessel for the chartered voyage because performing the voyage would cause the vessel to exceed the final date for redelivery under the time charter. In such a case the vessel will typically miss the canceling date under the voyage charter, however missing the canceling date under the voyage charter is irrelevant because this does not confer upon the time charterer the right to not perform the voyage. So the time charterer is still bound to present the vessel for loading, but the actual owner is within its rights to refuse to perform the voyage, leaving the time charterer open for a claim from the voyage charterer for non performance of the charter party.

6.2.1 Redelivery and Final Voyage Orders

This section will consider the relationship between what final orders may be given under a time charter and what impact these may have on an operator's liability under the voyage charter.

The question of final voyage orders is significant for time chartered operators. When the market rate is higher than the chartered rate a time charterer will wish to maximize the number of voyages and utilize the vessel for as long as possible in order to maximize the profit earned from the vessel. Conversely, the time charterer will wish to redeliver at the earliest possible moment when the market is lower than

⁵⁵⁸ See generally *Voyage Charters*, 2nd, *supra* note 2 at 19.1 – 19.8.

the chartered rate, however this is less relevant to the issue of final voyage orders. A period charter will sometimes specify a final date by which the vessel must be redelivered, earliest or latest dates for redelivery, or it may alternatively be for a specific period of time, which may or may not be qualified by the use of a term such as “about”. The issue of determining the actual latest final date the vessel can be redelivered, as well as the consequences if that date is surpassed, are topics that are frequently considered by both time charterers and vessel owners. These are key issues for an operator, when entering into a voyage charter nearing the end of the time charter period it can become perilous for the time charterer if there is a risk that an owner may refuse to perform the voyage on the basis that it is an illegitimate final voyage.

The situation where the time charterer is concerned with the earliest possible date of legitimate redelivery is the subject of less litigation and consequently less academic consideration. This represents a gap in the literature and will be addressed in this chapter.⁵⁵⁹ Much of the analysis with regard to the date of redelivery is discussed in the context of late redelivery but is equally applicable to the earliest redelivery date.

The issue with regard to late redelivery involves three discrete topics, these being determination of the correct charter period, what constitutes a legitimate last voyage and the determination of quantum of damages for an illegitimate last voyage. These main topics also give rise to several minor topics. When considering early redelivery only two of these three main topics remain relevant. Determination of the charter period is still necessary in order to determine the earliest redelivery date, also applicable is the issue of damages; however it is not necessary to determine

⁵⁵⁹ For example, *Girvin*, 2nd *supra* note 3, despite devoting 8 pages (493-500) to the topic of the charter period gives only 5 lines to underlap, while *Wilson*, *Carriage of Goods 4th*, *supra* note 96, does not even deal with the topic of underlap and only addresses overlap (section 4.3.2).

legitimacy of the final voyage, the owner has no basis to claim a voyage is illegitimate because a voyage is expected to finish before the earliest date for redelivery.

This section will explore the following issues, which are considered the key issues with respect to final voyage orders. These include the three main topics outlined above, as well as their subsidiary topics:

- 1- Definition of legitimate last voyage
- 2- At what point in time is legitimacy judged
- 3- Does when the last voyage order is given make a difference
- 4- The two obligations with respect to redelivery: Giving a legitimate order and redelivering on time
- 5- Determination of charter period (overlap/underlap) and redelivery window
- 6- Quantum of damages
- 7- Implications if the owner complies with illegitimate last voyage order
- 8- Proposed charter party wording to assist in dispute avoidance

These issues will be dealt with in the sections which follow.

6.2.1.1 Definition of a Legitimate Last Voyage

A legitimate last voyage is one that may reasonably be anticipated as being completed prior to the end of the charter period. The final date on which the vessel may validly redeliver is commonly referred to as the "final terminal date".⁵⁶⁰ In the case that a legitimate last voyage order is given the vessel owner must comply with

⁵⁶⁰ *Dockray, supra* note 218, 332.

it.⁵⁶¹ There are several issues that immediately arise from this definition. These issues include the question of when is the legitimacy of the final voyage judged, does when the order is given influence the question of legitimacy and how the duration of the charter period is determined.

6.2.1.2 The Point at Which Legitimacy is Judged

The first key question which arises is that of when legitimacy of the voyage is judged. There are several choices, including when the order is given, when the vessel commences the approach voyage to the port, when the vessel arrives at the port and when the vessel commences loading among other possibilities.

The last 40 years has seen significant development in this area. A chronological review of several significant cases can commence in 1972 with the minority opinion in *The London Explorer* which held that the charterer's obligation was only to give an order for a legitimate final voyage.⁵⁶² This was followed by the decision in *The Berge Tasta* where it was opined that in determining legitimacy of last voyage instructions that attention should be paid to the charterer's overall voyage planning, and not simply the last voyage.⁵⁶³ Therefore, by the mid 1970s the question of final voyage orders was unclear, but there was a line of precedent indicating that legitimacy of the final voyage should be judged at the time when the order was given. This reasoning was rejected in *The Democritos*, where it was held that the relevant time for determining legitimacy of the order was immediately prior to commencing the last voyage.⁵⁶⁴ Subsequent to the decision in *The Democritos* obiter comments in

⁵⁶¹ *Alma Shipping Corp of Monrovia v Mantovani (The Dione)* [1975] 1 Lloyd's Rep 115. CA.

⁵⁶² [1972] AC 1.

⁵⁶³ [1975] 1 Lloyd's Rep. 149.

⁵⁶⁴ [1976] 2 Lloyd's Rep. 149.

The Matija Gubec suggested that the obligation of the time charterer was limited to giving an order which was valid on the date it was given.⁵⁶⁵ In *The Peonia* the Court of Appeal rejected the argument that the charterer's obligation was limited to giving a legitimate final voyage order.⁵⁶⁶ The House of Lords finally addressed this issue in the *The Gregos*⁵⁶⁷ and in line with this case it is now settled law that the legitimacy of the final voyage is evaluated at the time of performance.⁵⁶⁸ The House of Lords made it clear that legitimacy of the final voyage order is an ongoing obligation and one that exists not only at the time of instructing the vessel but also at the time when the vessel must actually perform the voyage. This is the factor that is identified as causing risk to the time charterer, who must of course fix a voyage charter in advance of the time of performance, but then may be susceptible to changes in circumstances between the time of the fixture and the time for performance. Therefore, a voyage order that is legitimate when given may subsequently become illegitimate before performance, and should this arise the time charterer will be in breach of the obligation to give a legitimate final voyage order.

What the courts have yet to do is precisely define when the final voyage commences for the purposes of determining legitimacy of the final voyage order. As can be seen, the obligation to give a legitimate final voyage order continues to the time when the final voyage commences, at which point the right of the owner to reject the final voyage order expires. It is not difficult, however, to conjure a scenario under which the question of whether a voyage has started or not is relevant. For example, once a vessel has completed her penultimate voyage and commences the approach voyage to the port of loading a time charterer will assert that the final voyage has

⁵⁶⁵ [1983] 1 Lloyd's Rep. 24.

⁵⁶⁶ *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co. Ltd. (The Peonia)*, [1991] 1 Lloyd's Rep 100.

⁵⁶⁷ *Torvald Klaveness A/S v Arni Maritime Corp, (The Gregos)*, [1994] 1 WLR 1465 HL.

⁵⁶⁸ *Tetley, Maritime and Admiralty*, *supra* note 10, 159.

commenced, but if an intervening event occurs that then delays the final voyage, a ship owner may wish to argue that the final voyage has not yet commenced. Unfortunately, the courts have not clarified this. While the courts have yet to speak to the question of when a voyage commences it is submitted that from a practical standpoint a voyage should start at the point of the approach voyage to the first port of loading on the final voyage.

6.2.1.3 Timing of Last Voyage Orders

While it has been argued that the appropriate time for evaluating the legitimacy of a final voyage is the time of giving the order, and as noted above this approach has been suggested as appropriate in some cases in the past,⁵⁶⁹ the law as it now stands is that while an order that is illegitimate at the time that it is given may be rejected at that time the obligation to give a legitimate order is a continuing one. Therefore the vessel owner is able to reject an order that is valid when tendered but subsequently becomes illegitimate. In this case the owner can not rescind the charter but must call upon the charterer to issue a replacement order.⁵⁷⁰ If the time charterer refuses to change the order and evinces an intention that it does not intend to meet its contractual obligation then the owner is able to hold the charterer in anticipatory breach and withdraw the vessel from the time charter.⁵⁷¹

⁵⁶⁹ See *The Berge Tasta* [1975] 1 Lloyd's Rep 423 and *London & Overseas Freighters v Timber Shipping, (The London Explorer)* [1972] AC 1 (HL).

⁵⁷⁰ *Torvald Klaveness A/S v Arni Maritime Corp, (The Gregos)*, [1994] 1 WLR 1465 HL.

⁵⁷¹ *Torvald Klaveness A/S v Arni Maritime Corp, (The Gregos)*, [1994] 1 WLR 1465 HL.

6.2.1.4 Two Obligations With Regard to Redelivery

*The Peonia*⁵⁷² and *The Gregos*⁵⁷³ have established two obligations with respect to redelivery. The first is that there is an obligation to give a legitimate last voyage order which remains legitimate until the time for performance. A legitimate last voyage order is one for a voyage that can reasonably be completed by the final terminal date. The second obligation is to actually redeliver the vessel by the final terminal date. This has clarified that even when a final voyage that is legitimate when it is commenced exceeds the final day for redelivery there will be a breach of the second duty, which is to redeliver the vessel on time. In the past it had been suggested that redelivering late would only be a breach if, in the case of a last voyage which is legitimate at the time of commencement, that the vessel redelivered late due to a fault of the time charterer.⁵⁷⁴ The present law is that late redelivery will be a breach by the charterer even if it appears to be due to a factor beyond the control of the time charterer.⁵⁷⁵ This represents an evolution in the law over the course of the last 20 years, when previously if the extension of the voyage beyond the final redelivery date was the fault of neither party it would not give rise to a claim.⁵⁷⁶

6.2.1.5 Determination of the Charter Period: Overlap / Underlap

With respect to time charters the terms overlap and underlap refer to whether the vessel has been redelivered after or before the latest or earliest date permitted

⁵⁷² *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co. Ltd. (The Peonia)*, [1991] 1 Lloyd's Rep 100.

⁵⁷³ *Torvald Klaveness A/S v Arni Maritime Corp. (The Gregos)*, [1994] 1 WLR 1465 HL.

⁵⁷⁴ *Hill, Maritime Law*, 4th, *supra* note 98, p. 212.

⁵⁷⁵ *Torvald Klaveness A/S v Arni Maritime Corp. (The Gregos)*, [1994] 1 WLR 1465 HL.

⁵⁷⁶ *Time Charters 3rd*, *supra* note 375, 88-89 and *The Dione* [1975] 1 Lloyd's Rep 115.

under the charter terms. As the names suggest overlap is when the charter exceeds the final date for redelivery, and underlap is when the vessel redelivers prior to the earliest charter party redelivery date. This is a major issue because vessel owners will typically wish to claim damages for redelivery outside of the contractual dates.

The first issue with regard to underlap and overlap is determination of the charter period. This will allow identification of the window of time during which the vessel may be legitimately redelivered. After this window has been established liability for redelivery outside of this window and quantum of damages may be ascertained.

6.2.1.6 Final Redelivery Date and Determination of the Charter Period

In order to determine the legitimacy of a final voyage the final redelivery date (known as the final terminal date) must be ascertained. The importance of this date is simple: an order for a voyage that cannot reasonably be expected to be completed by this date is illegitimate and a voyage that completes after this date may give rise to a claim by the owner against the time charterer. The general focus in this area has been determination of the final redelivery date. Much of the analysis here can also be applied to the earliest date for redelivery insofar as it relates to determining the duration of the charter, and this will be done later in this chapter. This section will provide a thorough review of the case law relevant to the question of determining the redelivery window.

In general terms charter periods can be described in several ways, they can be for a specified period of time (about 6 months), a range of time (about 4 to 6 months) or the charter party may specify redelivery within a certain date range (for example between October 15 and October 31). These descriptions of the period can at times

be imprecise, and lead to questions of construction with respect to the duration of the charter.

In the event that a vessel is chartered for a fixed period with a stated margin, as in the case of *The Dione*, where the vessel was chartered for 6 months 20 days more or less, then there will most likely be no margin implied beyond that specified in the charter party, because a margin has been expressly agreed.⁵⁷⁷ In *The Johnny* the vessel was chartered for a period of minimum 11 months for up to maximum 13 months, and in this case there was held to be no allowance beyond the stated limits.⁵⁷⁸ It is considered that the words “minimum” and “maximum” were of paramount importance in reaching this conclusion. In a dissenting opinion Lord Denning expressed the view that with respect to the maximum period in *The Johnny* the word ‘about’ in line 63 of the charter form on a 13 month charter would allow a margin of only 2 or 3 days.⁵⁷⁹ Lines 105-112 of the Baltime charterparty are relevant to final voyage orders and calculation of damages in the event that the charter period is exceeded. It allows the charterer to complete a final voyage that exceeds the charter period as long as it could be reasonably calculated that the voyage could be completed on about the terminal date.⁵⁸⁰ The majority in *The Johnny* felt that this wording did not provide the charterer with any additional margin as the charter period included the word “maximum”. Irrespective of the dissenting opinion the established law on this subject indicates that when a margin is specified or when a minimum/maximum is expressly mentioned there will be no further margin implied.

⁵⁷⁷ *Alma Shipping Corp of Monrovia v Mantovani*, (*The Dione*) (1975) 1 Lloyd’s Rep 115, CA.

⁵⁷⁸ *Arta Shipping Co. Ltd. v Thai Europe Tapioca Service Ltd.* (*The Johnny*) (1977) 2 Lloyd’s Rep 1.

⁵⁷⁹ This dissent is influential with respect to the tolerance that it suggests for the term “about”.

⁵⁸⁰ “Baltime 1939” Uniform Time-Charter (Box Layout 1974).

When a time charter period is specified but qualified by the term “about”, for example, “about 4 months up to about 6 months” it is clear that the use of the term “about” will allow for an implied margin. Based on the decision in *The Democritos* when a period is expressed as “4 months up to 6 months”,⁵⁸¹ without specifying that the period is “about” then it appears that an additional margin will be implied even in the absence of the word “about”. It must be noted that there is a distinction between this decision and that in *The Johnny*;⁵⁸² the cases can be distinguished on the basis of insertion of the word “maximum” prior to the period. In *The Democritos* the vessel was chartered for a period of “about 4 to 6 months”. In spite of the absence of the word “about” preceding “6 months” the arbitrators’ allowance for a 5 day margin in excess of the 6 month period was upheld by the English Court of Appeal. However, the more recent High Court decision in *Bocimar v Farenco Navigation* is problematic.⁵⁸³ This case was an appeal from an arbitration, where the court refused leave to appeal the arbitrators’ decision that there was no implied margin in the case of a vessel on an 11 to 14 month period. In this case the vessel redelivered 5 days early, and the arbitrators found that due to the already wide redelivery window there was no implied margin. This decision appears to be out of line with other authority on this matter, and given that the Court of Appeal in *The Democritos* addressed a similar situation it is submitted that it is *The Democritos* that should establish the general principal.

Therefore, when the period is qualified by the use of the term about a margin will be allowed. However, when a period is simply stated without qualification it again seems a tolerance will be implied. In the event that specific words were used to the effect that the period was strictly meant as a minimum or maximum then this would

⁵⁸¹ *The Democritos* (1976) 2 Lloyd’s Rep 149.

⁵⁸² *Arta Shipping v Thai Europe Tapioca Shipping Services (The Johnny)* [1977] 1 Lloyd’s Rep 257.

⁵⁸³ [2002] E.W.H.C. 1617 Q.B..

be enforced, for example “minimum 4 months up to maximum 6 months”, or in the alternative specified earliest or latest dates for redelivery.

The question of when redelivery is specified to take place within a range of dates, or by a certain date, was addressed in *Watson v Merryweather*.⁵⁸⁴ In this case a vessel was time chartered with redelivery agreed to take place between 15 and 31 October, and it was held that failure to redeliver by the 31 of October was a breach of the charter, thus illustrating that no margin is to be implied when redelivery is specified as being within a range of dates.

Therefore, the situation can be summarized as follows. When redelivery is to take place by a specified date, or within a specified range of dates then there is an absolute obligation to redeliver within these limits. This is equally true when the period is agreed but is qualified by the use of the terms minimum or maximum. When the word ‘about’ precedes the margin, or when a charter period is expressed as a unit of time (for example 12 months) but no qualifying words are used then the court will imply a reasonable margin.

It must be noted that the analysis above is concerned primarily with period time charters. Often vessels will be fixed on time charter trips with an approximate duration. If this duration is described as being “without guarantee” then there is no general liability on the part of the charterer for redelivery outside of the dates provided for by the charter.⁵⁸⁵ In order for the charterer to be liable it must be

⁵⁸⁴ (1913) 12 Asp 353.

⁵⁸⁵ *The Alaskan Trader* (No. 2) [1983] 2 Lloyd’s Rep 645.

shown that at the time the charter was concluded that the charterer had no reasonable expectation of being able to redeliver by the date agreed.⁵⁸⁶

6.2.1.7 Amount of Margin to be Implied

As outlined above, the parties are free to agree to redelivery by a specific date, or in the alternative they are able to contractually define the margin which will be permitted. However, if they have not done this and there is an implied margin then the amount of the margin must be decided by the courts. Having discussed what terminology will lead to the implication of a margin it is useful to attempt to quantify this margin.

As stated above, no margin will be implied in the case that a period is specified as a minimum/maximum or when a margin of days is specified. When the term “about” is used then there will be an implied margin, this is equally true in most instances where the word about is not used but a specific margin is not introduced. In these situations quantification of the margin must be considered.

To illustrate the margin that may be implied, several relevant cases will be considered. As mentioned above, in *The Democritos* the charter was for a period of about 4 to 6 months and the margin allowed was 5 days. In *The Berge Tasta* the charter period was for 30 months and a redelivery within 10 or 11 days was considered reasonable.⁵⁸⁷ Finally, in *The Dione* a reasonable overlap for a charter period of 6 months and 20 days was assessed at 8.4 days.⁵⁸⁸ These cases illustrate

⁵⁸⁶ *Ibid.*

⁵⁸⁷ (1975) 1 Lloyd's rep 422.

⁵⁸⁸ *Alma Shipping Shipping Corporation v Mantovani (The Dione)* [1975] 1 Lloyd's Rep 115.

that while a tolerance will be allowed that the margin will allow for only minimal additional time.

While it has been suggested that a margin of up to 5% will be permitted⁵⁸⁹ authority would seem to indicate that in most cases there will be less of a tolerance. *The Dione*,⁵⁹⁰ as noted above, allowed that a margin of 8.4 days on a charter of approximately 200 days would be reasonable, and this is somewhat less than 5%. Other decisions, such as *The Berge Tasta*,⁵⁹¹ have allowed significantly less. Therefore, an operator planning a final voyage and relying on an “about” margin should proceed with caution before assuming that a 5% margin can be relied upon.

It should also be noted that in the case of a charter party with an optional period then the charterer will only be able to benefit from one margin. This was made clear in the decision in *The Aspa Maria* where a vessel was chartered for 6 months 30 days more or less with an optional period of an additional 6 months 30 days more or less.⁵⁹² It was held that the overall period, after exercise of the option, was for 12 months 30 days more or less, the charterer was not to have the right to avail himself of two optional margins for one charter.

Unfortunately the courts have yet to adopt a consistent approach with respect to determining the amount of margin to be implied and it is therefore difficult to arrive at any general rule. However, this inconsistency does give rise to a warning for both charterers and owners in terms of the need for a cautious approach at the end of a charter period. The only certain point to emerge from the analysis of the various

⁵⁸⁹ *Wilson, Carriage of Goods 4th, supra* note 96, p. 94.

⁵⁹⁰ *Alma Shipping Shipping Corporation v Mantovani (The Dione)* [1975] 1 Lloyd's Rep 115.

⁵⁹¹ (1975) 1 Lloyd's Rep 422.

⁵⁹² (1976) 2 Lloyd's Rep 643.

decisions is that a time charterer is virtually certain to enjoy a relatively small margin of less than 5%, and quite possibly as low as 2-3%, as in *The Berge Tasta*. It should also be noted that as the length of the charter period increases the tolerance increases in absolute terms but generally decreases in terms of the margin as a percentage of the total period. However, with relation to the decisions in *The Democritos* (where 8.4 days margin was permitted) and *The Dione*, (5 days margin) two charters of similar basic duration, the inconsistency in the margin implied is difficult to reconcile.

This difficulty does illustrate the need for time charterers and owners to define the charter period carefully, and avoid terminology such as “about” unless it is accompanied by a definition.⁵⁹³

6.2.1.8 Right to Add Off-hire and Marginal Period in Determining Final Terminal Date

Many time charter parties will specifically incorporate a clause allowing that any off hire period can be added to the total hire period. It would seem that absent a specific clause to the effect there is no implied right to add off hire period to the charter period,⁵⁹⁴ therefore it is always advisable for a time charterer to ensure that such a clause is contained in the charter party.⁵⁹⁵

⁵⁹³ For example, “the term “about” in this charter is defined as 10 days”.

⁵⁹⁴ It has been noted that there does not seem to be any case that is specifically binding on this point, however this is the generally accepted practice in the industry. It can also be noted that many charter parties now contain clauses expressly allowing for this time to be added to the charter period. See: Nicholas J Healy Jr. "Termination of Charter Parties, Tulane Law Review", vol 49, number 4, May 1975, 856.

⁵⁹⁵ Clauses to this effect are frequently added to charter parties, see, for example, *Petroleo Brasileiro SA v Kriti Akti Shipping Co. SA (The Kriti Akti)* [2004] 1 Lloyd's Rep 712.

In the event that the time charterer is permitted to add off hire period then it must be considered whether this time may be used as additional time in voyage planning. *The Kriti Akti* is a useful case in this regard, as it addressed both the issue of off hire and the marginal time within which the vessel had to redeliver.⁵⁹⁶ The vessel was on charter for a period of 11 months, with an express margin of 15 days. The 11 month period ended on April 24, 2001. Under the charter party the charterer also had the option to add all off hire time to the charter period. On March 13, 2001, the charterer informed the owner that the option to add the off hire period was being exercised and additionally the charterer declared that they intended to add the 15 day margin provided for under clause 3 of the charter. The question which arose was whether the charterer was entitled to use the marginal period as well as the accumulated off hire time in planning the voyage. The English Commercial Court, in a decision upheld by the Court of Appeal, determined that the charterer had the right to use the vessel for any period of time they wished during the period of 11 months, plus or minus 15 days. The charterer was entitled to take advantage of off hire time added to the charter in the same way. Voyage orders could be given that would lead to a voyage that foresaw redelivery within the additional time period, and this margin was not reserved for use merely as a safety margin.

6.2.2 Difficulties for Time Chartered Operators

As outlined above the decision in *The London Explorer* gave some hope to time charterers that their only obligation was to give orders for a legitimate last voyage.⁵⁹⁷ A series of decisions, culminating with *The Gregos*, has made it clear that

⁵⁹⁶ *The Kriti Akti* [2004] 1 Lloyd's Rep 712.

⁵⁹⁷ [1971] 1 Lloyd's Rep 523.

a time charterer's obligation extends beyond giving an order that is legitimate at the time it is given.⁵⁹⁸

In terms of the legitimate last voyage orders the House of Lords held in *The Gregos* that this was an ongoing obligation in the sense that the final voyage order must be legitimate both at the time when it is given and at the time when performance arises.⁵⁹⁹ Should it become illegitimate at any time prior to performance the owner has the right to refuse performance and call for the charterer to issue substitute orders.

In deciding in *The Gregos* that the owner had the right to refuse performance the House of Lords essentially put the owner's operational considerations ahead of those of the time charterer. This creates a significant potential difficulty for the time chartered operator. In terms of the final voyage the operator may sub charter the vessel on a voyage basis and in doing so will have a contract with the voyage charterer in addition to the already existing contract with the vessel owner. Under the time charter the operator will have an obligation to issue a legitimate final voyage order, an obligation which is continuing as outlined above. From a legal standpoint this is straightforward and poses little problem. From a practical standpoint the time charterer approaching the end of the time charter period must continue to employ the vessel, and vessels in general are chartered in advance of the date of the present voyage. For example, a vessel proceeding with a cargo to discharge in Algeria will typically be chartered for her next voyage prior to completing discharge of the cargo in Algeria, and often before even arriving in Algeria. Therefore, between concluding the fixture for the subsequent voyage and

⁵⁹⁸ See section 6.2.1.3, *supra*.

⁵⁹⁹ *Dockray*, *supra* note 218, 2004 at 332.

commencing that subsequent voyage situations can arise that will delay the vessel. A prudent operator will allow a margin for these eventualities, but despite the operator's best efforts it will occasionally come to pass that a vessel encounters a delay of unexpected length. Generally, the time charterer will advise the owner of the upcoming voyage shortly after concluding the fixture, the owner will therefore typically know well in advance what final voyage is proposed. If in the interim period an unforeseen event arises, such as the temporary closure of the Orinoco River as occurred in *The Gregos*,⁶⁰⁰ which means that the vessel, if she were to proceed on the chartered final voyage, will not be able to redeliver by the final terminal date, the owner is within its rights to call for alternative orders. This is the point at which the potential for difficulty arises for the time charterer. As noted the owner has a right to call for alternative orders, failing which the owner may withdraw the vessel. Therefore, the time charterer must either issue alternative orders or risk having the vessel withdrawn. The result of either of these actions is that the time charterer will not have the right to employ the vessel for completing the voyage charter for which the vessel has been fixed. However, the key problem for the time charterer is that under the sub voyage charter there is no right on the part of the operator to cancel the voyage. The voyage charter exists separately from the time charter and the voyage charterer is unconcerned with whether or not the voyage charter coincides with the vessel's last voyage under the time charter; it is only the voyage charterer that has a right to cancel the charter should the vessel present late. Most voyage charters do not include a term that requires the charterer to notify the owner of their intention to cancel prior to the vessel presenting at the port of loading. The Gencon C/P is exceptional in this sense as it does grant the owner the right to request

⁶⁰⁰ [1971] 1 Lloyd's Rep 523.

notification from the charterer as to whether or not the charter will be cancelled.⁶⁰¹ However, the charterer under this provision need advise whether it plans on exercising the option to cancel 48 hours prior to the vessel's expected arrival at the load port. Therefore, this option is in general useful and of potential benefit to the owner. However, in the specific instance being considered here it would appear to be less likely to be effective. The likelihood is that at the point when the vessel would be 48 hours from the port of loading the vessel will have been withdrawn by the owner because at this point it is quite likely that it has already become clear to the owner that the voyage is illegitimate, by the time the vessel is within 48 hours of the load port it is likely that the vessel may have already been withdrawn. Irrespective of the timing it is important to note that even if the voyage charter has a provision allowing the operator to request advance notice of cancellation the voyage charterer still has the right to maintain the charter, leaving the operator no better off.

As outlined above it is clear that the voyage charterer has the right to maintain the charter regardless of whether the vessel is running late. Therefore, a situation may arise where the time charterer will have a contractual obligation to present the time chartered vessel to load a cargo, but the vessel owner will be entitled to withdraw the vessel. If the owner elects to withdraw the vessel the time charterer may find itself in breach of the voyage charter. Furthermore, if the owner's withdrawal of the vessel was valid then the time charterer would have no recourse against the actual owner, leaving the time charterer liable for the claim. As the voyage charterer has contracted with the operator there is no right on the part of the voyage charterer to

⁶⁰¹ Gencon Charter 1994 lines 141-153. The Shellvoy 5 voyage charter also contains a clause at lines 165-171 that allows the owner to apply for an extension to the cancelling date. Like the Gencon this does not confer upon the owner under the voyage charter any right to cancel the charter, it merely gives the owner the ability to apply for advance notice with respect to cancellation.

force the actual owner to present the vessel for loading, nor will the voyage charterer have any recourse against the actual owner of the vessel.

In the event that the time charterer fails to present the vessel for loading this represents a breach for which the voyage charterer is entitled to claim damages.

Under a voyage charter the owner has an obligation to present the vessel for loading; this is true even if the vessel has missed the cancelling date. Only at this point is the charterer required to make an election regarding cancellation.⁶⁰²

Therefore, even if a vessel falls behind schedule and is consequently unable to meet the contractual canceling date the vessel is still obligated to present for loading, which will not possible if the vessel's actual owner has refused to perform the voyage. If the owner has withdrawn the vessel, with the result that the time charterer is unable to present the vessel for loading this would put the time charterer in repudiatory breach of the voyage charter through non presentation of the vessel, and the voyage charterer would then be entitled to claim damages for this breach. As noted above, the time charterer would have no possibility of passing any part of this claim to the owner.⁶⁰³

The second problem to be considered is the situation where a vessel undertakes a voyage that was legitimate when commenced but due to circumstances arising during the voyage the vessel redelivers after the final terminal date. In this case the time charterer would not have any liability vis-à-vis the voyage charterer, and the issue would be whether the owner had recourse against the time charterer for late redelivery. The court in *The Peonia* made clear that there is an obligation on the part

⁶⁰² The exception to this is if the voyage charter contains an express term allowing the contractual owner under the voyage charter to call upon the voyage charterer to exercise the right of cancellation earlier.

⁶⁰³ This statement is based on the assumption that the withdrawal was lawful.

of the charterer to redeliver the vessel on time,⁶⁰⁴ a position which has been reaffirmed by the House of Lords in *The Gregos*.⁶⁰⁵ Therefore, in the event of late redelivery the time charterer will be liable in damages, irrespective of whether the late redelivery was due to circumstances beyond the control of the charterer.

6.2.3 Potential Risk Management Approaches for the Time Charterer

The general solution to the problem outlined in the previous section is not theoretically complex. Essentially, the remedy is the drafting of a charter party clause that permits a final voyage to be undertaken, and sets out the requirements and parameters surrounding such a voyage. Such a clause can be worded in any way the parties wish, however, from a time charterer's standpoint the key is to negotiate wording that permits the charterer to undertake the final voyage, as this removes the risk of the claim from the voyage charterer. Therefore one solution is to agree a clause that will allow the final voyage and any time beyond the final terminal date will be paid for at an increased hire rate reflecting the market rate. The alternative, and preferable solution for the time charterer is a clause which allows that the final voyage is both permissible and to be performed at the contractual hire rate. A vessel owner may be reluctant to accept a clause that is this broad, but that will be a matter of the relative strength of the negotiating positions at the time the charter is concluded.

From the vessel owner's perspective last voyage clauses which decrease the certainty of when the vessel is to be redelivered will be less palatable, as the owner will want information regarding the vessel's itinerary which facilitates scheduling of

⁶⁰⁴ *Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co. Ltd. (The Peonia)*, [1991] 1 Lloyd's Rep 100

⁶⁰⁵ [1971] 1 Lloyd's Rep 523.

employment after the time charter has concluded. At a minimum the owner will want to know that after the voyage in question the vessel is being redelivered, and therefore be able to at least schedule based on the delayed redelivery. It is considered highly unlikely that a ship owner would be willing to agree to a charter party clause allowing the time charterer the option of performing a final voyage at the chartered rate with complete disregard for any final terminal date.

An owner will be more agreeable to a clause which is viewed as not causing difficulties with regard to obligations beyond the vessel's redelivery from the period charter; in particular an owner will be reluctant to agree any clause which may increase the likelihood of the owner missing the cancelling date for subsequent employment.⁶⁰⁶ It must be noted that like the time charterer the owner wishes to maximize revenue and as such the owner will also wish to receive back the vessel as soon as possible when the market rate has escalated and is higher than the chartered rate. This is an entirely reasonable position on the part of the owner and it must be recalled that the owner is contractually and legally entitled to have the vessel redelivered. For this reason, from a practical standpoint, last voyage clauses that permit completion of a last voyage that is expected to extend past the final terminal date should only cover voyages where the delay is unexpected.

It is submitted that a clause which allows the time charterer to complete a final voyage that is realistic at the time of nomination to the owner should be commercially viable. The time charterer will need to adhere to charter party requirements in terms of notices required prior to redelivery, and it is based on these notices that the owner is most likely to subsequently charter the vessel. Such a

⁶⁰⁶ Obligations beyond the present charter will most often involve a subsequent charter, but can also include drydocking, surveys, repairs or even delivery of the vessel to a new owner.

clause is clearly beneficial to the charterer, as this will avoid the situation where the charterer fails to perform on a sub charter; as well it allows the owner to plan follow up employment with greater certainty in terms of the geographic area where the vessel will next be available.

When agreeing a final voyage clause it is vital that the time when the legitimacy of the final voyage is determined is clear. While having a specific time for determination of validity reduces uncertainty, careful consideration must also be given to when the optimal time for determining legitimacy occurs. For example, if legitimacy is determined upon sailing from the final port prior to loading this may not coincide with conclusion of the final charter for the vessel, and it is possible that if the final voyage charter is agreed earlier than this point and some intervening event happens between the agreement of the charter and the sailing from the port that makes the order illegitimate then little will have been gained. The safest route is to have the legitimacy of the order judged at the time the order is given, allowing the charterer more certainty in chartering the vessel for final voyages. Final voyage orders under such a clause should also be required to be specific, in order to avoid the situation where the charterer nominates a fictional final voyage merely to hold the vessel, or in an attempt to gain a few extra days on the charter.

The frequently used Shelltime 4 incorporates a clause that addresses the question of a last voyage:

“If at the time when this charter would otherwise terminate...the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and

conditions as stand herein for as long as necessary to complete such ballast voyage and return to a port of redelivery as provided by this charter, as the case may be.”⁶⁰⁷

This clause will provide some comfort to time charterers, primarily because it addresses the issue of quantum of damages. Under clause 19 of the Shelltime 4 a time charterer knows that even if a voyage overruns there will be no requirement to pay an increased rate of hire for the additional period, and it is therefore positive from the time charterer’s perspective as there is no uncertainty with respect to the rate. In terms of the time charterer who wishes certainty regarding final voyage orders the clause is of no assistance, all it provides is that the vessel may complete the voyage which is presently being undertaken, and does not in any way deal with a final voyage that has yet to be commenced. The Shelltime 3 also contains a final voyage clause, and like the Shelltime 4 this clause also does not permit the charterer to undertake an illegitimate last voyage.⁶⁰⁸

In terms of dry cargo time charters the Baltime Charter contains a last voyage clause which states:

“Should the vessel be ordered on a voyage by which the Charter period will be exceeded the charterers shall have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow redelivery about the time fixed for the termination of the Charter, but for any time exceeding the

⁶⁰⁷ “Shelltime 4” issued December 1984 clause 19.

⁶⁰⁸ *The World Symphony* [1992] 2 Lloyd’s Rep 115.

termination date the Charterers shall pay the market rate if higher than the rate stipulated herein.”⁶⁰⁹

The Baltime clause is difficult to interpret as it allows the charterer use of the vessel to complete the final voyage, provided that it could reasonably be calculated that the vessel could be redelivered on about the required date. It is unclear that this gives the charterer any rights beyond those established by law. It clearly does not give the charterer the right to perform a final voyage that will obviously and substantially exceed the final terminal date and this becomes clear prior to commencing the voyage. In terms of damages, the clause has the advantage that it clarifies the level of damages to be paid in the event that there is an overrun. It is submitted, however, that it would be preferable to include a mechanism for determining what this market rate should be.

Therefore, it can be seen that both of the Shelltime forms as well as the Baltime charter party have provisions with respect to final voyages, however none of these are worded in such a way that a time charterer is permitted to embark upon an illegitimate final voyage. In order to be permitted to do this precise wording that overrules the charterer's obligation to redeliver on time is required.

A well drafted charter party should address several issues regarding redelivery. The first requirement is that the window within which the vessel is permitted to redeliver should be well defined. This includes clear wording regarding margins and the ability to add both marginal time and off hire periods to the duration. The second issue is that of final voyage orders. The final voyage clause should deal specifically with the question of when legitimacy of a final voyage is judged. The final issue is that of

⁶⁰⁹ Lines 105-112 “Baltime 1939” Uniform Time-Charter (as revised 2001).

quantum of damages, a well drafted clause will clearly define how damages are to be calculated if the charter period exceeds the final terminal date.

A clause which is balanced between owners and charterers interests will be one which is most likely to be acceptable to both parties. Given the decision in *The Kriti Akti* agreeing to a clause that allows a time charterer full use of the vessel for the marginal period as well as any off hire period should not be difficult, as this reflects both the state of the law and commercial practice. The issues upon which achieving a consensus are more likely to be difficult are those regarding time of determination of final voyage order legitimacy and quantum in the event of overrun.

6.2.4 Practical and Commercial Considerations for Time Charterers and Owners

This section will explore the practical considerations involved in these legal issues from both the time charterer's and owner's perspectives. It will also give consideration to the position of the voyage charterer.

From the ship owner's point of view completing the final voyage by a specific date is important to allow scheduling of the vessel's next employment. If the owner fixes employment for after the final voyage (after redelivery) and the vessel redelivers late to the owner from the time charterer then the owner is at risk of missing the cancelling date under the next charter. While this is a practical consideration and a legitimate concern the commercial reality is that the majority of owners will tend to wait until there is a clear picture of the vessel's schedule prior to fixing her next

employment.⁶¹⁰ Also, while a delayed vessel may not suit an owner the argument that the owner should be able to refuse the voyage is premised, from a practical standpoint, on the owner's operational requirements. However the next charterer after redelivery will typically require the vessel in a specific location, and an owner seeking alternate orders because of anticipated late redelivery may not get the vessel back in a position that is suitable for the next employment. An example of this can occur if for instance a vessel is chartered for a final voyage from New Orleans to Japan. The owner then fixes the next employment after redelivery from the present time charter for delivery in Japan. If the vessel subsequently runs late before commencing the voyage to Japan the owner that asks for alternative orders risks the time charterer nominating a voyage to a different location that will then jeopardize the owner's next employment, or make the following voyage less economically rewarding for the owner.⁶¹¹ It must also be recalled that the obligation to present the vessel for the next chartered employment that causes the time charterer concerns in relation to last voyage orders will apply to the owner with respect to the subsequent charter that has been entered into, and the owner that has fixed subsequent employment will be obligated to present the vessel for loading. Therefore, for reasons of scheduling an owner will tend to wait until a vessel's position is clearer before fixing employment, and it can be suggested that often when an owner refuses a last voyage instruction it is due to market reasons rather

⁶¹⁰ Typically the owner will negotiate the vessel's subsequent employment during the final voyage under the time charter, in general terms the owner will typically have not fixed the subsequent employment prior to being informed of the charterer's final voyage intentions. However, this will vary based on a number of factors, including the type of vessel, the trades in question and market conditions.

⁶¹¹ If the vessel is redelivered a greater distance from the owner's next voyage than anticipated this will cause the owner a reduced return as there will be an unanticipated ballast voyage which the vessel will have to undertake.

than the time charterer's orders causing an inability on the part of the owner to meet its contractual obligations.⁶¹²

From a time charterer's standpoint the main practical considerations are that it must have an ability to fix the vessel while on charter and fulfill its contractual obligations, and this includes the vessel's last voyage. While it can be accepted that nearing the end of the charter period a time charterer must act in a commercially prudent fashion and exercise caution with regard to scheduling unexpected situations do arise. However, taking *The Gregos* as an example there is no suggestion that this case involved any failure on the part of the time charterer to act prudently,⁶¹³ the grounding of another vessel in the Orinoco River, which resulted in a delay to the vessel, was a factor beyond the control or reasonable anticipation of the time charterer.

Finally, with regard to the voyage charterer, it can be noted that the voyage charterer has commercial and operational considerations that drive its legal position that it requires the vessel to present for loading. Once a vessel is chartered it will often be nominated to the shipper of the cargo who will then make arrangements with, *inter alia*, loading facilities, banks, customs and the purchaser of the cargo. The voyage charterer will in many cases be prepared to delay loading of the cargo, particularly when the delay is merely a matter of a few days, rather than become involved in the, sometimes arduous, process of changing all these arrangements. A second consideration is that on a rising freight market when the owner wishes to avoid performing a last voyage for financial reasons a voyage charterer may be confronted with a situation where the freight rate that it must pay for shipment of its

⁶¹² However, it should be noted that whatever an owner's motivations that the owner is acting within its legal rights, and from an economic perspective an owner is entitled to maximize earnings.

⁶¹³ *Torvald Klaveness A/S v Arni Maritime Corp (The Gregos)* [1994] 1 WLR 1465 HL.

cargo with an alternate carrier is higher than the rate agreed with the operator, and the voyage charterer may also for this reason prefer to maintain the bargain it has already agreed.

6.2.5 Proposed Final Voyage Clause

The goal in drafting a final voyage clause is to formulate a balanced clause that is acceptable to both parties which can assist in avoiding the situation where a vessel is nominated by the time charterer to perform what is at the time of nomination a legitimate voyage but subsequently becomes illegitimate through no fault of the time charterer.

The following proposed clause addresses the issues identified in the preceding sections.

“Last Voyage Clause

The charterer is to have the right to complete a last voyage that has been nominated by the charterer in good faith as long as such final voyage can reasonably be completed prior to the final terminal date of the charter at the time of nomination.

The owner does not have the right to refuse to perform a final voyage that is legitimate at the time of nomination, even if the final voyage subsequently becomes one that can no longer be completed by the final terminal date of the charter. Any voyage nominated for the purposes of this clause must be a voyage which the time charterer has fully concluded at the time of nomination and may not be a proposed, anticipated or intended voyage.

The final terminal date is defined as the final date of redelivery including all marginal periods and any off hire period accrued during the period of the charter may be added to the charter period in the charterer's option.

The charterer may not nominate, for the purposes of this clause, a final voyage prior to arriving at the first load port for the penultimate voyage under this charter. If such a voyage is nominated prior to arrival then the owner may require the charterer to issue alternative orders if at any time prior to arrival pilot station at the first load port of the penultimate voyage it becomes clear that the vessel cannot reasonably expect to complete the nominated voyage prior to the final terminal date.

After nomination of the final voyage if at any time it appears that the vessel will not redeliver by the final terminal date the charterer is to promptly advise the owner, irrespective of whether any redelivery notice is due. The charterer is then to keep the owner regularly informed of the vessel's itinerary and expected completion, in addition to redelivery notices as required under the charter party.

In the event that redelivery of the vessel takes place after the final terminal date then, should the present market rate for the vessel be higher than the chartered rate, the owner to be entitled to increased hire representing the difference between the market rate and the charter party rate from the final terminal date until the actual date of redelivery. Should the market rate be lower than the charter party rate then the owner would be entitled to hire at the charter party rate until the final redelivery of the vessel. The market rate is to be considered as the rate for the charter between the owner and the time charterer at the time of the final voyage."⁶¹⁴

⁶¹⁴ It is also suggested that it would be advisable to incorporate a defined method of calculating the market rate. Although discussion of such an issue is beyond the scope of this work possible ideas include agreeing

This clause is designed to address the concerns of both owners and charterers while providing certainty with respect to final voyage orders. The following paragraphs will provide an examination of the proposed last voyage clause

In order to allow the charterer to confidently schedule a final voyage the date for determination of validity has been set as the date of nomination. With respect to this, there are three conditions which must be satisfied in order for the nomination to be valid. The first is that the voyage must be reasonably expected to be completed by the final terminal date; this point is fundamental to any final voyage. The second is that the voyage must be fully fixed, this avoids the charterer nominating a fictitious voyage in anticipation that the vessel may run late and that this will gain the charterer a few extra days. The third condition is that a valid notification under this clause cannot be given prior to arriving at the first discharge port of the voyage prior to the nominated voyage, which limits the charterer from giving an unreasonably early notice in order to ensure the use of the vessel.

The clause also requires that, should it appear that the vessel is unable to redeliver by the final terminal date that the charterer must immediately advise the owner, which assists the owner in scheduling subsequent employment.

Finally, in the event that the vessel redelivers after the final terminal date, damages are clearly spelled out, and the owner is entitled to damages for the additional time used at the market rate. The recovery of damages by the owner at the market rate

in the charter a panel of brokers that could be consulted, or using data from one of the existing market indices. Failure to define the method of determining the market level would clearly leave open a major avenue for disputes to arise, and even the validity of the clause could be called into question, see for example *Sudbrook Estates v Eggleton* [1993] 1 AC 44. Use of data from market indices is probably the preferable method, but a full consideration of this issue is outside of the scope of this paper.

allows the owner recover fair compensation for the time overrun and therefore minimizes financial losses to the owner, and the method of calculation is consistent with existing legal principles.⁶¹⁵

6.2.6 Quantum of Damages for Late Redelivery

This focus of this section will be determination of quantum of damages in the event that the maximum period of the time charter is exceeded and the vessel is redelivered late, this section will in addition address what damages the operator may face in the event there is a failure to load the final cargo.

If the charter market for the vessel has fallen and the hire rate under the charter party exceeds the prevailing market rate, then no damages will be payable to the owner.⁶¹⁶ However, as noted previously it is not open to the charterer to claim a rebate on the hire for the difference between the chartered rate and the market rate when the market has fallen.⁶¹⁷

If the market rate for the vessel is higher than the chartered rate then the charterer will be liable to pay the owner the increased rate for any additional time used. The damages assessed will be the difference between the market rate and the charter party rate for all time used after the final date.⁶¹⁸ The market rate is assessed as being the present market rate for the time charter the vessel is performing as between the owner and the charterer, and not the sub charter that the vessel is

⁶¹⁵ See: *Arta Shipping v Thai Europe Tapioca Shipping Services (The Johnny)* [1977] 1 Lloyd's Rep 257 and section 6.2.6, *infra*.

⁶¹⁶ *The London Explorer* [1972] AC 1.

⁶¹⁷ *Ibid.*

⁶¹⁸ *The Dione* [1975] 1 Lloyd's Rep 115.

performing.⁶¹⁹ In a practical sense this means that if a vessel is performing under a 12 month charter damages will be assessed based on the present market rate for a 12 month charter, which may not be the employment the owner was contemplating. In *The Peonia* it was established that the time charterer is liable for damages even if a voyage that is legitimate when it commences exceeds the charter period.⁶²⁰

The recent House of Lords decision in *The Achillesas* addressed the question of the whether damages could be claimed for the loss of a subsequent fixture due to late redelivery by the time charterer.⁶²¹ In this case, the vessel was redelivered by the time charterer to the owner late, and as a result the owner was required to renegotiate the subsequent fixture at a lower rate. The owner claimed for the difference between the original rate and the renegotiated rate of the subsequent fixture and the dispute was submitted to arbitration and subsequently appealed to the courts. The arbitrators, in a decision upheld by the High Court and the Court of Appeal, held that the charterer was responsible for the loss suffered by the owner. These findings were reversed by the House of Lords. The ratio of the majority was that the loss was not recoverable because it was not the type that was within the contemplation of the parties at the date of the conclusion of the contract. Therefore, it would appear that in the case of late redelivery owners will be limited to claiming for the differential between the market rate and the charter rate.

Another recent case dealing with damages for late redelivery was *The Paragon*.⁶²² In this case a vessel redelivered 6 days after the final terminal date. The time charter contained a provision whereby if the vessel redelivered late then the hire rate from

⁶¹⁹ *Arta Shipping v Thai Europe Tapioca Shipping Services (The Johnny)* [1977] 1 Lloyd's Rep 257.

⁶²⁰ (1991) 1 Lloyd's Rep, 100, CA.

⁶²¹ *Transfield Shipping Inc v Mercator Shipping Inc (The Achillesas)* [2008] UKHL 48.

⁶²² [2009] EWCA Civ 855.

the 30th day prior to the final terminal date until the actual date of redelivery was to be increased to reflect the market rate, should the market rate have increased. As it transpired the market rate was higher than the chartered rate, and the owner claimed the increased rate of hire for about the final 36 days of the charter. The time charterer did not dispute paying increased hire for the 6 days the vessel was employed beyond the final terminal date, but argued that there was no liability to pay for the 30 days prior to the final terminal date as this represented a penalty clause which was unenforceable under English law.⁶²³ It is considered that such a clause would also be equally unenforceable under Canadian law.⁶²⁴ The owner argued that this was not a penalty, and it was in fact a genuine pre-estimate of the loss. It was held that the clause was in fact in a penalty clause, and that in line with the House of Lords decision in *The Achilles* the measure of damages was to be calculated as the differential between the market rate and chartered rate.

In the event that the time charterer must present the vessel for loading but the owner withdraws the vessel due to the final voyage order being illegitimate and the vessel consequently fails to present for loading then the time charterer may be liable for damages under the voyage charter. Such damages could include any additional freight the charterer was required to pay for replacement tonnage. There is also the potential that damages could include a claim for loss of profit on the sale of the cargo, storage charges and other costs or losses that the charterer may incur. This is based on the decision in *Hadley v Baxendale* which establishes that conditional

⁶²³ *Dunlop Pneumatic Tyre Co. Ltd v New Garage and Motor* (1915) AC 79.

⁶²⁴ Angela Swan, *Canadian Contract Law*, 2nd ed., (Markham, LexisNexis, 2009), at 9.226 and *Canadian General Electric Co. Ltd. v Canadian Rubber Company Ltd.* (1915), 52 S.C.R. 349, 27 D.L.R. 294, [1915] S.C.J. No. 58 (S.C.C.).

upon remoteness damages for reasonable expectations can be claimed.⁶²⁵ Damages will be restricted to those that were within the contemplation of the parties and those which could be fairly and reasonably expected to arise in the natural course of events. The question of whether a charterer could recover from the owner an increase in the price of an oil cargo was examined in the *The Rio Claro*.⁶²⁶ In this case the late arrival of a vessel resulted in the charterer having to pay more for an oil cargo under a purchase agreement, the charterer attempted to claim the resulting loss from the owner, but the losses were found to be too remote. In *The Heron II* a breach of the charter party by the shipowner led to the late delivery of a sugar cargo.⁶²⁷ In this case the charterer successfully claimed for the difference in the market price of the sugar. In *The Baleares* a gas carrier delivered late in breach of charter.⁶²⁸ The late delivery of the vessel deprived the charterer of the opportunity to buy the propane needed to service forward contracts. The court upheld the arbitrators' decision that the owner was liable for losses suffered by the charterer under the forward contracts.

These decisions, unfortunately, do not provide a clear precedent that can be followed on the question of ability to claim what can be described as ancillary losses such as storage charges. The cases noted above do illustrate that it is possible that such losses may be recoverable. In general, the principles in *The Heron II* and *Hadley v Baxendale* are applicable and remoteness will be determined in the same way as any other contract.

⁶²⁵ (1854) 9 Exch 341. The ratio in *Hadley v Baxendale* is also generally accepted as authoritative under Canadian Common Law, see Angela Swan, *Canadian Contract Law*, 2nd ed, (Markham: LexisNexis, 2009) at 6.2.6.2.

⁶²⁶ [1987] 2 Lloyd's Rep 175.

⁶²⁷ *Koufos v C Czarnikow Ltd (The Heron II)* [1969] 1 AC 350.

⁶²⁸ [1993] 1 Lloyd's Rep 215.

An option for a time chartered operator is to attempt to include a clause in the voyage charter that limits damages in the event that the vessel is unable to perform the voyage. A voyage charterer is not likely to agree to a clause completely waiving a right to damages, and what a charterer is precisely willing to agree will depend on individual circumstances prevailing at the time of the negotiation. For example, if a charterer has a full storage facility and railcars waiting to discharge into the facility the charterer may not be willing to agree that no damages for storage will be claimed.⁶²⁹ In general a solution that voyage charterers may find acceptable is agreeing that in the event that the time chartered owner fails to present the vessel for loading that damage claimed will be limited to any increased freight that the voyage charterer was liable to pay. However, even a carefully worded clause has the potential to cause commercial difficulties, as a voyage charterer will generally wish to avoid uncertainty and therefore avoid chartering a vessel if the time chartered owner appears unsure that it will be available to perform the voyage, and such clauses are therefore considered most likely to be commercially non viable.

6.2.7 Redelivery Prior to the Earliest Permissible Charter Party Date

Most cases to date have focused on vessels redelivering after the final terminal date the alternative scenario arises on a falling market. In these instances the time charterer will wish to redeliver a vessel as early as possible, and in some cases prior to the earliest permitted date.

⁶²⁹ Damages may be recoverable under the principle in *Hadley v Baxendale* (1854) 9 Exch 341, see preceding paragraphs.

Much of the analysis that applies to late redelivery is also applicable to early redelivery, and a consideration of the similarities and differences will form the basis of this section.

The first issue is that of what is the earliest date the vessel may be redelivered. There is no difference between determining the earliest and latest redelivery date, therefore the analysis provided above may be fully applied to a determination of the earliest redelivery date.⁶³⁰ It should be noted that there is no obligation to add off hire periods to the minimum period. Therefore, if the period is described as requiring redelivery between two specific dates then this will be an absolute obligation. If the period is described as “about”, then the normal considerations will apply, which is to say that a tolerance will be implied. A tolerance will also generally be implied when a period is unqualified by the word “minimum”, so in the case of a period of 4 to 6 months the courts would typically imply a margin of a few days. However, if the period is described using the term “minimum” then no tolerance will be implied.

With respect to last voyage orders it can be observed that this is a non issue with regard to early redelivery. An owner cannot reject a final voyage on the basis that the duration is not long enough. As long as the voyage is within the parameters of the charter party the owner is obligated to perform the voyage. If the voyage results in the vessel not achieving the minimum period this is a separate issue.

Having noted that the owner is unable to reject the final voyage, it must also be noted that the owner is generally not permitted to reject redelivery of the vessel, even if the vessel has not satisfied the minimum period. In *The Puerto Buitrago* the

⁶³⁰ See section 6.2.1.6, *supra*, with respect to determining the redelivery window.

Court of Appeal held that when damages were an adequate remedy for early redelivery then the owner may not refuse redelivery.⁶³¹ *The Odenfield* suggests that under certain circumstances it is possible that the owner may hold the vessel ready and at the charterer's disposal for a period of time while claiming hire.⁶³² However, once it becomes clear that the charterer will not change its mind it appears that the owner must accept redelivery and seek compensation through damages, unless damages are not an adequate remedy.⁶³³ In the instance of early redelivery damages will be calculated according to a notional voyage back to the redelivery range, if the vessel is not within the redelivery range. If the vessel is within the redelivery range then the owner must attempt to mitigate the charterer's damages by employing the vessel on alternative business and claiming any losses which accrue. If there is a special provision in the charter calling for continued payment of hire up until the date of redelivery then such a provision is binding.⁶³⁴

Therefore, it has been established that once the minimum period is determined the owner has no right to reject a final voyage that does not meet the minimum period, nor does the owner have the right to refuse an early redelivery of the vessel.

Thus it is clear that the owner's recourse in the event of early redelivery of the vessel rests in a claim for damages. In this respect *The Rijn* is informative.⁶³⁵ In this case the vessel redelivered in the wrong place. Damages were held to be based on the hire that the vessel would have earned through a notional voyage in ballast to

⁶³¹ *Attica Sea Carriers Corporation v Ferrostaal (The Puerto Buitrago)* [1976] 1 Lloyd's Rep 250.

⁶³² [1978] 2 Lloyd's Rep 357.

⁶³³ *Ibid.*

⁶³⁴ In *Reindeer Steamship v Forslind* (1908) 13 Com Cas there was a provision that hire must be paid until the termination date of the charter, and as such the time charterer was required to pay hire until the redelivery date in charter party.

⁶³⁵ *Santa Martha Baay Scheepvaart & Handelsmaatschappij NV v Scanbulk A/S (The Rijn)* [1981] 2 Lloyd's Rep 267.

the closest point within the redelivery range, and any profit realized by the owner during this period was to be deducted from the damages paid by the charterer.

6.3 SECONDARY ISSUES: REDELIVERY IN LIKE GOOD ORDER, ABILITY TO REDELIVER A DAMAGED VESSEL, REDELIVERY IN THE WRONG LOCATION

The major issue to be addressed in this section is that of redelivery in “like good order”, which is an obligation of the time charterer generally found in time charter parties, with an exception for ordinary wear and tear.⁶³⁶ This issue encompasses the questions of liability for wear and tear, stevedore damage to the vessel, damage to the vessel attributable to the cargo carried, and damage due to unsafety of the port. Although minor points, for sake of completeness whether redelivery can be refused due to the damaged state of the vessel or due to redelivery in the wrong location will also be considered.

Under a time charter, in general terms a charterer will incur liability if the ship is redelivered in worse condition than on delivery due to a breach of any of their obligations under the charter party.⁶³⁷ This is essentially the obligation, as noted above, that the vessel is to be redelivered in like good order and condition. This phrasing illustrates that there is no specific limitation with regard to the manner in which the damage giving rise to the claim can occur, but as noted there is an exception for ordinary wear and tear. As the term suggests, this excuses the time charterer for any damage that is within that which would generally be contemplated or arise during normal use of the vessel.

⁶³⁶ The NYPE 93 charter party requires “redelivery in like good order and condition, ordinary wear and tear excepted” at lines 130-131, the “Baltimex 1939” Uniform Time-Charter (Box Layout 1974) requires that the vessel be redelivered “in the same good order as when delivered to the Charterers (fair wear and tear excepted)” at lines 95-96.

⁶³⁷ *Time Charters 3rd*, *supra* note 375, 188.

With respect to voyage charters, there is no general liability on the part of the charterer for wear and tear. In order for damage to the vessel to be claimable by the owner from the charterer,⁶³⁸ it must fall within the ambit of a specific provision of the charter party. The three main areas under which liability for damage to the vessel on the part of the voyage charterer could potentially be envisioned would be damage caused to the vessel by the stevedores, damage due to an unsafe port or berth, or damage caused by the cargo.

It can be seen that in terms of liability under time and voyage charters that in terms of a voyage charter the burden of proving liability on the part of the charterer for damage would fall upon the owner, whereas under the a time charter the burden rests upon the charterer.

Under a time charter the requirement that the vessel be redelivered in “like good order, ordinary wear and tear excepted”, puts a large degree of responsibility upon the time charterer for the condition of the vessel. Liability for damage under a voyage charter is more limited. There is no general provision in a voyage charter that a charterer bears responsibility for damage to the vessel, and under the terms of the voyage charter damage for which the voyage charterer is likely to be liable would appear to be narrowly limited to issues with respect to which the charterer has made particular contractual undertakings or specific warranties. One such area of warranty involves safe ports, however the question of safe ports is dealt with elsewhere in this work and as such will not be further examined here except to note

⁶³⁸ Or in the case of a vessel on time charterer by the time chartered owner as against the voyage charterer.

that if the voyage charterer has warranted the safety of a port or berth then a claim may flow to them in the case of damage to the vessel due to unsafety.⁶³⁹

The difference in liability for damage under time and voyage charters is consistent with the concept of each charter. Under a time charter the charterer assumes a much greater degree of commercial control over the vessel and is making decisions with respect to both the trading pattern of the vessel and the cargoes carried. Under a voyage charter the owner retains commercial control of the vessel and is responsible for the trades in which the vessel engages and furthermore under a voyage charter the cargo and ports will typically be known to the owner at the time of fixing, the owner will therefore have ample opportunity to investigate the characteristics and risks involved.

6.3.1 Stevedore Damage

In terms of ways in which damage may occur to the vessel stevedore damage is a common cause of damage, and is an issue which the operator must monitor closely. Stevedore damage will often occur during loading or discharging operations when, for example, equipment being used in cargo handling inadvertently causes damages to the vessel.

The issue of stevedore damage is generally the subject of a specialist clause in both time and voyage charters. For this reason the general discussion of stevedore damage will be followed by an examination of damage in the context of stevedore damage clauses.

⁶³⁹ See generally chapter 4, *supra*.

Under the terms of a time charter party the stevedore will invariably be working under the responsibility of the time charterer,⁶⁴⁰ under voyage charters stevedore damage is complicated by the fact that in some instances the stevedore will be employed by the contractual owner under the voyage charter (for the purposes of this discussion that will be the time charterer) and at other times by the cargo interests. Barring any wording in the charter party to the contrary the loading operation under a voyage charter is the responsibility of the owner.⁶⁴¹ However, in reality the stevedore is more often selected and employed by the voyage charterer, and allocation of risk for stevedore damage under voyage charter parties is amended to reflect this.⁶⁴² In the event of damage to a vessel performing under a voyage charter liability for the damage will depend on the terms of the voyage, and in particular the stevedore damage clause. Charter party clauses will occasionally specify that the owner is required to seek recourse directly from the stevedore for any damage to the vessel.⁶⁴³ This has the potential to leave a time charterer seeking compensation from a stevedore located in a remote port while the vessel owner pursues a claim against the time charterer under the time charter party, with the additional likelihood that the actions would each be resolved under different legal systems.⁶⁴⁴

There are many variations of stevedore damage clauses. BIMCO has recommended clauses for both time and voyage charter parties, and these will be considered and

⁶⁴⁰ See for example clause 4 of the Baltime, and clause 7 of the NYPE 1993.

⁶⁴¹ *Wilson, Carriage of Goods 4th, supra* note 96, p. 70.

⁶⁴² In trades where the standard is the appointment of stevedores by the cargo interests charter parties for use in that trade are often drafted to reflect this, see for example the Synacomex 90, which is still widely used and designed for use in grain trades allocates risk and expense of loading and discharging to parties other than the vessel owner.

⁶⁴³ This type of clause is more often seen under voyage charters, and rarely under time charters.

⁶⁴⁴ Stevedore damage to vessel is a subject that is almost always the subject of a specialist clause which typically allocates responsibility for damage.

compared, as differences between clauses in time and voyage charters can lead to liability for the operator.

Stevedore Damage Clause for Time Charter Parties 2008

(a) The Charterers shall be responsible for damage (fair wear and tear excepted) to any part of the Vessel caused by Stevedores. The Charterers shall be liable for all costs for repairing such damage and for any time lost.

(b) The Master or the Owners shall notify the Charterers or their agents and the Stevedores of any damage as soon as reasonably possible, failing which the Charterers shall not be responsible.

(c) Stevedore damage affecting seaworthiness shall be repaired without any delay before the Vessel sails from the port where such damage was caused or discovered. Stevedore damage affecting the Vessel's trading capabilities shall be repaired prior to redelivery, failing which the Charterers shall be liable for resulting losses. All other damage which is not repaired prior to redelivery shall be repaired by the Owners and settled by the Charterers on receipt of Owners' supported invoice.⁶⁴⁵

As can be seen from this clause the vessel time charterer is liable for any damage to the vessel caused by the stevedores. The only reservations are for ordinary wear and tear and that the charterer must be advised as soon as possible. This level of liability on the part of the time charterer is consistent with the responsibility that the time charterer assumes upon chartering the vessel.

In terms of voyage charters, the BIMCO clause reads as follows:

⁶⁴⁵ See www.bimco.dk clause current as of: May 20, 2013.

BIMCO Stevedore Damage Clause

'The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.

The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.

Like the time charter clause the voyage charter clause shifts responsibility for stevedore damage to the charterer. From an operator's perspective there is much to recommend that efforts are made to incorporate the BIMCO clauses into both time and voyage charters; the consistency they in general terms provide between the time and voyage charter forms is beneficial, as is the fact in particular that while the time charterer is assuming responsibility for damage under the time charter clause the voyage charter clause allows the passing of responsibility to the voyage charterer. Also, both clauses have the same damage reporting requirements which eliminates the risk that one charter party may allow damage to be notified upon discovery, while the other charter party may require damage to be reported within 24 hours. If, under a voyage charter a charterer is able to notify damage to the time chartered owner later than the time chartered owner is permitted to notify the actual owner under the time charter this can lead to an unnecessary assumption of liability

on the part of the time charterer. The consistency between requirements in the two clauses minimizes this risk.

Relative to other stevedore damage clauses in use the BIMCO time charter clause is fairly representative of what can generally be expected. With respect to voyage charters the clauses are much more variable. While it is submitted that the BIMCO clause for voyage charters is even handed in the allocation of risk, many voyage charterers wish to completely avoid any potential liability for damage to the vessel caused by stevedores.⁶⁴⁶ As noted above voyage charters occasionally incorporate clauses which state that stevedore damage is to be settled directly between the owner and the stevedore. Broadly speaking there exist two variations on this type of clauses. In both cases the clause provides that stevedore damage is to be settled directly, with the variation occurring in the role of the voyage charterer. The first type of clause will state that damage is to be settled directly between the owner and stevedore and that the charterer is to only assist in the claim against the stevedore, the second variation is that damage is to be settled directly but the charterer remains ultimately responsible for the claim. Therefore it can be seen that in the first scenario the charterer is assuming no responsibility for the claim beyond providing assistance, which from a practical standpoint incurs no liability on the part of the charterer, while in the second variation of the clause if the owner does not receive resolution from the stevedore the charterer will bear the ultimate responsibility. Clearly, it is preferable from the time charterer's perspective that the voyage charterer remains ultimately responsible. If the voyage charterer is relieved of responsibility under the clause then a claim for damage to the vessel will have to be settled directly with the stevedore, and this may prove difficult in the case of a large

⁶⁴⁶ This is understandable given that in many cases the voyage charterer is neither the shipper nor the receiver and has no role in choosing the stevedore.

damage claim. Also, in the event that a damage case must be litigated there is a likelihood that this will involve the time charterer in simultaneous proceedings in different legal systems, one with the owner and one with the stevedore, with no ability to join the disputes, and an increased risk of inconsistent decisions where the time charterer may end up liable for a damage claim. However, it should be noted that while the alternative of the charterer remaining ultimately responsible is preferable this still requires the operator to, at first instance, pursue the stevedore which can be costly and inconvenient.

It is submitted that an owner should not be expected to assume liability for the actions of stevedores that the owner has not selected nor contracted with, particularly considering the owner will not have had any opportunity to verify the competence or financial standing of the company.⁶⁴⁷

It can be seen from the above that with respect to stevedore damage clauses the key from the time charterer's perspective is negotiating clauses in the time and voyage charters that are consistent in terms of allocation of risk and reporting requirements. Risk in this scenario arises when the time charterer assumes risk for damage during loading and discharging of the cargo under the time charter, and then does not receive a parallel indemnity under the voyage charter. This is minimized by agreeing a clause under the voyage charter which allocates the risk for stevedore damage to the voyage charterer with the same constraints in terms of when the damage must be notified. However, when the time charterer takes responsibility for the loading and/or discharging of the cargo (in the sense that the

⁶⁴⁷ It can be argued that during negotiations the time charterer can ask details concerning the stevedores and attempt to verify their financial standing and competence. However, often a voyage charterer will not have details concerning the identity of the stevedore as the stevedore will in fact be appointed by (for example) the buyer of the cargo. In other cases, the length of time required for inquiries concerning the stevedore will be impractical when a fixture must be concluded quickly.

cargo is fixed on “liner terms”) there will be an inevitable assumption of risk on the part of the charterer, as in this case the stevedore will be selected and paid by the time charterer and a voyage charterer will be unwilling to indemnify the time charterer for damage to the vessel in such a case.⁶⁴⁸

6.3.2 Wear and Tear and Breach of Charter

With respect to damage to the vessel in general the time charterer's liability would seem to be limited to wear and tear which is related to a breach of charter,⁶⁴⁹ however in *Chellev Navigation v Appelquist* a vessel sustained damage to her holds during the loading and discharging of iron ore.⁶⁵⁰ Although counsel for the time charterer argued that the vessel was employed in permitted trades and the damage was not caused through the negligence of the charterer Acton J. found that even though there was no breach of charter that this did not preclude the charterer from being held liable for damage related to the time charterer's use of the vessel. Therefore, it seems that breach of charter is not technically necessary for a claim to succeed. However it would seem that the instances where such a claim would succeed would be more limited.

6.3.3 Damage to the Vessel Caused by Cargo

Chellev Navigation v Appelquist is also relevant to the issue of damage to the vessel caused by the cargo.⁶⁵¹ Based on the decision in this case it appears that in the event of damage to the vessel attributable to a permitted cargo the time charterer

⁶⁴⁸ Damage to the vessel will typically be covered by the time charterer's insurance, however it is clearly preferable from the operator's perspective to be able to pass the damage claim to the voyage charterer rather than rely on insurance, in other words to have the voyage charterer's insurance rather than the time charterer's insurance bear the claim.

⁶⁴⁹ *Wilson, Carriage of Goods 4th, supra* note 96, p. 91, 115-116.

⁶⁵⁰ (1933) 45 L.L. Rep. 190.

⁶⁵¹ *Ibid.*

will remain liable for damage to the vessel. While there is limited case law on this point the American case of *Hudson Valley Light Weight Aggregate Corp. v Windsor Building and Supply Co*, is useful.⁶⁵² In this case a vessel operating under a demise charter was damaged while carrying a cargo of heavy aggregate. It was held that there was a *prima facie* case against the charterers, and that the charterer must come forward with proof that it exercised due care and that the accident occurred without any negligence on its part. It is suggested that this is a fair evaluation of the law and it is submitted that under a time charter if a vessel is redelivered damaged there is a rebuttable presumption of liability on the part of the time charterer.

From this point arises the question of damage to the vessel caused by a cargo carried on a vessel performing under a time charter trip. The trip charter is frequently described as a “hybrid” charter.⁶⁵³ Defining the time charter trip as a hybrid charter is favourable to the Charterer when the issue of damage to a vessel attributable to a cargo carried arises. Typically, when a vessel is permitted to carry a wide range of cargoes, it may be envisioned that the owner of a vessel that is damaged by a permitted cargo may have a claim for this damage, even though there was no breach of charter. Under a time charter trip, which specified the intended cargo, it is submitted that specific knowledge of the cargo to be carried would mean that such a claim was likely to fail, and in this case the time charter trip is analogous to a voyage charter. This can be likened to safe port guarantees. When a specific port is named then it is implied that the owner will verify the safety of the port, however when the port to be called is within a geographical range of ports then it may be found that the charterer is implied to have warranted the safety of any port to be nominated. Similarly, when a particular cargo is specified it is strongly

⁶⁵² 446 F.2d 750 92d Cir 1971.

⁶⁵³ See for example *Hill, Maritime Law*, 6th, *supra* note 7 at 159.

arguable that the owner should verify that the cargo will not damage the vessel, whereas when there are a large number of permitted cargoes it is unrealistic to expect the owner to verify each potential cargo.⁶⁵⁴ It should also be noted that the use of the term “permitted cargoes” is somewhat misleading. A typical period time charter will contain a cargo exclusion clause, which lists cargoes that may not be carried, and by implication all cargoes not specifically included and therefore permitted.⁶⁵⁵ This illustrates clearly that when time chartering out a vessel an owner is permitting a time charterer to carry literally hundreds of different varieties of cargoes. From this it can be seen that it is unrealistic for an owner to be knowledgeable regarding the characteristics of each of these cargoes.

Having ascertained that there is a possibility that a time charterer may be liable under the time charter for damage caused by the carriage of a permitted cargo this gives rise to the question of whether under a typical voyage charter the time charterer (who in effect has contracted as the owner under the voyage charter) would be able to successfully pursue a parallel claim under the terms of the voyage charter. It is submitted that in general these damages would not be claimable from the voyage charterer. The rationale for this argument is the same as that with respect to damage by the cargo to the vessel under a time charter. Under a voyage charter the owner has agreed to transport a specific cargo and as such is responsible for assuring the suitability of the cargo in terms of the carrying vessel. As noted in the previous paragraph this can be viewed as similar to the example of a safe port warranty where when a port is named there is generally no implied warranty of safety, because the owner has been told what port is being called and has had the

⁶⁵⁴ See section 4.6, *supra*.

⁶⁵⁵ Although it should also be noted that a cargo exclusion clause may also include a blanket exclusion of certain general types of cargoes, the most common being dangerous cargoes.

opportunity to verify the characteristics of the port.⁶⁵⁶ In this case the time charterer would be liable for the claim without any recourse against the voyage charterer. If the damage was due to a fault or abnormality in the cargo that was not disclosed then there may be liability on the part of the charterer. However, in such a case the issue may be related to the obligation of the charterer to not ship dangerous goods,⁶⁵⁷ or, in the event that the cargo has been incorrectly described, the owner may be able to pursue a claim under the laws relating to misrepresentation.⁶⁵⁸

The second element to be considered is whether damage to a vessel can prevent the time charterer from making a valid redelivery. This issue was considered in *Wye Shipping v Compagnie du Chemin du Fer Paris Orleans*.⁶⁵⁹ In this case it was found that while the owner is entitled to claim for damages there is no right to refuse redelivery of the vessel. On the basis of the decision in this case it is now generally accepted that there is no right to refuse redelivery, even if the vessel is damaged.⁶⁶⁰ The time charterer will, however, be liable for a claim in damages.

In terms of avenues that the time charterer may take to minimize risk in this area it is possible to attempt to insert wording that relieves the time charterer of any

⁶⁵⁶ See chapter 4.

⁶⁵⁷ There is a long line of cases affirming that the charterer must not ship dangerous goods without giving notice to the carrier. The House of Lords has affirmed this position in *Effort Shipping v Linden Management (The Giannis NK)* [1998] 1 Lloyd's Rep 337. It is considered that a full discussion of dangerous goods is beyond the scope of this work.

⁶⁵⁸ Under Canadian law misrepresentation is divided into innocent misrepresentations, negligent misrepresentations and fraud. An examination of the law of misrepresentation is beyond the scope of this work, however, a possible mis-description of the cargo could fall into any of these three categories. With regard to misrepresentation see generally: Angela Swan, *Canadian Contract Law*, 2nd ed, (Markham, LexisNexis, 2009) 8.2. Canadian law is large similar to English law in this area. English law has been codified by the *Misrepresentation Act, 1967* (29 statutes 978). English law divides misrepresentation into innocent misrepresentation, fraudulent misrepresentation and negligent misrepresentation.

⁶⁵⁹ (1922) 10 L.L. Rep 85.

⁶⁶⁰ *Wilson, Carriage of Goods 4th, supra* note 96, p. 116.

liability for damage to the vessel due to a non excluded cargo. The success of inserting such a clause will very much depend upon the market conditions as well as the type of cargoes and trading patterns that are being contemplated, as well as the range of potential cargoes. However, it is considered that it is possible that in many cases an owner will be willing to agree to such a clause. If such wording cannot be included then there is little a time charterer can do other than be aware of the characteristics and potential risks associated with the carriage of potential cargoes.

6.3.4 Redelivery Notices

Redelivery notices are a consideration for the time charterer that does not have a parallel under the voyage charter. As the voyage charterer exercises no operational control over the vessel while at sea and as there is no concept equivalent to redelivery under voyage charters the voyage charterer does not give notices to the operator, and as such should the time charterer incur any liability towards the owner with respect to notices there will be no direct recourse against the voyage charterer.

When the a vessel under time charter is approaching the end of her chartered voyage the operator will almost invariably be required to give notices of the impending redelivery. These notices are generally divided into approximate notices and definite notices. The question which must be addressed from the time charterer's standpoint is twofold, can redelivery of the vessel be rejected for failure to tender appropriate notices and once given can a notice be rescinded.

With respect to whether an owner can reject redelivery for failure to give a notice, the answer is consistent with that regarding redelivery of a vessel early, or redelivery of a damaged vessel, which is to say that redelivery of the vessel cannot be rejected

for failure to tender a redelivery notice.⁶⁶¹ It is possible that the owner may have a claim in damages against the time charterer in the event that any losses arise from the time charterer's failure to give redelivery notices.

In terms of whether, once given, a redelivery notice can be rescinded this question was addressed in the recent case of *The Zenovia*.⁶⁶² In *The Zenovia* the time charterer of the vessel was, under the terms of the charter, required to give a series of approximate notices of redelivery, followed by several definite notices of redelivery. The first approximate notice was required about 30 days prior to redelivery, followed by approximate notices at varying intervals with the final approximate notice due 7 days prior to redelivery. The next notice required was a definite 5 day notice. The time charterer gave the 30 day notice on the basis that the present voyage would be the final voyage under the time charter. As it transpired, that voyage proceeded more quickly than anticipated, and the charterer was able to have sufficient time to schedule an additional voyage for redelivery before the final terminal date. The time charterer wished to employ the vessel for the maximum time possible and as such wanted to perform another voyage. The time charterer therefore informed the owner that the previous redelivery notice was being revised and that the vessel would redeliver later than anticipated.

The owner, relying on the approximate redelivery notice, had already fixed the vessel's next employment and took the position that the time charterer could not withdraw a redelivery notice and refused to allow the vessel to undertake the newly revised final voyage.

⁶⁶¹ See also Trond Solvang, "Redelivery Notices Under Time Charters", Nordisk Medlemsblad Membership Circular, No 569, October 2009, at 6163.

⁶⁶² *IMT Shipping and Chartering GmbH v Chansung Shipping Company Ltd, (The Zenovia)* [2009] EWHC 739 (Comm).

The charterer claimed that the owner was in breach by withdrawing the vessel and claimed damages totaling about US \$750,000. At arbitration the owner prevailed, with the arbitrators pointing out the commercial considerations facing the owner. On appeal to the Commercial Court, however, the charterer's argument prevailed. In the view of the court as long as the initial notice had been given in good faith and insofar as it was only an approximate notice the charterer was able to change it within the parameters provided by the charter party.

It is submitted that the preferable view is that espoused by the arbitrators, because it leads to greater certainty with respect to voyage scheduling.⁶⁶³

As noted earlier in this chapter the owner has commercial and operational considerations that must be taken in account when redelivery of the vessel is approaching, and a key consideration is the scheduling of the vessel's upcoming employment.⁶⁶⁴ While it has been previously pointed out that from a purely operational standpoint the owner will not typically fix the vessel's upcoming employment prior to the vessel starting the final voyage it must be noted that once the voyage is started, as happened in *The Zenovia*,⁶⁶⁵ the owner will generally be prepared to fix the vessel's next employment. The owner will rely largely upon the notices given by the charterer for the purpose of scheduling, and if the owner cannot rely on these notices they serve no purpose under the charter. It is therefore submitted that the arbitrators view in *The Zenovia* that a term must be implied into the charter party to the effect that the time charterer could not voluntarily change their final voyage plans is a preferable conclusion.

⁶⁶³ *Time Charters*, 6th, *supra* note 1, 270.

⁶⁶⁴ See section 6.2.2, *supra*.

⁶⁶⁵ [1984] 2 Lloyd's Rep 264.

It should also be pointed out that in a commercial context approximate notices are not described as “approximate” because they are intended to be non binding, they are described in this way because they are a greater amount of time from the date under consideration and as such are described approximate because they are more difficult to predict.

In spite of this and in light of the decision in *The Zenovia* the law as it presently stands is that a notice described as approximate is non binding and a charterer is within its rights to resile from such a notice. This is a point that legally favours time charterers but it is suggested that in order to increase certainty, it is advisable to include a term in the charter party that while redelivery dates may be subject to change that once notices are given, the voyage contemplated must be undertaken barring unexpected circumstances.⁶⁶⁶ This would represent the general commercial understanding of redelivery notices as well as provide the owner with the certainty required in commercially operating a vessel.

6.3.5 Other Redelivery Issues: Unclean Holds, Wrong Location

A subject similar to the question of a damaged vessel is that of redelivery of a vessel with unclean holds. Hold cleaning is dealt with elsewhere in this paper and as such will not be considered at length in this chapter.⁶⁶⁷ It needs to be noted, however, that there are instances where the question of vessel cleaning can pose significant issues for time chartered operators. For example, in the case where a cargo carried requires extensive cleaning after carriage this is a problem of which the time

⁶⁶⁶ Examples of such unexpected circumstances would be if the vessel was delayed and cancelled for the final voyage, or where the voyage charterer was unable to perform the final voyage.

⁶⁶⁷ See chapter 3, *supra*.

charterer must be aware. An example of such a cargo is cement, which can take several days to clean. It can be seen that in such a case the question of who is responsible for the time used in such cleaning and whether the vessel can be redelivered without the cleaning having been effected are major considerations.

In terms of redelivery in the wrong location it must be noted that there is no redelivery under a voyage charter; a voyage charter typically ends upon completion of discharge, not upon the reaching of a certain geographical point.⁶⁶⁸ Therefore, there is no relevance of the concept of redelivery to the voyage charterer, and the voyage charterer has no obligation which it is capable of breaching in this area. Under a time charter redelivery outside of the range specified in the charter party does not prevent redelivery. Rather, it allows the owner a claim for damages against the time charterer. The measure of damages will consist of the net profit that would have been earned by the owner for a theoretical voyage from the place where the charterer has returned the ship to the nearest port of place where redelivery could take place within the redelivery range.⁶⁶⁹ In *The Rijn* Mustill, J., held that the damages for the theoretical final voyage would be those which reduced that damages to a minimum, which would be a voyage in ballast to the nearest point within the redelivery range.⁶⁷⁰

6.4 CONCLUSION

It can be seen that issues surrounding redelivery are diverse but capable of management through both legal negotiation of charter party terms as well as well as

⁶⁶⁸ As in a time charter, where redelivery will occur on dropping last outward sea pilot from a given port (DLOSP), or passing a certain geographical point (such as passing Gibraltar).

⁶⁶⁹ *The Bunga Kenanaga* [1981] 1 Lloyd's Rep 518 and *The Rijn* [1981] 2 Lloyd's Rep 267.

⁶⁷⁰ *Santa Martha Baay Scheepvaart & Handelsmaatschappij NV v Scanbulk A/S (The Rijn)* [1981] 2 Lloyd's Rep 267.

prudent vessel operation. The main areas of risk were with respect to claims arising with regard to last voyage instructions and damage arising due to stevedore damage, which is most frequently settled after redelivery, and damage to the vessel attributable to the cargo carried on board.

The main area of risk identified is that of the time charterer fixing a final voyage that subsequently becomes illegitimate. The risk is that the operator may be exposed to a large claim for failure to perform the voyage, or that the operator may be required to pay increased hire for any period used in excess of the final terminal date. Risk in this area may be avoided through the application of a charter party clause that sets the date for determination of legitimacy of the final voyage as the date of nomination.

In terms of damage to the vessel most risk in this area arises with regard to stevedore damage and can be minimized by careful negotiation of stevedore damage clauses that have parallel terms under both time and voyage charters. Damage to the vessel arising from cargo carried is also a potential issue. Claims in this area appear rare, and can be avoided by attempting to either negotiate wording that excludes liability for damage arising due to the carriage of a permitted cargo.

Overall it appears that redelivery is an area where risk can be managed by time charterers through negotiation of charter party terms. This can, for example, be achieved in the case of the redelivery window by negotiation of a clear final voyage clause and through the avoidance of unclear parameters in describing the period.

CONCLUSION

This thesis has examined the legal risks which may be encountered by the time chartered operator who operates vessels under a time charter party then sub charters on voyage terms.

The risks examined in this thesis have been those which may exist (or relate to contractual terms) under both charter parties and does not extend to risks which do not give rise to an equivalent risk under the other charter form. An example of the latter type of risk would be speed and consumption claims. It must also be noted that many risks do not run in perfect parallel and one of the interesting and unique perspective of this work is the linkage of concepts under time and voyage charters through the risk management perspective of the time charterer.

The primary question that this thesis addressed was what risks existed, for the time chartered operator, under time charters that gave rise to an equivalent risk under voyage charters, and to what extent these risks can be managed through amendment of existing charter party terms.

This thesis addresses a gap in the existing shipping law literature in that it addresses charter party law specifically from the perspective of the time chartered operator. Rather than viewing time and voyage charter disputes in a vacuum this work looks at them in a comparative fashion. Beyond this, risks for the time charterer are identified and analyzed. Finally, potential risk management approaches are considered. Therefore it represents an original contribution to the field through for its comparative nature of reflecting on time and voyage charters as well as for specifically identifying and analyzing risks.

The general layout has been to set out the issues, broadly speaking, in a manner consistent with that stages of a voyage, and to consider charter party law relative to each stage. Each chapter identifies the key legal concepts and draws out the concepts which are of particular relevance to the time chartered operator. Once the existing law has been analyzed each chapter considers the specific risks which arise for the operator and evaluates both the extent to which risk exists and can be minimized.

The first chapter examines the issue of delivery and readiness. These concepts will only run in parallel during a time chartered vessel's first voyage, as this will be the only voyage under which the ship delivers. This chapter examines the rights and responsibilities primarily in relation to time, that is when the vessel must present a notice, and how this varies under time and voyage charters. There is an examination of the difference, under voyage charters, of the cancelling date, the notice of readiness for the purposes of laytime counting and the expected ready to load date. The key risk involved in this area is that of delivery of the vessel taking place and the time charterer subsequently losing the sub voyage charter, leaving them with no employment for the vessel. It is concluded that there exists a real risk in this area, and that while certainly contractual wording is theoretically possible to eliminate this risk that a ship owner is unlikely to agree to wording that would completely reapportion risk in this way. What is considered more viable is agreeing a clause in the sub voyage charter than gives the ship owner the right to require advance notification of the voyage charterer's intention to cancel should the vessel become certain to miss her cancelling date. In this sense the conclusion in this chapter is that risk minimization is more realistic than complete elimination.

The second chapter deals with the subject of off hire and suspension of laytime, with the specific off hire situations examined primarily focusing on those which occur in port. The reason for this limitation is fundamentally that there would be no common occurrence that would give rise to a voyage charterer being liable for time lost at sea. The comparison of off hire and laytime is a novel approach to the question of time lost in port. These are two fundamentally different concepts that only overlap from the perspective of the time chartered operator because, in the event of time lost in port the time charterer will wish to avoid the situation where laytime does not count but the vessel remains on hire. While this chapter includes extensive consideration of different types of inefficiencies and whether they may lead to situations of liability for the time charterer it can generally be concluded that there is significant risk, under standard charter terms, of the time charterer incurring risk in this area. However, it is also generally concluded that this is an area in which can be well managed through the careful negotiation of charter party terms, primarily in the area of negotiating a provision for the vessel being off hire in the event of non physical inefficiencies. This chapter is particularly original on several levels. On a theoretical legal level it undertakes a comparative examination of two different yet interrelated concepts, on a practical level it is of use to ship operators in determining their risks.

The third topic examined was that of cargo space cleanliness. This is an aspect that is not widely examined the literature and thus constitutes an original analysis of this area of law as well as providing a useful framework for those involved in chartering ships. Of particular note in this chapter is the analysis from a time charterer's standpoint of the decision in the *Bunga Saga Lima*,⁶⁷¹ a case which presents serious risks to the time charterer, and clear solutions are presented in terms of dealing with

⁶⁷¹ *The Bunga Saga Lima* [2005] 2 Lloyd's Rep 1.

the ramifications of this case. The question of intermediate hold cleaning is also examined at length, which is topic upon which previous academic focus is lacking. Overall risk is assessed to exist in this area, with the major area for disputes being seen as intermediate cleaning between voyages. It is concluded that in this area disputes can be minimized through the use of contractual wording which clearly outlines which risks each party is to bear. In terms of risk minimization time charterers have certain steps which can be taken in relation to the charter party which can serve to reduce risk.

The fourth chapter examined the questions of safe ports. Unlike laytime and off hire this is an area where the type of warranty given under each charter is the same, a safe port in a voyage charter and time charter is effectively the same thing. The difference arises in that while the warranties themselves are the same⁶⁷² what is generally warranted varies between type of charter form and the time charterer potentially assuming liability for warranting safety to the owner while not receiving and equivalent warranty from the voyage charterer. In spite of the consistency between the definition of what constitutes a safe port the area of non physical unsafety remains a developing area of the law and this was examined, particularly with regard to required certificates and the owners obligations under the time charter. Also of particular importance to the time chartered operator is when a warranty of safety may be implied into charter parties, another area which has not been fully examined. Finally, it was necessary to analyze the law of safe ports and berths from the perspective the operator, which is an original viewpoint. In terms of risk arising from safe ports and berths it is considered that, generally speaking, this

⁶⁷² In fact case law relating to safe berths and ports is generally used interchangeably between time and voyage charter cases.

is an area that can be addressed in a relatively straightforward fashion through attempting to negotiate parallel terms.

Chapter five focused on the question of bills of lading and letters of indemnity. The key consideration in this area was approaches which the time charterer could employ to attempt to minimize risk inherent in dealing with bills of lading which were not in conformity with the actual cargo condition. Many strategies were outlined and considered in this chapter, with the most promising being the delegation of authority to sign bills of lading to the voyage charterer on the same terms as between the owner and the time charterer. Letters of indemnity for issuing clean bills of lading continue to be used in practice and have tended to receive little academic consideration. This chapter, which examines the risks involved in issuing them and outlines strategies to limit their harmfulness therefore represents an addition to the literature.

The final chapter examined the issue of redelivery. This is the final stage of any time charter, when the vessel is returned to her owner. There is no equivalent provision under voyage charters; a vessel completes discharge and that is, fundamentally the end of the charter.⁶⁷³ Where risk exists with respect to redelivery in relation to the time charterers final voyage orders. While variations exist, a troublesome scenario for a time charterer may occur if a final cargo is booked, which at the time of booking appears to be on a safe position with regard to dates. However, the vessel may delay at which point were the vessel to perform the voyage redelivery would take place later than the contractually agreed dates. The owner is therefore under no obligation to allow the time charterer to perform the final voyage as proposed,

⁶⁷³ Notwithstanding that the charterer may still be liable under a safe port warranty if the vessel is unable to leave port, if such a warranty exists under the voyage charter.

whereas the time charterer has a firm commitment to the voyage charterer to move the cargo and could be held liable in damages for failure to perform. The risk with respect to final delivery orders it is considered that these risks are manageable through negotiation of a final voyage clause that judges whether a final order is legitimate at the time the order is given, albeit allowing the owner to claim for additional hire should the voyage extend past the final redelivery date. Other issues with respect to redelivery were also examined, including damage to the vessel on redelivery, redelivery in the wrong place or redelivery with the cargo spaces in unclean condition. Because of relatively recent developments in the law relating to redelivery, particularly the decision in *The Achilles*,⁶⁷⁴ and that in *The Paragon*,⁶⁷⁵ there has been increased interest in redelivery. However, redelivery poses additional areas for inquiry for the time chartered operator who runs additional risks with respect to contractual obligations made to sub voyage charterers. The examination of these risks, and the drafting of a redelivery clause ensure that this chapter is a valuable addition to the literature.

One theme that runs through the pure charter party disputes is that of off hire. Because the time charterer pays for the vessel on a daily basis the primary question for the time charterer often becomes that of when hire can be interrupted. The theme of time is less present in voyage charters, the exception being laytime. Otherwise under voyage charters claims will often be for damages. Time as a concept under charter parties is also shown in terms of redelivery, where the timing of orders is significant and the amount of time remaining under the charter are key questions, as well as in terms of time of readiness and cancelling.

⁶⁷⁴ *Transfield Shipping Inc v Mercator Shipping Inc (The Achilles)* [2008] UKHL 48.

⁶⁷⁵ [2009] EWCA Civ 855.

Bill of lading disputes are a different general variety, being more concerned with claims for damage, shortage or wrongful delivery.

Overall it is concluded that assumption of risk is inherent to ship chartering and that charter party risks will continue to exist to some extent irrespective of attempts to negotiate more favourable or more precise charter party terms. This is simply due to the differing natures of time and voyage charters, an operator has taken a vessel on charter for a period of time and seeks to make a profit running the vessel, despite the time chartered operators best efforts. For example, the fundamental nature of time and voyage charters precludes passing weather delays at sea to voyage charterers, and voyage charterers are unlikely to accept risks of contamination of cargo due to previous cargoes carried. However, it is also concluded that it is possible in many cases to greatly reduce these risks through contractual negotiation and awareness of the risks that exists. In all areas examined some room for improvement was viewed as possible. Some areas, such as final voyage orders, require a more proactive approach combined with an awareness of the risks in which case contractual language reducing, or even eliminating the risk, should be possible to achieve. On the other hand an area such as bills of lading is more difficult, and many strategies may possibly be employed, none of which are certain to be effective, but in general it shown that risk reduction is possible.

BIBLIOGRAPHY

BOOKS

- Aikens, Richard, Lord, Richard, Bools, Michael *Bills of Lading* (London, Informa, 2006)
- Baughen, Simon, *Shipping Law*, 4th ed, (London, Routledge-Cavendish, 2009)
- Baughen, Simon, *Shipping Law*, 3rd ed, (London, Cavendish, 2004)
- Bonassies, Pierre, Scapel, Christian, *Droit Maritime*, (Paris, L.G.D.J, 2006)
- Branch, Alan, *Elements of Shipping*, 8th edition, (Oxford, Routledge, 2007)
- Chuah, J.C.T, *Law of International Trade*, 2nd ed, (London, Sweet & Maxwell, 2001)
- Coghlin, Terence, Baker, Andrew, Kenny, Julian and Kimball, John, *Time Charters*, 6th ed, (London, Informa, 2008)
- Cooke, Julian, Young, Timothy, Taylor, Andrew, Kimball, John, Martowski, David, Lambert, LeRoy, *Voyage Charters*, 2nd ed, (London, Informa, 2007)
- Charles Debattista in *Maritime Law* 2nd ed, edited by Yvonne Baatz, (London, Sweet & Maxwell), 2011
- Davies, Donald, *Commencement of Laytime*, 3rd ed, (London, LLP, 1998)
- Davies, Donald, *Commencement of Laytime*, 4th ed, (London, Informa, 2006)
- Dockray, Martin, *Cases and Materials on the Carriage of Goods by Sea*, 3rd ed, (London, Cavendish Publishing, 2004)
- Bernard Eder, Howard Bennett, Steven Barry, David Foxton, Christopher Smith, *Scrutton on Charterparties and Bills of Lading*, 22nd ed, (London, Sweet & Maxwell, 2011)
- NJJ Gaskell, NJJ, Debattista, Charles, & Swatton, RJ, *Chorley & Giles' Shipping Law*, 8th Edition, (London, Pitman, 1987)
- Gold, Edgar, Chircop, Aldo, and Kindred, Hugh, *Maritime Law*, (Toronto, Irwin Law, 2003)
- Girvin, Stephen, *Carriage of Goods by Sea*, (London, Sweet & Maxwell, 2007)
- Girvin, Stephen, *Carriage of Goods by Sea*, 2nd ed, (Oxford, Oxford University Press, 2011)
- Christopher Hill, *Maritime Law*, 5th ed, (London, LLP, 1998)
- Christopher Hill, *Maritime Law*, 6th ed, (London, LLP, 2003)

Mocatta, Sir Alan Abraham, and Mustill, Sir Michael J., *Scrutton on Charterparties and Bills of Lading 19th Edition*, (London, Sweet & Maxwell, 1984)

Remond-Gouilloud, Martine, *Droit Maritime*, 2nd ed, (Paris, Pedone, 1993)

Robinson, Gustavus H., *Robinson on Admiralty*, (St. Paul, West, 1939)

Schoenbaum, Thomas J., *Admiralty and Maritime Law*, 3rd ed, (St. Paul, West, 2001)

Schofield, John, *Laytime and Demurrage* 2nd ed, (London, LLP, 1990)

Swan, Angela, *Canadian Contract Law*, 2nd ed., (Markham, LexisNexis, 2009)

Tetley, William, *International Maritime and Admiralty Law*, (Cowansville, Yvon Blais, 2002)

Tetley, William, *Marine Cargo Claims*, 3rd ed (Cowansville, Yvon Blais, 1988)

Tetley, William, *Marine Cargo Claims*, 4th ed (Cowansville, Yvon Blais, 2008)

Treitel, Sir Guenther and Reynolds, F.M.B. *Carver on Bills of Lading*, 3rd ed (London Sweet & Maxwell 2011)

Thomas, O.O., Agnew, John, and Cole, K.L., *Thomas' Stowage*, (Glasgow, Brown, Son & Ferguson Ltd, 1983)

Wilford, Michael, Coghlin, Terence, Kimball, John D., *Time Charters*, 3rd ed, (London, LLP, 1989)

John F. Wilson, *Carriage of Goods by Sea*, 4th ed, (Harlow, Longman, 2001)

John F. Wilson, *Carriage of Goods by Sea*, 5th ed, (Harlow, Pearson Longman, 2004)

John F. Wilson, *Carriage of Goods by Sea*, 6th ed, (Harlow, Pearson Education, 2009)

ARTICLES

Bond Smith Jr., J., "Time and Voyage Charters : Safe Port/Safe Berth" (1975) 49 Tulane Law Review,

Braen, André, "La Responsabilité de la société de classification en droit maritime canadien", (2007) 52 McGill L.J., 497

Gebb, Sheldon A., "The Demise Charter: A Conceptual and Practical Analysis", Tulane Law Review, Vol 49 Number 4 May 1975

Healy Jr., Nicholas, Termination of Charter Parties, Tulane Law Review, Vol .49, No. 4

Liang, Chen, "Seaworthiness under Charter Parties", Journal of Business Law, 2000

- Low, Hang Yen, "Confusion and difficulties surrounding the fraud rule in letters of credit: an English Perspective" 17 JIML (2011), 562
- Malbane, Richard, "Outcome of hold-cleaning case a warning to charterers", (2008) Lloyd's List, 18 June
- Mays, Joe, "Charterers' CQD Obligations", Steamship Mutual website
- Siddall, Kieran, "The Confluence of Insolvency and Maritime Law in Canada, Navigating Troubled Waters", Lexpert Feature Articles, <http://www.lexpert.ca/directory/feature-articles/the-confluence-of-insolvency-and-maritime-law-in-canada-navigating-troubled-waters-12/>
- Solvang, Trond, "Redelivery Notices Under Time Charters", Nordisk Medlemsblad Membership Circular, No 569, October 2009, at 6163
- Stone, Arthur J., "Canada's Admiralty Court in the Twentieth Century", (2002) 47 McGill L.J. 511
- Tetley, William, Letters of Indemnity at Shipment and Letters of Guarantee at Discharge, ETL (2004), 287
- Todd, Paul, "Ransom Piracy and Time Charterparties", 18 JIML (2012) 3 193
- Weale, John, "A Case of No Great Significance: Hogarth v. Miller (The Westphalia)", [1891] A.C. 48 34 J. Mar. L. & Com 683
- Wereley, James R., "Third Party Enforcement of Letters of Indemnity for Non-Presentation of Bills of Lading", 18 JIML (2012) 338
- Britannia P & I Club Claims & Legal Volume 1: Number 3: November 2009 "Indian Law Provides a Trap for those Relying on Foreign Arbitration"

CASES

- The Ardennes* [1951] 1 KB 55
- The Austin Friars* (1894) 71 L.T. 27
- Actis Co. Ltd v Sanko Steamship Co (The Aquacharm)* [1982] 1 Lloyd's Rep 7
- Adelaide Steamship Co. v R* [1926] AC 172
- Aegean Sea Traders Corporation v Repsol Petrolea SA (The Aegean Sea)* [1998] 2 Lloyd's Rep 39
- The Aello* [1961] AC 135
- Akins HA International of Vaduz v Islamic Republic of Iran Shipping Lines (The APJ Priti)* [1987] 2 Lloyd's Rep 37
- Aktiebolaget Nordiska Lloyd v J. Brownlie & Co. (The Gevalia)* (1925) Com. Cas. 307

The Alaskan Trader (No. 2) [1983] 2 Lloyd's Rep 645

The Alina (1880) 5 Ex D 227 (CA)

Alma Shipping Corp. of Monrovia v Mantovani (The Dione) (1975) 1 Lloyd's Rep 115

Andre et Cie v Orient Shipping (Rotterdam) (The Laconian Confidence) [1997] 1 Lloyd's Rep 139

Angel Maritime Inc. v Barber Dubai Shipping Agencies Co. (LLC) , 2002 CanLII 38097 (QC CA)

The Arctic Trader (1996) 2 Lloyd's Rep 449

Aris Steamship Co. v Associated Metals & Minerals Corp (The Evie W) [1980] 2 S.C.R. 322

Armonikos Corp Ltd v Saskatchewan Wheat Pool 2002 FCT 799

Arta Shipping Co v Thai Europe Tapioca Shipping Service (The Johnny) (1977) 2 Lloyd's Rep 1

The Aspa Maria (1976) 2 Lloyd's Rep 643

Attica Sea Carriers Corp v Ferrostaal (The Puerto Buitrago) [1976] 1 Lloyd's Rep 250

Axel Brostrom v Louis Dreyfus (1932) Com Cas 79

The Baleares [1993] 1 Lloyd's Rep 215

Balfour Guthrie (Canada) Ltd v Far Eastern Steamship Co (1977) 82 D.L.R. (3d) 414 (C.A.)

The Bela Krajina [1975] 1 Lloyd's Rep 139

Bellcore Maritime Corp v Fratelli Moretti Cereali S.p.A. (The Mastro Giorgis) [1983] 2 Lloyd's Rep 66

The Berge Tasta [1975] 1 Lloyd's Rep 423

The Berkshire [1974] 1 Lloyd's Rep 185

Blue Anchor Line Ltd v Alfred C Toepfer International GmbH (The Union Amsterdam) [1982] 2 Lloyd's Rep. 432

Bocimar v Farencos Navigation [2002] E.W.H.C. 1617 Q.B.

Brown, Jenkinson & Co., Ltd v Percy Dalton, [1957] 2 Lloyd's Rep 1

The Boukadoura [1989] 1 Lloyd's Rep 393

Budgett & Co. v Binnington & Co. [1891] 1 Q.B. 35

Bulk Shipping v Ipco Trading [1992] 1 Lloyd's Rep 39

The Bunga Kenanaga [1981] 1 Lloyd's Rep 518

The Bunga Saga Lima [2005] 2 Lloyd's Rep 1

Canadian General Electric Co. Ltd. v Canadian Rubber Company Ltd. (1915), 52 S.C.R. 349, 27 D.L.R. 294, [1915] S.C.J. No. 58 (S.C.C.)

Canadian Pacific (Bermuda) Ltd v Canadian Transport Co. Ltd. (1974) 1 Lloyd's Rep 311 (C.A.)

Canastrand Industries v The Lara S [1993] 2 F.C. 553

Canficorp v Cormorant Bulk Carriers (1984) 54 N.R. 66

Canmer International Inc v UK Mutual Steamship Assurance Association (Bermuda) Ltd. (The Rays) [2005] EWHC 1694 (Comm)

Carlton S.S. Co v Castle Mail Packets Co. (1898) AC 486 (HL)

Cheikh Boutros Selim El-Khoury v Ceylon Shipping Lines Ltd (The Madeleine) (1967) 2 Lloyd's Rep 224

Chellew Navigation v Appelquist (1933) 45 Ll.L. Rep. 190

Christie & Vesey Ltd. v. Maatschappij tot Exploitatie Van Schepen en Andere Zaken (The Helvetia-S) [1960] 1 Lloyd's Rep 540

Cia Naviera Vasconzada v Churchill & Sim [1906] 1 KB 237

Compania Naviera Maropan v Bowaters Lloyd Pulp and Paper Mills (The Stork) [1955] 2 Q.B. 68

Compania de Naviera Nedelka v Tradax International (The Tres Flores) [1974] Q.B. 264

Copco Steel & Eng Co. v S.S. Alwaki 131 F. Supp. 332 1955 AMC 2001 (S.D.N.Y. 1955)

Court Line v Dant & Russell (1939) 44 Com. Cas. 345

Daewoo Heavy Industries v Klipriver Shipping Ltd. (The Kapitan Petko Voivoda) [2003] EWCA Civ 451

Davis v Fareham U.D.C. [1956] AC 696

Davis v Garrett (1830), Bing. 716, 130 E.R. 1456

Deep Sea Tankers Limited et al. v. The Ship "Tricape" et al., [1958] S.C.R. 585

The Democritos [1976] 2 Lloyd's Rep 149 (CA)

Dias Compania Naviera v Louis Dreyfus (The Dias) [1978] 1 Lloyd's Rep 325

Dow Chemical (Nederland) v B.P. Tanker Co. (The Vorras) [1983] 1 Lloyd's Rep 579 (C.A.)

Dow Europe v Novoklav Inc. [1998] 1 Lloyd's Rep 306

Dunlop Pneumatic Tyre Co. Ltd v New Garage and Motor (1915) AC 79

Eastern Mediterranean Maritime (Liechtenstein) Ltd. v Unimarine S.A. (The Marika M) [1981] 2 Lloyd's Rep. 622

Effort Shipping v Linden Management (The Giannis NK) [1998] 1 Lloyd's Rep 337

The Elpa (2001) 2 Lloyd's Rep 596

Re Empire Shipping Co [1940] 1 D.L.R. 695 (B.C.S.C)

The Eugenia [1964] 2 Q.B. 226

Far East Chartering Ltd and Binani Cement Ltd v Great Eastern Shipping Company Ltd (The Jag Ravi) [2012] EWCA Civ 180

Federal Bulk Carriers Inc v C Itoh & Co. Ltd (The Federal Bulker) [1989] 1 Lloyd's rep 103

Federal Commerce and Navigation Co Ltd v Tradax Export SA (The Maratha Envoy) [1978] A.C. 1

Unitramp v Garnac Grain Co Inc (The Hermine) [1978] 2 Lloyd's Rep. 37

Gem Shipping Co of Monrovia v Babanaft (Lebanon) Sarl (The Fontevivo) [1975] 1 Lloyd's Rep 399

General Traders v Saguenay Shipping [1983] C.A. 536

Geogas SA v Trammo Gas Ltd (The Baleares) [1993] 1 Lloyd's Rep 215 (CA)

Glencore Grain Ltd v Flacker Shipping Ltd, (The Happy Day) [2002] 2 Lloyd's Rep 487

The Good Friend [1984] 2 Lloyd's Rep 586

Groves, Maclean & Co. v Volkart (1884) C & E 309

G.W. Grace and Co. v General Steam Navigation Co (1950) 2 KB 383

Hadley v Baxendale (1854) 9 Exch 341

Hasbro Industries v St. Constantine 705 F.2d

The Hector [1998] 2 Lloyd's Rep 287

Hiram Walker & Sons v. Dover Navigation (1949) 83 Ll. L Rep. 84

Hogart v Miller [1891] A.C. 48 (H.L.)

The Hongkong Fir [1961] 2 Lloyd's Rep. 478 (CA)

Hick v Raymond (1893) AC 22

Holman v Dasnieres

Houlder v Weir [1905] 2 KB 267

The HR Macmillan [1974] 1 Lloyd's Rep 311 (CA)

Hudson Valley Light Weight Aggregate Corp. v Windsor Building and Supply Co 446 F.2d 750 92d Cir 1971

Hunter Grain Pty. V. Hyundai Merchant Marine Co Ltd. (1928) 1 ALR 507 (Fed Ct. Austr)

Hyundai Merchant Marine Co Ltd v Furness Withy (Australia) Pty [2006] 2 Lloyd's Rep 175

Hyundai Merchant Marine Co Ltd v Gesuri Chartering Co. Ltd. (The Peonia), [1991] 1 Lloyd's Rep 100

Independent Petroleum Ltd v Seacarriers Count Pte [2006] EWHC 32222

IMT Shipping and Chartering GmbH v Chansung Shipping Company Ltd, (The Zenovia) [2009] EWHC 739 (Comm)

The Ioanna [1985] 2 Lloyd's Rep 164

The Ira [1995] 1 Lloyd's Rep 103

The Island Archon [1994] 2 Lloyd's Rep 227

Islander Shipping Enterprises v Empresa Maritime Del Estado (The Khian Sea) [1979] 1 Lloyd's Rep 545

J Lauritzen v Wijsmuller, (The Super Servant Two) [1990] 1 Lloyd's Rep 1

The Kanchenjunga [1990] 1 Lloyd's Rep 391

Kodros Shipping Corp. v Empresa Cubana de Fletes (The Evia) (No. 2) [1983] 1 A.C. 763 H.L

Koufos v C Czarnikow Ltd (The Heron II) [1969] 1 AC 350

Kwei Tek Chao v. British Traders & Shippers Ltd [1954] 2 Q.B. 459

Leary v United States 81 U.S. (14 Wall) 607

Leduc v Ward (1888) 20 QBD 475 (CA)

Leeds Shipping Company v Duncan, Fox & Co., Ltd (1932) 42 Ll.L. Rep 123

Leeds Shipping Co. Ltd. v Société Française Bunge (The Eastern City) [1958] 2 Lloyd's Rep 127 (CA)

Lickbarrow v Mason (1787) 2 TR 64

London & Overseas Freighters v Timber Shipping, (The London Explorer) [1972] AC 1 (HL)

McFadden v Blue Star Line [1905] 1 KB 697

Maredelanto Compania Naviera SA v Bergbau-Handel GmbH (The Mihalis Angelos) [1971] 1 QB 164 (CA)

Mareva Navigation v Canadria Armadora SA (The Mareva AS) [1977] 1 Lloyd's Rep 368

The Matija Gubec [1983] 1 Lloyd's Rep. 24

Mediterranean Freight Services v B.P. Oil International (The Fiona) [1994] 2 Lloyd's Rep 506

Miramar Maritime Corp v Holborn Oil Trading Ltd (The Miramar) [1984] 1 AC 676

Moel Tryvan Ship Co. Ltd. v Andrew Weir & Co. [1910] 2 K.B. 844

Navigas International Ltd v Trans-Offshore Inc. (The Bridgestone Maru No. 3) [1985] 2 Lloyd's Rep 62

Navrom v Callistis Ship Management S.A. (The Radauti) [1988] 2 Lloyd's Rep. 416 (CA)

The Nea Tyhi [1982] 1 Lloyd's Rep 606

N.M. Paterson & Sons Ltd. v Mannix Ltd. [1966] S.C.R. 180

Noemijulia v Minister of Food [1951] 1 K.B. 223

The Nogar Marin [1988] 1 Lloyd's Rep 412

Nolisement (Owners) v Bunge y Born, (The Nolisement) [1917] 1 K.B. 160

Norfolk S. Ry v James N. Kirby, Pty Ltd, 543 U.S. 14, 30-35, 2004 AMC 2705, 2715-20 (2004) (US)

Northern S.S. Co. v Earn Line S.S. Co., 175 Fed. 529 (2 Cir. 1910)

The Odenfield [1978] 2 Lloyd's Rep 357

Outtrim v British Colombia [1948] 3 D.L.R. 273 (B.C.C.A.)

Owners of Cargo on Ship Maori King v. Hughes [1895] 2 Q.B. 550

The Paragon [2009] EWCA Civ 855

Paterson Steamships Ltd v ALCAN [1951] S.C.R. 852

Petroleo Brasileiro SA v Kriti Akti Shipping Co. SA (The Kriti Akti) [2004] 1 Lloyd's Rep 712

The Quarrington Court 36 F. Supp. 278; 1940 AMC 1546 (S.D.N.Y. 1940)

R. Pagnan & Fratelli v. N.G.J. Schouten [1973] 1 Lloyd's Rep 349

Reardon Smith Line v Australian Wheat Board (The Houston City) [1956] 1 Lloyd's Rep 1

Reardon Smith Line v Ministry of Agriculture, Fisheries and Food [1962] 1 Q.B 42 (C.A.)

Reindeer Steamship v Forslind (1908) 13 Com Cas

Rodocanachi v Milburn (1886) 17 QBD 316

Royal Greek Government v Minister of Transport, (The Ann Stathatos) (1948) 82 Ll.L. Rep 196

Royal Greek Government v Minister of Transport (The Ilissos) (1949) 1 All E.R. 171 (C.A.)

Rudolf A Oetker v IFA Internationale Frachagentur AG (The Almak) [1985] 1 Lloyd's Rep 557

Sametiet M/T Johs Stove v Istanbul Petrol Raffinerisi (The Johs Stove) [1984] 1 Lloyd's Rep. 38

The Samuel W. Hall, 49 F. 281 (S.D.N.Y. 1892)

The Sanko Steamship Co. v Fearnley & Eger A/S (The Manhattan Prince) 1985] 1 Lloyd's Rep 140

Santa Martha Baay Scheepvaart & Handelsmaatschappij NV v Scanbulk A/S (The Rijn) [1981] 2 Lloyd's Rep 267

The Saudi Crown [1986] 1 Lloyd's Rep 261

The Scindia Steamship Navigation Company Limited Bombay v Nippon Yusen Kaisha Limited (The Jalagouri) [2000] EWCA Civ 93

Seagate Shipping Ltd v Glencore International AG (The Silver Constellation) [2008] EWHC 1904 (Comm)

Semon v Royal Indemnity Co., 279 F.2d 737, 739 (5th Cir. 1960) (USA)

Sidermar S.p.A. v Apollo Corp (The Apollo) [1978] 1 Lloyd's Rep. 200

Sig Bergensen DY A/S v Mobil Shipping & Transportation Co (The Berge Sund)
[1993] 2 Lloyd's Rep 453 (CA)

Smith v Dart (1884) 14 QBD 105

Standard Chartered Bank v Pakistan National Shipping Corp. [2002] UKHL 43

Stanton v Richardson (1875) LR 9 CP 390

STX Pan Ocean Co. Ltd. v Ugland Bulk Transport A.S. (The Livantia) [2007] EWHC 1317 (Comm)

Sudbrook Estates v Eggleton [1993] 1 AC 44

TA Shipping v Comet Shipping, (The Agammemnon), [1998] 2 Lloyd's Rep 675

Tage Berlund v Montoro Shipping Corp. (The Dagmar) [1968] 2 Lloyd's Rep 563

Tillmans v Knutsford [1908] AC 406

Torvald Klaveness A/S v Arni Maritime Corp. (The Gregos) (1995) 1 Lloyd's Rep 1;
[1994] 1 WLR 1465; 4 All ER 998

Trade Arbed Ltd v MV Swallow 688 F. Supp. 1095 at p. 1106, 1989 AMC 2218 (E.D. La. 1988)

Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas) [2008] UKHL 48

Transoceanic Carriers v Cook Industries (The Mary Lou) [1971] 2 Lloyd's Rep 272

Transportation by Mendez 2 U.S.M.C.

Tweddle Trad. Co. v George D. Emery Co., 154 Fed. 472 (2 Cir. 1907)

TW Thomas & Co Ltd. v Portsea Steamship Co. Ltd. (1912) AC 1

Tynedale Steam Shipping Co. Ltd. v. Anglo-Soviet Shipping Co. Ltd. [1936] 1 All E.R. 389

Union Carbide Corp v Fednav Ltd (The Hudson Bay) (1997) 131 F.T.R. 241

United Baltic Corp v Dundee Perth & London Shipping Co. (1928) 2 Ll.L. Rep 272

United City Merchants (Investments) Ltd. v Royal Bank of Canada [1983] 1 AC 168

United Nations Children's Fund v S.S. Nordstren 251 F. Supp. 833 (S.D.N.Y. 1966)

Vardinoyannis v The Egyptian General Petroleum Corp, (The Evaggelos Th) [1971] 2 Lloyd's Rep 200

The Varenna [1983] 2 Lloyd's Rep 592

Vaughan v Campbell, Heatley & Co. (1885) 2 TLR 33

Venezolana de Navigacion v Bank Line (The Roachbank) [1987] 2 Lloyd's Rep 138

Watson SS Co v Merryweather & Co. (1913) 108 LT 1031; 12 Asp MLC 226

West India Steamship Co. v Clyde Commercial Steamship Co 169 F.275 (2d Cir) cert. denied, 214 U.S. 523 (1909)

Western Sealanes Corp. v Unimarine S.A. (The Pythia) [1982] 2 Lloyd's Rep 160

Whistler International Ltd v Kawasaki Kisen Kaisha Ltd (The Hill Harmony) [2001] 1 AC 638

The World Symphony [1992] 2 Lloyd's Rep 115

Wye Shipping v Compagnie du Chemin du Fer Paris Orleans (1922) 10 Ll.L. Rep 85

Zim Israel Navigation Co. Ltd v Tradax Export SA (The Timma) [1971] 2 Lloyd's Rep 91 (CA)

LEGISLATION

Civil Code of Quebec

County Courts Act 1984 (UK)

Federal Court Act R.S.C 1985

Hague-Visby Rules

International Convention on Safety of Life at Sea

loi de 1966 (France)

Marine Liability Act S.C. 2001

Misrepresentation Act 1967 (UK)

Statute of Westminster, 1931 (UK)

Supreme Court Act 1981 (UK)

U.S. Constitution

CHARTER PARTIES

Asbatankvoy

Baltimex 1939

Baltimex 1939 Uniform Time-Charter (Box Layout 1974)

BPTIME3

Gencon (1976)

Gencon (1994)

NYPE (1946)

NYPE 1993

Norgrain 89 North American Grain Charterparty 1973 (Amended May 1989)

Shelltime 4

Shelltime 1

Shellvoy 5

Shellvoy 6

Synacomex 90 (Continent Grain Charterparty)

Worldfood 99

ARBITRATIONS

The Bjorn Ragne, SMA 1298 (Arbitration at N.Y. 1979)

London Arbitration 7/10 Cited from *The Tankvoyager* July/September 2010

(1986) 181 L.M.L.N. 18/86

The Milly Gregos S.M.A. 2190

The Pacsea & Pacsun, SMA 746 (Arbitration at N.Y. 1972)

The Silksworth S.M.A 398 (1969)

WEBSITES

Bimco (Baltic and International Maritime Council)

EMS Seven Seas http://www.ems-shipsupply.com/?pk_menu=354

International Maritime Organization www.imo.org

East of England P & I Club

Gard Club

The Shipping Federation of Canada: Shipping Federation Course Notes "Commercial & Contractual Aspects of Shipping"
<http://www.shipfed.ca/new/eng/original/Training/Lectures/4CommercialContract/Lecture3/CClecture3Notes.pdf>

Skuld (P & I Club)

The Standard Club

INDUSTRY INSURANCE AGREEMENTS

New York Produce Exchange Interclub Agreement

APPENDIX

A

VOYAGE CHARTER PARTIES

VOYAGE CHARTER PARTY
LONDON, 20

PREAMBLE

IT IS THIS DAY AGREED between
of (hereinafter referred to as "Owners"), being owners /disponent owners of the
motor/steam tank vessel called with an IMO number of
(hereinafter referred to as "the vessel")
and of
(hereinafter referred to as "Charterers"):
that the service for which provision is herein made shall be subject to the terms and conditions of this Charter which includes Part I,
Part II and Part III. In the event of any conflict between the provisions of Part I, Part II and Part III hereof, the provisions of Part I shall prevail.

PART I

(A) Description of vessel	(I) Owners warrant that at the date hereof, and from the time when the obligation to proceed to the loadport(s) attaches, the vessel	11
	(i) Is classed	12
	(ii) (a) Has a deadweight of tonnes (1000 kg) on a salt-water draft on assigned summer freeboard of m. and if applicable,	13
	(b) Has on board documentation showing the following additional drafts and deadweights	14
	(iii) Has capacity for cargo of m ³	15
	(iv) Is fully fitted with heating systems for all cargo tanks capable of maintaining cargo at a temperature of up to degrees Celsius and can accept a cargo temperature on loading of up to a maximum of degrees Celcius.	16
	(v) Has tanks coated as follows:	17
	(vi) Is equipped with cranes/derricks capable of lifting to and supporting at the vessel's port and starboard manifolds submarine hoses of up to tonnes (1000 kg) in weight.	18
	(vii) Can discharge a full cargo (whether homogenous or multi grade) either within 24 hours, or can maintain a back pressure of 100 PSI at the vessel's manifold and Owners warrant such minimum performance provided receiving facilities permit and subject always to the obligation of utmost despatch set out in Part II, clause 3 (1). The discharge warranty shall only be applicable provided the kinematic viscosity does not exceed 600 centistokes at the discharge temperature required by Charterers. If the kinematic viscosity only exceeds 600 centistokes on part of the cargo or particular grade(s) then the discharge warranty shall continue to apply to all other cargo/grades.	19
	(viii) Has or will have carried, for the named Charterers, the following three cargoes (all grades to be identified) immediately prior to loading under this Charter:- Last Cargo/charterer 2 nd Last Cargo/charterer 3 rd Last Cargo/charterer	20
	(ix) Has a crude oil washing system complying with the requirements of the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 ("MARPOL 73/78").	21
	(x) Has an operational inert gas system and is equipped for and able to carry out closed sampling/ullaging/loading and discharging operations in full compliance with the International Safety Guide for Oil Tankers and Terminals ("ISGOTT") guidelines current at the date of this Charter.	22
	(xi) Has on board all papers and certificates required by any applicable law, in force as at the date of this Charter, to enable the vessel to perform the charter service without any delay.	23
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	(xii)	Is entered in the	P&I Club, being a member of the International Group of P&I Clubs.	41
	(xiii)	Has in full force and effect Hull and Machinery insurance placed through reputable Brokers on Institute Time		42
		Clauses-Hull dated	for the value of	43
	(xiv)	Complies with the latest edition of the Oil Companies International Marine Forum ("OCIMF") standards for oil tankers'		44
		manifolds and associated equipment applicable to its size for cargo manifolds and vapour recovery systems.		45
	(xv)	Is equipped to comply with, and is operated in accordance with, and has on board, the latest edition of the International		46
		Chamber of Shipping ("ICS") and/or OCIMF guidelines / publications covering:		47
		(a) Ship to Ship Operations		48
		(b) ISGOTT		49
		(c) Clean Seas Guide for Oil Tankers		50
		(d) Bridge Procedure Guide		51
	(II)	Throughout the charter service, Owners shall ensure that the vessel shall be maintained, or that they take all steps		52
		necessary to promptly restore vessel to be, within the description in <u>Part I clause (A)(I)</u> and any questionnaires requested by		53
		Charterers or within information provided by Owners.		54
	(III)	Owners warrant that any information provided on any Questionnaire(s) requested by Charterers or any other vessel		55
		information/details provided by Owners to Charterers is always complete and correct as at the date hereof, and from the time when		56
		the obligation to proceed to the loadport attaches and throughout the charter service. This information is an integral part of this		57
		Charter but if there is any conflict between the contents of the Questionnaire(s), or information provided by Owners, and any other		58
		provisions of this Charter then such other provisions shall govern.		59
(B) Position/ Readiness	Now	Expected ready to load		60
		In addition to the above details on the position of the vessel Owners will advise Charterers of the known programme, including any		61
		contractual options available to the Charterers in <u>Part I clause (A)(I)</u> (viii) above between current position up to expected ready to		62
		load date at Charterers nominated or indicated first load port/area. Owners will not, unless with Charterers' prior consent, negotiate		63
		or enter into any business or give current Charterers any further options that may affect or alter the programme of the vessel as given		64
		in this clause.		65
(C) Laydays	Commencing Noon Local Time on	(Commencement Date)		66
	Terminating Noon Local Time on	(Termination Date)		67
(D) Loading port(s)/ Range				68
(E) Discharging port(s)/ Range				69
(F) Cargo description	Charterers' option			70
	Owners warrant that where different grades of cargo are carried pursuant to this Part I clause (F), they will be kept in complete			71
	segregation from each other during loading, transit, and discharge, to include the use of different pumps/lines for each grade. If,			72
	however, Charterers so require it, the vessel may be required to:			73
	(a) co-mingle different grades of cargo providing such grades fall within the cargo description set out in this Part I clause (F);			74
	(b) otherwise breach the vessel's natural segregation;			75
	(c) add dye to the cargo after loading, and/or			76
	(d) carry out such other cargo operations as Charterers may reasonably require as long as the vessel is capable of such operations			77
	provided that the Charterers will indemnify Owners for any loss damage delay or expense caused by following Charterers'			78
	instructions, except to the extent that such loss damage delay or expense could have been avoided by the exercise of due diligence			79
	by Owners.			80
(G) Freight rate	At	% of the rate for the voyage as provided for in the New Worldwide Tanker Nominal Freight Scale current at the date of		81
		commencement of loading (hereinafter referred to as "Worldscale") per ton (2240 lbs/tonne (1000 Kg) or, if agreed, the following		82
		lumpsum amount(s) or freight per tonne for named load and discharge area(s)/port(s) combinations		83

(H) Freight payable to		84
(I) Laytime	running hours	85
(J) Demurrage per day (or pro rata)		86
(K) ETAs	All radio/telex/e-mail messages sent by the master to Charterers shall be addressed to	87
	All telexes must begin with the vessel name at the start of the subject line (no inverted commas, or use of MT / SS preceding the vessel name)	88 89
(L) Speed	The vessel shall perform the ballast passage with utmost despatch and the laden passage at knots weather and safe navigation permitting at a consumption of tonnes of Fueloil (state grade) per day.	90 91
	Charterers shall have the option to instruct the vessel to increase speed with Charterers reimbursing Owners for the additional bunkers consumed, at replacement cost.	92 93
	Charterers shall also have the option to instruct the vessel to reduce speed on laden passage. Additional voyage time caused by such instructions shall count against laytime or demurrage, if on demurrage, and the value of any bunkers saved shall be deducted from any demurrage claim Owners may have under this Charter with the value being calculated at original purchase price.	94 95 96
	Owners shall provide documentation to fully support the claims and calculations under this clause.	97
(M) Worldscales	Worldscale Terms and Conditions ~~apply / do not apply~~ to this Charter. [delete as applicable]	98
(N) Casualty/ Accident contacts	In the event of an accident / marine casualty involving the vessel, Owners' technical managers can be contacted on a 24 hour basis as follows:	99
	Company Full Name:	100 101
	Contact Person:	102
	Full Address:	103
	Telephone Number:	104
	Fax Number:	105
	Telex Number:	106
	Email Address:	107
	24 Hour Emergency Telephone number:	108
(O) Special provisions		109
Signatures	IN WITNESS WHEREOF, the parties have caused this Charter consisting of the Preamble, Parts I, II and III to be executed as of the day and year first above written.	110 111
	By	112
	By	113

PART II

Condition of vessel	1. Owners shall exercise due diligence to ensure that from the time when the obligation to proceed to the loading port(s) attaches and throughout the charter service -	1
	(a) the vessel and her hull, machinery, boilers, tanks, equipment and facilities are in good order and condition and in every way equipped and fit for the service required; and	2
	(b) the vessel has a full and efficient complement of master, officers and crew and the senior officers shall be fully conversant in spoken and written English language	3
	and to ensure that before and at the commencement of any laden voyage the vessel is in all respects fit to carry the cargo specified in Part I clause (F). For the avoidance of doubt, references to equipment in this Charter shall include but not be limited to computers and computer systems, and such equipment shall (inter alia) be required to continue to function, and not suffer a loss of functionality and accuracy (whether logical or mathematical) as a result of the run date or dates being processed.	4
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Cleanliness of tanks	2. Whilst loading, carrying and discharging the cargo the master shall at all times keep the tanks, lines and pumps of the vessel always clean for the cargo. Unless otherwise agreed between Owners and Charterers the vessel shall present for loading with cargo tanks ready and, subject to the following paragraphs, if vessel is fitted with Inert Gas System ("IGS"), fully inerted.	12
	Charterers shall have the right to inspect vessel's tanks prior to loading and the vessel shall abide by Charterers' instructions with regard to tank or tanks which the vessel is required to present ready for entry and inspection. If Charterer's inspector is not satisfied with the cleanliness of the vessel's tanks, Owners shall clean them in their time and at their expense to the satisfaction of Charterers' inspector, provided that nothing herein shall affect the responsibilities and obligations of the master and Owners in respect of the loading, carriage and care of cargo under this Charter nor prejudice the rights of Charterers, should any contamination or damage subsequently be found, to contend that the same was caused by inadequate cleaning and/or some breach of this or any other clause of this Charter.	13
	Notwithstanding that the vessel, if equipped with IGS, shall present for loading with all cargo tanks fully inerted, any time used for de-inerting (provided that such de-inerting takes place after laytime or demurrage time has commenced or would, but for this clause, have commenced) and/or re-inerting those tanks that at Charterers' specific request were gas freed for inspection, shall count as laytime or if on demurrage as demurrage, provided the tank or tanks inspected are found to be suitable. In such case Charterers will reimburse Owners for bunkers consumed for de-inerting/re-inerting, at replacement cost.	14
	If the vessel's tanks are inspected and rejected, time used for de-inerting shall not count towards laytime or demurrage, and laytime or demurrage time shall not commence or recommence, as the case may be, until the tanks have been re-inspected, approved by Charterers' inspector, and re-inerted.	15
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Voyage	3. (1) Subject to the provisions of this Charter the vessel shall perform her service with utmost despatch and shall proceed to such berths as Charterers may specify, in any port or ports within Part I clause (D) nominated by Charterers, or so near thereunto as she may safely get and there, always safely afloat, load the cargo specified in Part I clause (F) of this Charter, but not in excess of the maximum quantity consistent with the International Load Line Convention for the time being in force and, being so loaded, proceed as ordered on signing bills of lading to such berths as Charterers may specify, in any port or ports within Part I clause (E) nominated by Charterers, or so near thereunto as she may safely get and there, always safely afloat, discharge the cargo.	23
	Charterers shall nominate loading and discharging ports, and shall specify loading and discharging berths and, where loading or discharging is interrupted, shall provide fresh orders in relation thereto. In addition Charterers shall have the option at any time of ordering the vessel to safe areas at sea for wireless orders. Any delay or deviation arising as a result of the exercise of such option shall be compensated by Charterers in accordance with the terms of Part II clause 26 (1).	24
	(2) Owners shall be responsible for and indemnify Charterers for any time, costs, delays or loss including but not limited to use of laytime, demurrage, deviation expenses, replacement tonnage, lightening costs and associated fees and expenses due to any failure whatsoever to comply fully with Charterers' voyage instructions and clauses in this Charter which specify requirements concerning Voyage Instructions and/ or Owners'/masters' duties including, without limitation to the generality of the foregoing, loading more cargo than permitted under the International Load Line Convention, for the time being in force, or for not leaving sufficient space for expansion of cargo or loading more or less cargo than Charterers specified or for not loading/discharging in accordance with Charterers' instructions regarding the cargo quantity or draft requirements.	25
	This clause 3(2) shall have effect notwithstanding the provision of Part II clause 32 (a) of this Charter or Owners' defences under the Hague-Visby Rules.	26
	(3) Owners shall always employ pilots for berthing and unberthing of vessels at all ports and/or berths under this Charter unless prior exemption is given by correct and authorised personnel. Owners to confirm in writing if they have been exempt from using a pilot and provide Charterers with the details, including but not limited to, the authorising organisation with person's name.	27
	(4) Without prejudice to the provisions of sub-clause (2) of this clause, and unless a specific prior agreement exists, if a conflict arises between terminal orders and Charterers' voyage instructions, the master shall stop cargo operations, and/or other operations under dispute, and contact Charterers immediately. Terminal orders shall never	28
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PART II

supersede Charterers' voyage instructions and any conflict shall be resolved prior to resumption of cargo, or other, operations in dispute. Where such a conflict arises the vessel shall not sail from the port or resume cargo operations, and/or other operations under dispute, until Charterers have directed the vessel to do so. Time spent resolving the vessel/terminal conflict will count as laytime or demurrage except that failure of Owners/master to comply with the procedure set forth above shall result in the deduction from laytime or demurrage time of the time used in resolving the vessel/terminal instruction conflict

(5) In this Charter, "berth" means any berth, wharf, dock, anchorage, submarine line, a position alongside any vessel or lighter or any other loading or discharging point whatsoever to which Charterers are entitled to order the vessel hereunder, and "port" means any port or location at sea to which the vessel may proceed in accordance with the terms of this Charter.

Safe berth

4. Charterers shall exercise due diligence to order the vessel only to ports and berths which are safe for the vessel and to ensure that transshipment operations conform to standards not less than those set out in the latest edition of ICS/OCIMF Ship-to-Ship Transfer Guide (Petroleum). Notwithstanding anything contained in this Charter, Charterers do not warrant the safety of any port, berth or transshipment operation and Charterers shall not be liable for loss or damage arising from any unsafety if they can prove that due diligence was exercised in the giving of the order or if such loss or damage was caused by an act of war or civil commotion within the trading areas defined in Part I clauses (D/E).

Freight

5. (1) Freight shall be earned concurrently with delivery of cargo at the nominated discharging port or ports and shall be paid by Charterers to Owners without any deductions, except as may be required in the Singapore Income Tax Act and/or under Part II clause 48 and/or under clause 55 and/or under Part III clause 4(a), in United States Dollars at the rate(s) specified in Part I clause (G) on the gross bill of lading quantity as furnished by the shipper (subject to Part II clauses 8 and 40), upon receipt by Charterers of notice of completion of final discharge of cargo, provided that no freight shall be payable on any quantity in excess of the maximum quantity consistent with the International Load Line Convention for the time being in force.

If the vessel is ordered to proceed on a voyage for which a fixed differential is provided in *Worldscale*, such fixed differential shall be payable without applying the percentage referred to in Part I clause (G).

If cargo is carried between ports and/or by an agreed route for which no freight rate is expressly quoted in *Worldscale*, then the parties shall, in the absence of agreement as to the appropriate freight rate, apply to *Worldscale Association (London) Ltd.*, or *Worldscale Association (NYC) Inc.*, for the determination of an appropriate *Worldscale* freight rate. If Owners or master unilaterally elect to proceed by a route that is different to that specified in *Worldscale*, or different to a route agreed between Owners and Charterers, freight shall always be paid in accordance with the *Worldscale* rate as published or in accordance with any special rate applicable for the agreed route.

Save in respect of the time when freight is earned, the location of any transshipment at sea pursuant to Part II clause 26(2) shall not be an additional nominated port, unless otherwise agreed, for the purposes of this Charter (including this clause 5) and the freight rate for the voyage shall be the same as if such transshipment had not taken place.

(2) If the freight in Part I clause (G) is a lumpsum amount and such lumpsum freight is connected with a specific number of load and discharge ports given in Part I clause (L) and Owners agree that Charterers may order the vessel to additional load and/or discharge ports not covered by the agreed lumpsum freight, the following shall apply:

- (a) the first load port and the final discharge port shall be deemed to be the port(s) that form the voyage and on which the lumpsum freight included in Part I clause (G) refers to;
- (b) freight for such additional ports shall be calculated on basis of deviation. Deviation shall be calculated on the difference in distance between the specified voyage (for which freight is agreed) and the voyage actually performed.

BP Shipping Marine Distance Tables (2004), produced by AtoBriac shall be used in both cases. Deviation time/bunker consumption shall be calculated using the charter speed and bunker consumption as per the speed and consumptions given in Part I clause(L) of this Charter.

Deviation time and time spent in port shall be charged at the demurrage rate in Part I clause (J) of this Charter except that time used in port which would otherwise qualify for half rate laytime and/or demurrage under Part II clause (15) (2) of this Charter will be charged at half rate.

Additional bunkers consumed shall be paid at replacement cost, and actual port costs shall be paid as incurred. Such deviation costs shall be paid against Owners' fully documented claim.

Claims, dues and other charges

6. (1) Dues and other charges upon the vessel, including those assessed by reference to the quantity of cargo loaded or discharged, and any taxes on freight whatsoever shall be paid by Owners, and dues and other charges upon the cargo shall be paid by Charterers. However, notwithstanding the foregoing, where under a provision of *Worldscale* a due or charge is expressly for the account of Owners or Charterers then such due or charge shall be payable in accordance with such provision.

(2) Any costs including those itemised under applicable "*Worldscale*" as being for Charterers' account shall,

PART II

	unless otherwise instructed by Charterers, be paid by Owners and reimbursed by Charterers against Owners' fully documented claim.	122
	(3) Charterers shall be discharged and released from all liability in respect of any charges/claims (other than demurrage and Worldscale charges/dues and indemnity claims) including but not limited to additional bunkers, detention, deviation, shifting, heating, deadfreight, speed up, slow down, drifting, port costs, additional freight, insurance, Owner may send to Charterers under this Charter unless any such charges/claims have been received by Charterer in writing, fully and correctly documented, within ninety (90) days from completion of discharge of the cargo concerned under this Charter. Part II clause 15 (3) of this Charter covers the notification and fully documented claim procedure for demurrage.	123
	(4) If, after disconnection of hoses, the vessel remains at berth for vessel's purposes, Owners shall be responsible for all direct and indirect costs whether advised to Owners in advance or not, and including charges by Terminal/Suppliers/Receivers.	124
Loading and discharging cargo	7. The cargo shall be loaded into the vessel at the expense of Charterers and, up to the vessel's permanent hose connections, at Charterers' risk. The cargo shall be discharged from the vessel at the expense of Owners and, up to the vessel's permanent hose connections, at Owners' risk. Owners shall, unless otherwise notified by Charterers or their agents, supply at Owners' expense all hands, equipment and facilities required on board for mooring and unmooring and connecting and disconnecting hoses for loading and discharging.	125
Deadfreight	8. Charterers need not supply a full cargo, but if they do not freight shall nevertheless be paid as if the vessel had been loaded with a full cargo. The term "full cargo" as used throughout this Charter means a cargo which, together with any collected washings (as defined in Part II clause 40) retained on board pursuant to the requirements of MARPOL 73/78, fills the vessel to either her applicable deadweight or her capacity stated in Part I clause (A) (I) (iii), whichever is less, while leaving sufficient space in the tanks for the expansion of cargo. If under Part I clause (F) vessel is chartered for a minimum quantity and the vessel is unable to load such quantity due to having reached her capacity as stated in Part I clause (A) (I) (iii), always leaving sufficient space for expansion of cargo, then without prejudice to any claims which Charterers may have against Owners, no deadfreight between the quantity loaded and the quantity shown in Part I clause (F) shall be due.	126
Shifting	9. Charterers shall have the right to require the vessel to shift at ports of loading and/or discharging from a loading or discharging berth within port limits and/or to a waiting place inside or outside port limits and back to the same or to another such berth/place once or more often on payment of all additional expenses incurred. For the purposes of freight payment and shifting the places grouped in Port and Terminal Combinations in Worldscale are to be considered as berths within a single port. If at any time before cargo operations are completed it becomes dangerous for the vessel to remain at the specified berth as a result of wind or water conditions, Charterers shall pay all additional expenses of shifting from any such berth and back to that or any other specified berth within port limits (except to the extent that any fault of the vessel contributed to such danger). Subject to Part II clause 14(a) and (c) time spent shifting shall count against laytime or if the vessel is on demurrage for demurrage.	127
Charterers' failure to give orders	10. If the vessel is delayed due to Charterers' breach of Part II clause 3 Charterers shall, subject to the terms hereof, compensate Owners in accordance with Part II clause 15(1) and (2) as if such delay were time exceeding the laytime. Such compensation shall be Owners' sole remedy in respect of such delay. The period of such delay shall be calculated: (i) from 6 hours after Owners notify Charterers that the vessel is delayed awaiting nomination of loading or discharging port until such nomination has been received by Owners, or (ii) from 6 hours after the vessel gives notice of readiness at the loading or discharging port until commencement of loading or discharging, as the case may be, subject always to the same exceptions as those set out in Part II clause 14. Any period of delay in respect of which Charterers pay compensation pursuant to this clause 10 shall be excluded from any calculation of time for laytime or demurrage made under any other clause of this Charter. Periods of delay hereunder shall be cumulative for each port, and Owners may demand compensation after the vessel has been delayed for a total of 20 running days, and thereafter after each succeeding 5 running days of delay and at the end of any delay. Each such demand shall show the period in respect of which compensation is claimed and the amount due. Charterers shall pay the full amount due within 14 days after receipt of Owners' demand. Should Charterers fail to make any such payments Owners shall have the right to terminate this Charter by giving written notice to Charterers or their agents, without prejudice to any claims which Charterers or Owners may have against each other under this Charter or otherwise.	128
Laydays/Termination	11. Should the vessel not be ready to load by noon local time on the termination date set out in Part I clause (C) Charterers shall have the option of terminating this Charter unless the vessel has been delayed due to Charterers' change of orders pursuant to Part II clause 26, in which case the laydays shall be extended by the period of such delay.	129

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	As soon as Owners become aware that the vessel will not be ready to load by noon on the termination date,	181
	Owners will give notice to Charterers declaring a new readiness date and ask Charterers to elect whether or not to terminate this Charter.	182
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	Within 4 days after such notice, Charterers shall either:	184
	(i) declare this Charter terminated or	185
	(ii) confirm a revised set of laydays which shall be amended such that the new readiness date stated shall be the commencement date and the second day thereafter shall be the termination date or,	186
		187
	(iii) agree a new set of laydays or an extension to the laydays mutually acceptable to Owners and Charterers	188
	The provisions of this clause and the exercise or non-exercise by Charterers of their option to terminate shall not prejudice any claims which Charterers or Owners may have against each other.	189
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Laytime	12. (1) The laytime for loading, discharging and all other Charterers' purposes whatsoever shall be the number of running hours specified in Part I clause (I). Charterers shall have the right to load and discharge at all times, including night, provided that they shall pay for all extra expenses incurred ashore.	191
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	(2) If vessel is able to, and Charterers so instruct, the vessel shall load earlier than the commencement of of laydays and Charterers shall have the benefit of such time saved by way of offset from any demurrage incurred.	193
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	Such benefit shall be the time between commencement of loading until the commencement of the original laydays.	195
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Notice of readiness/Running time	13. (1) Subject to the provisions of Part II clauses 13(3) and 14,	197
	(a) Time at each loading or discharging port shall commence to run 6 hours after the vessel is in all respects ready to load or discharge and written notice thereof has been tendered by the master or Owners' agents to Charterers or their agents and the vessel is securely moored at the specified loading or discharging berth. However, if the vessel does not proceed immediately to such berth time shall commence to run 6 hours after (i) the vessel is lying in the area where she was ordered to wait or, in the absence of any such specific order, in a usual waiting area and (ii) written notice of readiness has been tendered and (iii) the specified berth is accessible. A loading or discharging berth shall be deemed inaccessible only for so long as the vessel is or would be prevented from proceeding to it by bad weather, tidal conditions, ice, awaiting daylight, pilot or tugs, or port traffic control requirements (except those requirements resulting from the unavailability of such berth or of the cargo). If Charterers fail to specify a berth at any port, the first berth at which the vessel loads or discharges the cargo or any part thereof shall be deemed to be the specified berth at such port for the purposes of this clause.	198
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	Notice shall not be tendered before commencement of laydays and notice tendered by radio shall qualify as written notice provided it is confirmed in writing as soon as reasonably possible.	212
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	Time shall never commence before six hours after commencement of laydays unless loading commences prior to this time as provided in clause 13 (3).	215
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	If Owners fail;	217
	(i) to obtain Customs clearance; and/or	218
	(ii) to obtain free pratique unless this is not customary prior to berthing; and/or	219
	(iii) to have on board all papers/certificates required to perform this Charter, either within the 6 hours after notice of readiness originally tendered or when time would otherwise normally commence under this Charter, then the original notice of readiness shall not be valid. A new notice of readiness may only be tendered when Customs clearance and/or free pratique has been granted and/or all papers/certificates required are in order in accordance with relevant authorities' requirements. Laytime or demurrage, if on demurrage, would then commence in accordance with the terms of this Charter. All time, costs and expenses as a result of delays due to any of the foregoing shall be for Owners' account.	220
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	(b) Time shall:	228
	(i) continue to run until the cargo hoses have been disconnected.	229
	(ii) recommence two hours after disconnection of hoses if the vessel is delayed for Charterers' purposes and shall continue until the termination of such delay provided that if the vessel waits at any place other than the berth, any time or part of the time on passage to such other place that occurs after two hours from disconnection of hoses shall not count.	230
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	(2) If the vessel loads or discharges cargo by transshipment at sea time shall commence in accordance with Part II clause 13 (I) (a), and run until transshipment has been completed and the vessels have separated, always subject to Part II clause 14.	234
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	(3) Notwithstanding anything else in this clause 13, if Charterers start loading or discharging the vessel before time would otherwise start to run under this Charter, time shall run from commencement of such loading or discharging.	237
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	(4) For the purposes of this clause 13 and of Part II clause 14 and Part II clause 15 "time" shall mean laytime	240

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	or time counting for demurrage, as the case may be.	241
Suspension of time	14. Time shall not count when:	242
	(a) spent on inward passage from the vessel's waiting area to the loading or discharging berth specified by Charterers, even if lightening occurred at such waiting area; or	243
	(b) spent in carrying out vessel operations, including but not limited to bunkering, discharging slops and tank washings, and handling ballast, except to the extent that cargo operations are carried on concurrently and are not delayed thereby; or	244
	(c) lost as a result of:	245
	(i) breach of this Charter by Owners; or	246
	(ii) any cause attributable to the vessel, (including but not limited to the warranties in Part I (A) of this Charter) including breakdown or inefficiency of the vessel; or	247
	(iii) strike, lock-out, stoppage or restraint of labour of master, officers or crew of the vessel or tug boats or pilot.	248
Demurrage	15. (1) Charterers shall pay demurrage at the rate specified in Part I clause (J).	249
	If the demurrage rate specified in Part I clause (J) is expressed as a percentage of Worldscales such percentage shall be applied to the demurrage rate applicable to vessels of a similar size to the vessel as provided in Worldscales or, for the purpose of clause 10 and/or if this Charter is terminated prior to the commencement of loading, in Worldscales current at the termination date specified in Part I clause (C).	250
	Demurrage shall be paid per running day or pro rata for part thereof for all time which, under the provisions of this Charter, counts against laytime or for demurrage and which exceeds the laytime specified in Part I clause (I). Charterers' liability for exceeding the laytime shall be absolute and shall not in any case be subject to the provisions of Part II clause 32.	251
	(2) If, however, all or part of such demurrage arises out of or results from fire or explosion or strike or failure/breakdown of plant and/or machinery at ports of loading and/or discharging in or about the plant of Charterers, shippers or consignees of the cargo (not being a fire or explosion caused by the negligence or wilful act or omission of Charterers, shippers or consignees of the cargo or their respective servants or agents), act of God, act of war, riot, civil commotion, or arrest or restraint of princes, rulers or peoples, the laytime used and/or the rate of demurrage shall be reduced by half for such laytime used and/or for such demurrage or such parts thereof.	252
	(3) Owners shall notify Charterers within 60 days after completion of discharge if demurrage has been incurred and any demurrage claim shall be fully and correctly documented, and received by Charterers, within 90 days after completion of discharge. If Owners fail to give notice of or to submit any such claim with documentation, as required herein, within the limits aforesaid, Charterers' liability for such demurrage shall be extinguished.	253
	(4) If any part cargo for other charterers, shippers or consignees (as the case may be) is loaded or discharged at the same berth, then any time used by the vessel waiting at or for such berth and in loading or discharging which would otherwise count as laytime or if the vessel is on demurrage for demurrage, shall be pro-rated in the proportion that Charterers' cargo bears to the total cargo to be loaded or discharged at such berth. If however, the running of laytime or demurrage, if on demurrage, is solely attributable to other parties' cargo operations then such time shall not count in calculating laytime or demurrage, if on demurrage, against Charterers under this Charter.	254
Vessel inspection	16. Charterers shall have the right, but no duty, to have a representative attend on board the vessel at any loading and/or discharging ports and the master and Owners shall co-operate to facilitate his inspection of the vessel and observation of cargo operations. However, such right, and the exercise or non-exercise thereof, shall in no way reduce the master's or Owners' authority over, or responsibility to Charterers and third parties for, the vessel and every aspect of her operation, nor increase Charterers' responsibilities to Owners or third parties for the same.	255
Cargo inspection	17. This clause 17 is without prejudice to Part II clause 2 hereof. Charterers shall have the right to require inspection of the vessel's tanks at loading and/or discharging ports to ascertain the quantity and quality of the cargo, water and residues on board. Depressurisation of the tanks to permit inspection and/or ullaging shall be carried out in accordance with the recommendations in the latest edition of the ISGOTT guidelines. Charterers shall also have the right to inspect and take samples from the bunker tanks and other non-cargo spaces. Any delay to the vessel caused by such inspection and measurement or associated depressurising/repressurising of tanks shall count against laytime, or if the vessel is on demurrage, for demurrage.	256
Cargo measurement	18. The master shall ascertain the contents of all tanks before and after loading and before and after discharging, and shall prepare tank-by-tank ullage reports of the cargo, water and residues on board which shall be promptly made available to Charterers or their representative if requested. Each such ullage report shall show actual ullage/dips, and densities at observed and standard temperature (15° Celsius). All quantities shall be expressed in cubic metres at both observed and standard temperature.	257
Inert gas	19. The vessel's inert gas system (if any) shall comply with Regulation 62, Chapter II-2 of the 1974 Safety of	258

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Life at Sea Convention as modified by the Protocol of 1978, and any subsequent amendments, and Owners warrant that such system shall be operated (subject to the provisions of Part II clause 2), during loading, throughout the voyage and during discharge, and in accordance with the guidance given in the IMO publication "Inert Gas System (1983)". Should the inert gas system fail, Section 8 (Emergency Procedures) of the said IMO publication shall be strictly adhered to and time lost as a consequence of such failure shall not count against laytime or, if the vessel is on demurrage, for demurrage.	299 300 301 302 303 304
Crude oil washing	305
20. If the vessel is equipped for crude oil washing Charterers shall have the right to require the vessel to crude oil wash, concurrently with discharge, those tanks in which Charterers' cargo is carried. If crude oil washing is required by Charterers any additional discharge time thereby incurred, always subject to the next succeeding sentences, shall count against laytime or, if the vessel is on demurrage, for demurrage. The number of hours specified in Part I clause (A) (I) (vii) shall be increased by 0.6 hours per cargo tank washed, always subject to a maximum increase of 8 hours. If vessel fails to maintain 100 PSI throughout the discharge then any time over 24 hours, plus the additional discharge performance allowance under this clause, shall not count as laytime or demurrage, if on demurrage. This clause 20 does not reduce Owners' liability for the vessel to perform her service with utmost despatch as set out in Part II, clause 3(1). The master shall provide Charterers with a crude oil washing log identifying each tank washed, and stating whether such tank has been washed to the MARPOL minimum standard or has been the subject of additional crude oil washing and whether requested by Charterers or otherwise.	306 307 308 309 310 311 312 313 314 315
Overage insurance	316
21. Any additional insurance on the cargo required because of the age of the vessel shall be for Owners' account.	317
Ice	318
22. The vessel shall not be required to force ice or to follow icebreakers. If the master finds that a nominated port is inaccessible due to ice, the master shall immediately notify Charterers requesting revised orders and shall remain outside the ice-bound area; and if after arrival at a nominated port there is danger of the vessel being frozen in, the vessel shall proceed to the nearest safe and ice free position and at the same time request Charterers to give revised orders.	319 320 321 322
In either case if the affected port is:	323
(i) the first or only loading port and no cargo has been loaded, Charterers shall either nominate another port, or give notice cancelling this Charter in which case they shall pay at the demurrage rate in Part I clause (J) for the time from the master's notification aforesaid or from notice of readiness on arrival, as the case may be, until the time such cancellation notice is given;	324 325 326 327
(ii) a loading port and part of the cargo has been loaded, Charterers shall either nominate another port, or order the vessel to proceed on the voyage without completing loading in which case Charterers shall pay for any deadfreight arising therefrom;	328 329 330
(iii) a discharging port, Charterers shall either nominate another port or order the vessel to proceed to or return to and discharge at the nominated port. If the vessel is ordered to proceed to or return to a nominated port, Charterers shall bear the risk of the vessel being damaged whilst proceeding to or returning to or at such port, and the whole period from the time when the master's request for revised orders is received by Charterers until the vessel can safely depart after completion of discharge shall count against laytime or, if the vessel is on demurrage, for demurrage.	331 332 333 334 335 336
If, as a consequence of Charterers revising orders pursuant to this clause, the nominated port(s) or the number or rotation of ports is changed, freight shall nevertheless be paid for the voyage which the vessel would otherwise have performed had the orders not been so revised, such freight to be increased or reduced by the amount by which, as a result of such revision of orders,	337 338 339 340
(a) the time used including any time awaiting revised orders (which shall be valued at the demurrage rate in Part I clause (J)), and	341 342
(b) the bunkers consumed, at replacement cost and	343
(c) the port charges	344
for the voyage actually performed are greater or less than those that would have been incurred on the voyage which, but for the revised orders under this clause, the vessel would have performed.	345 346
Quarantine	347
23. Time lost due to quarantine shall not count against laytime or for demurrage unless such quarantine was in force at the time when the affected port was nominated by Charterers.	348
Agency	349
24. The vessel's agents shall be nominated by Charterers at nominated ports of loading and discharging. Such agents, although nominated by Charterers, shall be employed and paid by Owners.	350
Charterers' obligation at shallow draft port/ Lightening in port	351
25.(1) If the vessel, with the quantity of cargo then on board, is unable due to inadequate depth of water in the port safely to reach any specified discharging berth and discharge the cargo there always safely afloat, Charterers shall specify a location within port limits where the vessel can discharge sufficient cargo into vessels or lighters to enable the vessel safely to reach and discharge cargo at such discharging berth, and the vessel shall lighten at such location.	352 353 354 355
(2) If the vessel is lightened pursuant to clause 25(1) then, for the purposes of the calculation	356

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	of laytime and demurrage, the lightening place shall be treated as the first discharging berth within the port where such lightening occurs.	357 358
Charterers' orders/ Change of orders/ Part cargo transshipment	26. (1) If, after loading and/or discharging ports have been nominated, Charterers wish to vary such nominations or their rotation, Charterers may give revised orders subject to Part I clause (D) and/or (E), as the case may be. Charterers shall reimburse Owners at the demurrage rate provided in Part I clause (J) for any deviation or delay which may result therefrom and shall pay at replacement cost for any extra bunkers consumed. Charterers shall not be liable for any other loss or expense which is caused by such variation. (2) Subject to Part II clause 33(6), Charterers may order the vessel to load and/or discharge any part of the cargo by transshipment at sea in the vicinity of any nominated port or en route between two nominated ports, in which case unless Charterers elect, (which they may do at any time) to treat the place of such transshipment as a load or discharge port (subject to the number of ports and ranges in Part I clauses (D) and (E) of this Charter), Charterers shall reimburse Owners at the demurrage rate specified in Part I clause (J) for any additional steaming time and/or delay which may be incurred as a consequence of proceeding to and from the location at sea of such transshipment and, in addition, Charterers shall pay at replacement cost for any extra bunkers consumed. (3) Owners warrant that the vessel, master, officers and crew are, and shall remain during this Charter, capable of safely carrying out all the procedures in the current edition of the ICS/ OCIMF Ship to Ship Transfer Guide (Petroleum). Owners further warrant that when instructed to perform a ship to ship transfer the master Officers and crew shall, at all times, comply with such procedures. Charterers shall provide, and pay for, the necessary equipment and, if necessary, mooring master, for such ship to ship operation.	359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375
Heating of cargo	27. If Charterers require cargo heating the vessel shall, on passage to and whilst at discharging port(s), maintain the cargo at the loaded temperature or at the temperature stated in Part I clause (A) (I) (iv), whichever is the lower. Charterers may request that the temperature of the cargo be raised above or lowered below that at which it was loaded, in which event Owners shall use their best endeavours to comply with such request and Charterers shall pay at replacement cost for any additional bunkers consumed and any consequential delay to the vessel shall count against laytime or, if the vessel is on demurrage, for demurrage.	376 377 378 379 380 381
ETA	28. (1) Owners shall give Charterers a time and date of expected arrival at the first load port or if the loading range is in the Arabian Gulf, the time of her expected arrival off Quoin Island (hereinafter called "load port" in this clause) at the date of this Charter. Owners shall further advise Charterers at any time between the Charter date and arrival at load port of any variation of 6 hours or more in vessel's expected arrival time/date at the load port. (2) Owners undertake that, unless Charterers require otherwise, the master shall: (a) advise Charterers immediately on leaving the final port of call on the previous voyage of the time and date of the vessel's expected arrival at the first loading port and shall further advise Charterers 72, 48, 36, and 24 hours before the expected arrival time/date. (b) advise Charterers immediately after departure from the final loading port, of the vessel's expected time of arrival at the first discharging port or the area at sea to which the vessel has been instructed to proceed for wireless orders, and confirm or amend such advice not later than 72, 48, 36 and 24 hours before the vessel is due at such port or area; (c) advise Charterers immediately of any variation of more than six hours from expected times of arrival at loading or discharging ports, Quoin Island or such area at sea to Charterers; (d) address all messages as specified in Part I clause (K). Owners shall be responsible for any consequences or additional expenses arising as a result of non-compliance with this clause. (3) If at any time prior to the tender of notice of readiness at the first load port, the vessel ceases to comply with the description set out in Part I clause (A) and in any questionnaire(s), the Owners shall immediately notify Charterers of the same, providing full particulars, and explaining what steps Owners are taking to ensure that the vessel will so comply. Any silence or failure on the part of Charterers to respond to or any inaction taken in respect of any such notice shall not amount to a waiver of any rights or remedies which Charterers may have in respect of the matters notified by Owners.	382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405
Packed cargo	29. Charterers have the option of shipping products and/or general cargo in available dry cargo space, the Quantity being subject to the master's discretion. Freight shall be payable at the bulk rate in accordance with Part II clause 5 and Charterers shall pay in addition all expenses incurred solely as a result of the packed cargo being carried. Delay occasioned to the vessel by the exercise of such option shall count against laytime or, if the vessel is on demurrage, for demurrage.	406 407 408 409 410
Subletting/ Assignment	30. Charterers shall have the option of sub-chartering the vessel and/or of assigning this Charter to any person or persons, but Charterers shall always remain responsible for the due fulfilment of all the terms and conditions of this Charter. Additionally Charterers may novate this charter to any company of the Royal Dutch/ Shell Group of Companies.	411 412 413 414

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Liberty	31. The vessel shall be at liberty to tow or be towed, to assist vessels in all positions of distress and to deviate for the purpose of saving life or property. On the laden voyage the vessel shall not take on bunkers or deviate or stop, except as allowed in this clause 31, without prior permission of Charterers, Cargo Insurers, and Owners' P&I Club.	415 416 417 418
Exceptions	32. (1) The vessel, her master and Owners shall not, unless otherwise in this Charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, Bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that Part I clause (A) and Part II clauses 1 and 2 hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this Charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, act of public enemies, seizure under legal process, quarantine restrictions, strikes, lock-outs, restraints of labour, riots, civil commotions or arrest or restraint of princes, rulers or people. (2) Nothing in this Charter shall be construed as in any way restricting, excluding or waiving the right of Owners or of any other relevant persons to limit their liability under any available legislation or law. (3) Clause 32(1) shall not apply to or affect any liability of Owners or the vessel or any other relevant person in respect of (a) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any port to which the vessels may proceed under this Charter, whether or not such works or equipment belong to Charterers, or (b) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with the cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules, or the Hamburg Rules as the case may be, which ought pursuant to Part II clause 37 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the Hague-Visby rules unless the Hamburg Rules compulsory apply in which case to the Hamburg Rules.	419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443
Bills of lading	33. (1) Subject to the provisions of this clause Charterers may require the master to sign lawful bills of lading for any cargo in such form as Charterers direct. (2) The signing of bills of lading shall be without prejudice to this Charter and Charterers hereby indemnify Owners against all liabilities that may arise from signing bills of lading to the extent that the same impose liabilities upon Owners in excess of or beyond those imposed by this Charter. (3) All bills of lading presented to the master for signature, in addition to complying with the Requirements of Part II clauses 35, 36 and 37, shall include or effectively incorporate clauses substantially similar to the terms of Part II clauses 22, 33(7) and 34. (4) All bills of lading presented for signature hereunder shall show a named port of discharge. If when bills of lading are presented for signature discharging port(s) have been nominated hereunder, the discharging port(s) shown on such bills of lading shall be in conformity with the nominated port(s). If at the time of such presentation no such nomination has been made hereunder, the discharging port(s) shown on such bills of lading must be within Part I clause (E) and shall be deemed to have been nominated hereunder by virtue of such presentation. (5) Article III Rules 3 and 5 of the Hague-Visby Rules shall apply to the particulars included in the bills of lading as if Charterers were the shippers, and the guarantee and indemnity therein contained shall apply to the description of the cargo furnished by or on behalf of Charterers. (6) Notwithstanding any other provisions of this Charter, Owners shall be obliged to comply with any orders from Charterers to discharge all or part of the cargo provided that they have received from Charterers written confirmation of such orders. If Charterers by telex, facsimile or other form of written communication that specifically refers to this clause request Owners to discharge a quantity of cargo either: (a) without bills of lading and/or (b) at a discharge place other than that named in a bill of lading and/or (c) that is different from the bill of lading quantity then Owners shall discharge such cargo in accordance with Charterers' instructions in consideration of receiving the Following indemnity which shall be deemed to be given by Charterers on each and every such occasion and which is limited in value to 200 per cent of the C.I.F. value of the cargo on board: (i) Charterers shall indemnify Owners, and Owners' servants and agents in respect of any liability loss or damage of whatsoever nature (including legal costs as between attorney or solicitor and client and associated expenses) which Owners may sustain by reason of delivering such cargo in accordance with Charterers' request. (ii) If any proceeding is commenced against Owners or any of Owners' servants or agents in connection with the	444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475

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- vessel having delivered cargo in accordance with such request, Charterers shall provide Owners or any of Owners' servants or agents from time to time on demand with sufficient funds to defend the said proceedings.
- (iii) If the vessel or any other vessel or property belonging to Owners should be arrested or detained, or if the arrest or detention thereof should be threatened, by reason of discharge in accordance with Charterers' instruction as aforesaid, Charterers shall provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such vessel or property and Charterers shall indemnify Owners in respect of any loss, damage or expenses caused by such arrest or detention whether or not the same may be justified.
- (iv) Charterers shall, if called upon to do so at any time while such cargo is in Charterers' possession, custody or control, redeliver the same to Owners.
- (v) As soon as all original bills of lading for the above cargo which name as discharge port the place where delivery actually occurred shall have arrived and/or come into Charterers' possession, Charterers shall produce and deliver the same to Owners, whereupon Charterers' liability hereunder shall cease. Provided however, if Charterers have not received all such original bills of lading by 24.00 hours on the day 36 calendar months after the date of discharge, then this indemnity shall terminate at that time unless before that time Charterers have received from Owners written notice that:
- (a) some person is making a claim in connection with Owners delivering cargo pursuant to Charterers' request or
- (b) legal proceedings have been commenced against Owners and/or carriers and/Charterers and/or any of their respective servants or agents and/or the vessel for the same reason.
- When Charterers have received such a notice, then this indemnity shall continue in force until such claim or legal proceedings are settled. Termination of this indemnity shall not prejudice any legal rights a party may have outside this indemnity.
- (vi) Owners shall promptly notify Charterers if any person (other than a person to whom Charterers ordered cargo to be delivered) claims to be entitled to such cargo and/or if the vessel or any other property belonging to Owners is arrested by reason of any such discharge of cargo.
- (vii) This indemnity shall be governed and construed in accordance with the English law and each and any dispute arising out of or in connection with this indemnity shall be subject to the jurisdiction of the High Court of Justice of England.
- (7) The master shall not be required or bound to sign bills of lading for any blockaded port or for any port which the master or Owners in his or their discretion consider dangerous or impossible to enter or reach.
- (8) Charterers hereby warrant that on each and every occasion that they issue orders under Part II clauses 22, 26, 34 or 38 they will have the authority of the holders of the bills of lading to give such orders, and that such bills of lading will not be transferred to any person who does not concur therein.
- (9) Owners hereby agree that original bill(s) of lading, if available, will be allowed to be placed on board. If original bill(s) of lading are placed on board, Owners agree that vessel will discharge cargo against such bill(s) of lading carried on board, on receipt of receivers' proof of identity.
- War risks 34.(1) If
- (a) any loading or discharging port to which the vessel may properly be ordered under the provisions of this Charter or bills of lading issued pursuant to this Charter be blockaded, or
- (b) owing to any war, hostilities, warlike operation, civil commotions, revolutions, or the operation of international law (i) entry to any such loading or discharging port or the loading or discharging of cargo at any such port be considered by the master or Owners in his or their discretion dangerous or prohibited or (ii) it be considered by the master or Owners in his or their discretion dangerous or impossible or prohibited for the vessel to reach any such loading or discharging port,
- Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other loading or discharging port within the ranges specified in Part I clause (D) or (E) respectively (provided such other port is not blockaded and that entry thereto or loading or discharging of cargo thereat or reaching the same is not in the master's or Owners' opinion dangerous or impossible or prohibited).
- (2) If no orders be received from Charterers within 48 hours after they or their agents have received from Owners a request for the nomination of a substitute port, then
- (a) if the affected port is the first or only loading port and no cargo has been loaded, this Charter shall terminate forthwith;
- (b) if the affected port is a loading port and part of the cargo has already been loaded, the vessel may proceed on passage and Charterers shall pay for any deadfreight so incurred;
- (c) if the affected port is a discharging port, Owners shall be at liberty to discharge the cargo at any port which they or the master may in their or his discretion decide on (whether within the range specified in Part I clause (E) or not) and such discharging shall be deemed to be due fulfilment of the contract or contracts of affreightment so far as cargo so discharged is concerned.
- (3) If in accordance with clause 34(1) or (2) cargo is loaded or discharged at any such other port, freight shall be paid as for the voyage originally nominated, such freight to be increased or reduced by the amount by which, as a result of loading or discharging at such other port,
- (a) the time on voyage including any time awaiting revised orders (which shall be valued at the demurrage rate in Part I clause (J)), and

PART II

- (b) the bunkers consumed, at replacement cost, and 538
 (c) the port charges 539

for the voyage actually performed are greater or less than those which would have been incurred on the voyage originally 540
 nominated save as aforesaid, the voyage actually performed shall be treated for the purpose of this Charter as if it were the 541
 voyage originally nominated. 542

(4) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports 543
 of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nation 544
 under whose flag the vessel sails or any other government or local authority including any de facto government or local authority 545
 or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any 546
 committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions 547
 or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not 548
 done, such shall not be deemed a deviation. 549

If, by reason of or in compliance with any such directions or recommendations as are mentioned in clause 34 (4), the vessel does 550
 not proceed to the discharging port or ports originally nominated or to which she may have been properly ordered under the 551
 provisions of this Charter or bills of lading issued pursuant to this Charter, the vessel may proceed to any discharging port on 552
 which the master or Owners in his or their discretion may decide and there discharge the cargo. Such discharging shall be 553
 deemed to be due fulfilment of the contract or contracts of affreightment and Owners shall be entitled to freight as if discharging 554
 had been effected at the port or ports originally nominated or to which the vessel may have been properly ordered under the 555
 provisions of this Charter or bills of lading issued pursuant to this Charter. All extra expenses involved in reaching and 556
 discharging the cargo at any such other discharging port shall be paid by Charterers and Owners shall have a lien on the cargo for 557
 all such extra expenses. 558

(5) Owners shall pay for all additional war risk insurance premiums, both for annual periods and also for the specific 559
 performance of this Charter, on the Hull and Machinery value, as per Part I clause (A) (I) (xiii) applicable at the date of this 560
 Charter, or the date the vessel was fixed "on subjects" (whichever is the earlier), and all reasonable crew war bonus. The period 561
 of voyage additional war risks premium shall commence when the vessel enters a war risk zone as designated by the London 562
 insurance market and cease when the vessel leaves such zone. If the vessel is already in such a zone the period shall commence 563
 on tendering notice of readiness under this Charter. 564

Any increase or decrease in voyage additional war risk premium and any period in excess of the first fourteen days shall be for 565
 Charterers' account and payable against proven documentation. Any discount or rebate refunded to Owners for whatever reason 566
 shall be passed on to Charterers. Any premiums, and increase thereto, attributable to closure insurance (i.e. blocking and 567
 trapping) shall be for Owners' account. 568

Both to
 blame clause

35. If the liability for any collision in which the vessel is involved while performing this Charter falls to be determined in 569
 accordance with the laws of the United States of America, the following clause, which shall be included in all bills of lading 570
 issued pursuant to this Charter shall apply: 571

"If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or 572
 default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the 573
 owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel 574
 or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said 575
 cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of the said cargo and set off, recouped or 576
 recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or the Carrier. 577

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects 578
 other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact." 579

General
 average/
 New Jason
 clause

36. General average shall be payable according to the York/Antwerp Rules 1994, as amended from time to time, and shall 580
 be adjusted in London. All disputes relating to General Average shall be resolved in London in accordance with English Law. 581
 Without prejudice to the foregoing, should the adjustment be made in accordance with the Law and practice of the United States 582
 of America, the following clause, which shall be included in all bills of lading issued pursuant to this Charter, shall apply: 583

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any 584
 cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, 585
 by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Carrier in 586
 general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and 587
 shall pay salvage and special charges incurred in respect of the cargo. 588

If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or 589
 vessels belonged to strangers. Such deposit as the Carrier or its agents may deem sufficient to cover the estimated contribution of 590
 the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of 591
 the cargo to the Carrier before delivery." 592

Clause
 Paramount

37. The following clause shall be included in all bills of lading issued pursuant to this Charter: 593
 (1) Subject to sub-clauses (2) or (3) hereof, this bill of lading shall be governed by, and have effect subject to the rules 594
 contained in the International Convention for the Unification of Certain Rules relating to bills of lading signed at Brussels on 25th 595
 August 1924 (hereafter the "Hague Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the 596
 "Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the carrier of any of his rights or 597

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	immunities or any increase of any of his responsibilities or liabilities under the Hague-Visby Rules.	598
	(2) If there is governing legislation which applies the Hague Rules compulsorily to this bill of lading, to the exclusion of the Hague-Visby Rules, then this bill of lading shall have effect subject to the Hague Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rules.	599 600 601 602
	(3) If there is governing legislation which applies the United Nations Convention on the Carriage of Goods By Sea 1978 (hereafter the "Hamburg Rules") compulsorily to this bill of lading to the exclusion of the Hague-Visby Rules, then this bill of lading shall have effect subject to the Hamburg Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg Rules.	603 604 605 606
	(4) If any term of this bill of lading is repugnant to the Hague-Visby Rules, or Hague Rules or Hamburg Rules, if applicable, such term shall be void to that extent but no further.	607 608
	(5) Nothing in this bill of lading shall be construed as in any way restricting, excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law.	609 610
Back loading	38. Charterers may order the vessel to discharge and/or backload a part or full cargo at any nominated port within the loading / discharging ranges specified within Part I clauses (D/E) and within the rotation of the ports previously nominated, provided that any cargo loaded is of the description specified in Part I clause (F) and that the master in his reasonable discretion determines that the cargo can be loaded, segregated and discharged without risk of contamination by, or of any other cargo. Charterers shall pay in respect of loading, carrying and discharging such cargo as follows:	611 612 613 614 615
	(a) a lumpsum freight calculated at the demurrage rate specified in Part I clause (J) on any additional port time used by the vessel; and	616 617
	(b) any additional expenses, including bunkers consumed (at replacement cost) over above those required to load and discharge one full cargo and port costs which included additional agency costs: and	618
	(c) if the vessel is fixed on a Worldscales rate in Part I clause (G) then freight shall always be paid for the whole voyage at the rate(s) specified in Part I clause (G) on the largest cargo quantity carried on any ocean leg.	619 620
Bunkers	39. Owners shall give Charterers or any other company in the Royal Dutch/Shell Group of Companies first option to quote for the supply of bunker requirements for the performance of this Charter.	621 622
Oil pollution prevention/ Ballast management	40.(1) Owners shall ensure that the master shall:	623
	(a) comply with MARPOL 73/78 including any amendments thereof;	624
	(b) collect the drainings and any tank washings into a suitable tank or tanks and, after maximum separation of free water, discharge the bulk of such water overboard, consistent with the above regulations; and	625 626
	(c) thereafter notify Charterers promptly of the amounts of oil and free water so retained on board and details of any other washings retained on board from earlier voyages (together called the "collected washings").	627 628
	(d) not to load on top of such 'collected washings' without specific instructions from Charterers.	629
	(e) provide Charterers with a slops certificate to be made up and signed by the master and an independent surveyor/terminal representative. The certificate shall indicate:	630 631
	Origin and composition of slops, Volume, Free water and API measured in barrels at 60 deg F.	632
	(2) On being so notified, Charterers, in accordance with their rights under this clause (which shall include without limitation the right to determine the disposal of the collected washings), shall before the vessel's arrival at the loading berth (or if already arrived as soon as possible thereafter) give instructions as to how the collected washings shall be dealt with. Owners shall ensure that the master on the vessel's arrival at the loading berth (or if already arrived as soon as possible thereafter) shall arrange in conjunction with the cargo suppliers for the measurement of the quantity of the collected washings and shall record the same in the vessel's ullage record.	633 634 635 636 637 638
	(3) Charterers may require the collected washings to be discharged ashore at the loading port, in which case no freight shall be payable on them.	639 640
	(4) Alternatively Charterers may require either that the cargo be loaded on top of the collected washings and the collected washings be discharged with the cargo, or that they be kept separate from the cargo in which case Charterers shall pay for any deadfreight incurred thereby in accordance with Part II clause 8 and shall, if practicable, accept discharge of the collected washings at the discharging port or ports.	641 642 643 644
	In either case, provided that the master has reduced the free water in the collected washings to a minimum consistent with the retention on board of the oil residues in them and consistent with sub-clause (1)(a) above, freight in accordance with Part II clause 5 shall be payable on the quantity of the collected washings as if such quantity were included in a bill of lading and the figure therefore furnished by the shipper provided, however, that	645 646 647 648
	(i) if there is a provision in this Charter for a lower freight rate to apply to cargo in excess of an agreed quantity, freight on the collected washings shall be paid at such lower rate (provided such agreed quantity of cargo has been loaded) and	649 650 651
	(ii) if there is provision in this Charter for a minimum cargo quantity which is less than a full cargo, then whether or not such minimum cargo quantity is furnished, freight on the collected washings shall be paid as if such minimum cargo quantity had been furnished, provided that no freight shall be payable in respect of any collected washings which are kept separate from the cargo and not discharged at the discharge port.	652 653 654 655
	(5) Whenever Charterers require the collected washings to be discharged ashore pursuant to this clause, Charterers shall	656

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	provide and pay for the reception facilities, and the cost of any shifting there for shall be for Charterers' account. Any time lost discharging the collected washings and/or shifting therefore shall count against laytime or, if the vessel is on demurrage, for demurrage.	657 658 659
	(6) Owners warrant that the vessel will arrive at the load port with segregated/ clean ballast as defined by Annex I of MARPOL 73/78 including any amendments thereof.	660 661
Oil response pollution and insurance	41. (1) Owners warrant that throughout the duration of this Charter the vessel will be: (i) owned or demise chartered by a member of the 'International Tanker Owners Pollution Federation Limited, and (ii) entered in the Protection and Indemnity (P&I) Club stated in Part I clause (A) I (xii) . (2) It is a condition of this Charter that Owners have in place insurance cover for oil pollution for the maximum on offer through the International Group of P&I Clubs but always a minimum of United States Dollars 1,000,000,000 (one thousand million). If requested by Charterers, Owners shall immediately furnish to Charterers full and proper evidence of the coverage. (3) Owners warrant that the vessel carries on board a certificate of insurance as required by the Civil Liability Convention for Oil Pollution damage. Owners further warrant that said certificate will be maintained effective throughout the duration of performance under this Charter. All time, costs and expense as a result of Owners' failure to comply with the foregoing shall be for Owners' account. (4) Owners warrant that where the vessel is a "Relevant Ship", they are a "Participating Owner", both as defined in the Small Tanker Oil Pollution Indemnification Agreement ("STOPIA") and that the vessel is entered in STOPIA, and shall so remain during the currency of this Charter, provided always that STOPIA is not terminated in accordance with Clause VIII of its provisions.	662 663 664 665 666 667 668 669 670 671 672 673 674
Lien	42. Owners shall have an absolute lien upon the cargo and all subfreights for all amounts due under this charter and the cost of recovery thereof including any expenses whatsoever arising from the exercise of such lien.	675 676
Drugs and alcohol	43. Owners are aware of the problem of drug and alcohol abuse and warrant that they have a written policy in force, covering the vessel, which meets or exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol on board Ship" as published by OCIMF dated June 1995. Owners further warrant that this policy shall remain in force during the period of this Charter and such policy shall be adhered to throughout this Charter.	677 678 679 680 681
ITWF	44. Owners warrant that the terms of employment of the vessel's staff and crew will always remain acceptable to the International Transport Workers Federation on a worldwide basis. All time, costs and expenses incurred as a result of Owners' failure to comply with foregoing shall be for Owners' account.	682 683 684
Letters of protest/ Deficiencies	45. It is a condition of this Charter that from the time the vessel sails to the first load port there will be no Letter(s) of Protest ("LOP") or deficiencies outstanding against the vessel. This refers to LOP's or deficiencies issued by Terminal Inspectorate or similar Port or Terminal or Governmental Authorities.	685 686 687
Documentation	46. Owners shall ensure that the master and agents produce documentation and provide Charterers with copies of all such documentation relevant to each port and berth call and all transshipments at sea, including but not limited to: Notice of Readiness / Statement of Facts / Shell Form 19x (if Charterers nominate agents under Part II clause 24) / Time sheet(s) / LOPs/ Hourly pumping logs /COW performance logs by facsimile (to the number advised in the voyage instructions). These documents to be faxed within 48 hours from sailing from each load or discharge port or transshipment area. If the vessel does not have a facsimile machine on board the master shall advise Charterers, within 48 hours from sailing from each port under this Charter, of the documents he has available and ensure copies of such documents are faxed by agents to Charterers from the relevant port of call or at latest from the next port of call. Complying with this clause does not affect the terms of Part II clause 15(3) with regard to notification and submission of a fully documented claim for demurrage or a claim described in Part II clause 6(3) of this Charter. Any documents to be faxed under this clause may be, alternatively, scanned and e-mailed to Charterers. If any actions or facilities of Suppliers / Receivers / Terminal/ Transshipment vessels or Charterers, as applicable, impinge on the vessel's ability to perform the warranties and / or guarantees of performance under this Charter the master must issue a LOP to such effect. If the master fails to issue such LOP then Owners shall be deemed to have waived any rights to claim. Master and agents shall ensure that all documents concerning port/berth and cargo activities at all ports/berths and transshipment at sea places are signed by both an officer of the vessel and a representative of either Suppliers / Receivers / Terminal / Transshipment vessels or Charterers, as applicable. If such a signature from Suppliers / Receivers / Terminal/ Transshipment vessels or Charterers, as applicable, is not obtainable the master or his agents should issue a LOP to such effect. All LOP's issued by master or his agents or received by master or his agents must be forwarded to Charterers as per the terms of this clause.	688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706
Administration	47. The agreed terms and conditions of this Charter shall be recorded and evidenced by the production of a fixture note sent to both Charterers and Owners within 24 hours of the fixture being concluded. This fixture note shall state the name and date of the standard pre-printed Charter Party Form, on which the Charter is based, along with all amendments / additions/ deletions to such charter party form. All further additional clauses agreed shall be reproduced in the fixture note with full wording. This fixture note shall be approved and acknowledged as correct by both Owners and Charterers to either the Ship Broker through whom they negotiated or, if no Ship Broker was involved, to each other within two working days after fixture concluded. No formal written and signed Charter Party will be produced unless specifically requested by Charterers or Owners or is required	707 708 709 710 711 712 713

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	by additional clauses of this Charter.	714
Cargo retention	48. If on completion of discharge any liquid cargo of a pumpable nature remains on board (the presence and quantity of such cargo having been established, by application of the wedge formula in respect of any tank the contents of which do not reach the forward bulkhead, by an independent surveyor, appointed by Charterers and paid jointly by Owners and Charterers), Charterers shall have the right to deduct from freight an amount equal to the FOB loading port value of such cargo, cargo insurance plus freight thereon; provided, however, that any action or lack of action hereunder shall be without prejudice to any other rights or obligations of Charterers, under this Charter or otherwise, and provided further that if Owners are liable to any third party in respect of failure to discharge such pumpable cargo, or any part thereof, Charterers shall indemnify Owners against such liability up to the total amount deducted under this clause.	715 716 717 718 719 720 721 722
Hydrogen sulphide	49. Owners shall comply with the requirements in ISGOTT (as amended from time to time) concerning Hydrogen Sulphide and shall ensure that prior to arrival at the load port the Hydrogen Sulphide (ppm by volume in vapour) level in all bunker, ballast and empty cargo spaces is below the Threshold Limit Value ("TLV") - Time Weighted Average ("TWA"). If on arrival at the loading terminal, the loading authorities, inspectors or other authorised and qualified personnel declare that the Hydrogen Sulphide levels in the vessels' tanks exceed the TLV- TWA and request the vessel to reduce the said level to within the TLV-TWA then the original notice of readiness shall not be valid. A valid notice of readiness can only be tendered and laytime, or demurrage time, if on demurrage, can only start to run in accordance with Part II clause 13 when the TLV-TWA is acceptable to the relevant authorities. If the vessel is unable to reduce the levels of Hydrogen Sulphide within a reasonable time Charterers shall have the option of cancelling this Charter without penalty and without prejudice to any claims which Charterers may have against Owners under this Charter.	723 724 725 726 727 728 729 730 731 732 733
Port regulations	50. Owners warrant that the vessel will fully comply with all port and terminal regulations at any named port in this Charter, and any ports to which Charterers may order the vessel to under this Charter in accordance with Part I clauses (D/E) provided that Owners have a reasonable opportunity to acquaint themselves with the regulations at such ports.	734 735 736
Single Point/ Buoy and jetty mooring	51. (1) Owners warrant that: (a) the vessel complies with the OCIMF recommendations, current at the date of this Charter, for equipment employed in the mooring of ships at single point moorings in particular for tongue type or hinged bar type chain stoppers and that the messenger from the Chain Stopper(s) is secured on a winch drum (not a drum end) and that the operation is totally hands free. (b) the vessel complies and operates in accordance with the recommendations, current at the date of this Charter, contained in the latest edition of OCIMF's "Mooring Equipment Procedures" (2) If requested by Charterers, or in the event of an emergency situation arising whilst the vessel is at a Single Buoy Mooring ("SBM"), the vessel shall pump sea water, either directly from the sea or from vessel's clean ballast tanks, to flush SBMs floating hoses prior to, during or /after loading and/or discharge of the cargo; this operation to be carried out at Charterers' expense and with time counting against laytime, or demurrage, if on demurrage. Subject to Owners exercising due diligence in carrying out such an operation Charterers hereby indemnify Owners for any cargo loss or contamination directly resulting from this request. If master or Owners are approached by Suppliers/Receivers or Terminal Operators to undertake such an operation Owners shall obtain Charterers' agreement before proceeding.	737 738 739 740 741 742 743 744 745 746 747 748 749 750 751
ISPS/MTSA	52. (1) (a) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and the US Maritime Transportation Security Act 2002 ("MTSA") in relation to the vessel, and thereafter during the currency of this Charter, Owners shall procure that both the vessel and "the Company" (as defined by the ISPS Code) and the "owner" (as defined by the MTSA) shall comply with the requirements of the ISPS Code relating to the vessel and "the Company" and the requirements of MTSA relating to the vessel and the "owner". Upon request Owners shall provide a copy of the relevant International Ship Security Certificate to Charterers. Owners shall provide documentary evidence of compliance with this clause 52 (1) (a). (b) Except as otherwise provided in this Charter, loss, damage, expense or delay caused by failure on the part of Owners or "the Company"/"owner" to comply with the requirements of the ISPS Code/MTSA or this clause shall be for Owners' account. (2) (a) Charterers shall provide the Owners with their full style contact details and other relevant information reasonably required by Owners to comply with the requirements of the ISPS Code/MTSA. Additionally, Charterers shall ensure that the contact details of any sub-charterers are likewise provided to Owners. Furthermore, Charterers shall ensure that all sub-charter parties they enter into shall contain the following provision: "The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that contact details of all sub-charterers are likewise provided to the Owners". (b) Except as otherwise provided in this Charter, loss, damage, expense or delay caused by failure on the part of Charterers to comply with this sub clause (2) shall be for Charterers' account.	752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771

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	(3) (a) Without prejudice to the foregoing, Owners right to tender notice of readiness and Charterers' liability for demurrage in respect of any time delays caused by breaches of this clause 52 shall be dealt with in accordance with Part II clauses 13, (Notice of readiness/Running time), 14, (Suspension of Time), and 15,(Demurrage), of the charter.	772 773 774 775
	(b) Except where the delay is caused by Owners and/or Charterers failure to comply, respectively, with clauses (1) and (2) of this clause 52, then any delay arising or resulting from measures imposed by a port facility or by any relevant authority, under the ISPS Code/MTSA, shall count as half rate laytime, or, if the vessel is on demurrage, half rate demurrage.	776 777 778 779
	(4) Except where the same are imposed as a cause of Owners and/or Charterers failure to comply, respectively, with clauses (1) and (2) of this clause 52, then any costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be shared equally between Owners and Charterers. All measures required by the Owners to comply with the Ship Security Plan shall be for Owners' account.	780 781 782 783 784 785
	(5) If either party makes any payment which is for the other party's account according to this clause, the other party shall indemnify the paying party.	786 787
Business principles	53. Owners will co-operate with Charterers to ensure that the "Business Principles", as amended from time to time, of the Royal Dutch/Shell Group of Companies, which are posted on the Shell Worldwide Web (www.Shell.com), are complied with.	788 789 790
Law and litigation	54. (a) This Charter shall be construed and the relations between the parties determined in accordance with the laws of England.	791 792
Arbitration	(b) All disputes arising out of this Charter shall be referred to Arbitration in London in accordance with the Arbitration Act 1996 (or any re-enactment or modification thereof for the time being in force) subject to the following appointment procedure:	793 794 795
	(i) The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so.	796 797
	(ii) If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.	798 799 800 801
	(iii) If a party fails to appoint an arbitrator within the time specified in (ii) (the "Party in Default"), the party who has duly appointed his arbitrator shall give notice in writing to the Party in Default that he proposes to appoint his arbitrator to act as sole arbitrator.	802 803 804
	(iv) If the Party in Default does not within 7 days of the notice given pursuant to (iii) make the required appointment and notify the other party that he has done so the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.	805 806 807
	(v) Any award of the arbitrator(s) shall be final and binding and not subject to appeal.	808
	(vi) For the purposes of this clause 54 any requests or notices in writing shall be sent by fax, e-mail or telex and shall be deemed received on the day of transmission.	809 810
	(c) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this Charter, that that party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.	811 812 813 814
Small claims	(d) In cases where neither the claim nor any counterclaim exceeds the sum of United States Dollars 50,000 (or such other sum as Owners/Charterers may agree) the arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association Small Claims Procedure current at the time when the arbitration proceedings are commenced.	815 816 817 818
Address commission	55. Charterers shall deduct address commission of 1.25% from all payments under this Charter.	819 820
Construction	56. The side headings have been included in this Charter for convenience of reference and shall in no way affect the construction hereof.	821 822

PART III

Australia	(1)(a)	The vessel shall not transit the Great Barrier Reef Inner Passage, whether in ballast en route to a loadport or laden, between the Torres Strait and Cairns, Australia. If the vessel transits the Torres Strait, the vessel shall use the outer reef passage as approved by the Australian Hydrographer. Owners shall always employ a pilot, when transiting the Torres Strait and for entry and departure through the Reef for ports North of Brisbane.	1 2 3 4 5
	(b)	The vessel shall discharge all ballast water on board the vessel and take on fresh ballast water, always in accordance with safe operational procedures, prior to entering Australian waters.	6 7
	(c)	On entering, whilst within and whilst departing from the port of Sydney Owners and master shall ensure that the water line to highest fixed point distance does not exceed 51.8 (fifty one point eight) metres.	8 9
	(d)	If Charterers or Terminal Operators instruct the vessel to slow the cargo operations down or stop entirely the cargo operations in Sydney during the hours of darkness due to excessive noise caused by the vessel then all additional time shall be for Owners' account.	10 11 12
	(e)(i)	Goods Services Tax ("GST") imposed in Australia has application to any supply made under this Charter, the parties agree that the Charterer shall account for GST in accordance with Division 83 of the GST Act even if the Owner becomes registered. The Owner acknowledges that it will not recover from the Charterer an additional amount on account of GST.	13 14 15 16
Goods Services Tax	(ii)	The Owner acknowledges that it is a non-resident and that it does not make supplies through an enterprise carried on in Australia as defined in section 995-1 of the Income Tax Assessment Act 1997.	17 18
	(iii)	The Charterer acknowledges that it is registered. Where appropriate, terms in this clause have the meaning set out in section 195-1 of the GST Act.	19 20
Brazil	(2) (a)	Owners acknowledge the vessel will have, if Charterers so require, to enter a port or place of clearance within mainland Brazil, to obtain necessary clearance from the Brazilian authorities and/or to pick-up personnel required to be on board during the loading of the cargo at Fluminense FPSO. The vessel then proceeds to the Fluminense FPSO where she can tender her notice of readiness. Time at the port of clearance, taken from arrival at pilot station to dropping outward pilot to be for Charterers' account and payable at the agreed demurrage rate together with freight. However this time not to count as laytime or demurrage if on demurrage.	21 22 23 24 25 26 27
	(b)	Freight payment under Part II clause 5 of this Charter shall be made within 5 banking days of receipt by Charterers of notice of completion of final discharge	28 29
Canada	(3)	Owners warrant that the vessel complies with all the Canadian Oil Spill response regulations currently in force and that the Owner is a member of a certified oil spill response organisation and that the Owners/vessel shall continue to be members of such organisation and comply with the regulations and requirements of such organisation throughout the period of this Charter.	30 31 32 33
	(4)(a)	Any costs incurred by Charterers for vessel garbage or in vessel deballasting at Sidi Kerir shall be for Owners' account and Charterers shall deduct such costs from freight	34 35
	(b)	Charterers shall have the option for the discharge range Euromed and/or United Kingdom/ Continent (Gibraltar Hamburg range) to instruct the vessel to transit via Suez Canal. In the event that Charterers exercise this option the following shall apply: Charterers option to part discharge Ain Sukhna and reload Sidi Kerir. Charterers will pay the following with freight against Owners' fully documented claim:	36 37 38 39 40
	(c)	time incurred at the demurrage rate on the passage from the point at which the vessel deviates from the direct sailing route between last loadport and Port Suez, till the tendering of notice of readiness at Ain Sukhna, less any time lost by reason of delay beyond Charterers' reasonable control;	41 42 43
Egypt	(d)	time incurred at the demurrage rate on the passage from disconnection of hoses at Sidi Kerir to the point at which the vessel rejoins the direct sailing route between Port Said and the first discharge port UK Continent or Mediterranean, less any time lost by reason of delay beyond Charterers' reasonable control;	44 45 46
	(e)	time incurred at the demurrage rate between tendering of notice of readiness at Ain Sukhna and disconnection of hoses there;	47 48
	(f)	time incurred at the demurrage rate between tendering of notice of readiness at Sidi Kerir and disconnection of hoses there;	49 50
	(g)	all bunkers consumed during the periods (c) to (f) above at replacement cost;	51
	(h)	all port charges incurred at Ain Sukhna and Sidi Kerir.	52
		Freight rate via Suez shall be based on the Suez/Suez flat rate without the fixed Suez rate differential, other than as described below (the Worldscale rates in Part I clause (G) of this Charter to apply). All canal dues related to Suez laden transit, including Suez Canal port costs, agency fees and expenses, including but not limited to escort tugs and other expenses for canal laden transit, to be for Charterers' account and to be settled directly by them. Charterers' to pay Owners the 'ballast transit only' fixed rate differential as per Worldscale together with freight.	53 54 55 56 57 58
	(5) (a)	In assessing the pumping efficiency under this Charter at ports in India, Owners agree to accept the record of pressure maintained as stated in receiver's statement of facts signed by the ship's representative.	59 60

PART III

	(b) Owners shall be aware of and comply with the mooring requirements of Indian ports. All time, costs and expenses as a result of Owners' failure to comply with the foregoing shall be for Owners' account.	61 62 63
	(c) Charterers shall not be liable for demurrage unless the following conditions are satisfied:	64
	(i) the requirements of Part II clause 15 (3) are met in full; and	65
	(ii) a copy of this Charter signed by Owners is received by Charterers at least 2 (two) working days prior to the vessel's arrival in an Indian port.	66 67
	Charterers undertake to pay agreed demurrage liabilities promptly if the above conditions have been satisfied.	68 69
Japan	(6) (a) Owners shall supply Charterers with copies of:-	70
	(i) General Arrangement/Capacity plan; and	71
	(ii) Piping/Fire Fighting Diagrams	72
	as soon as possible, but always within 4 working days after subjects lifted on this Charter.	73
	(b) If requested by Charterers, Owners shall ensure a Superintendent, fully authorised by Owners to act on Owners' and/or master's behalf, is available at all ports within Japan to attend safety meetings prior to vessel's arrival at the port(s) and be in attendance throughout the time in each port and during each cargo operation.	74 75 76 77
	(c) Vessel to record and print out the position with date/time by Global Positioning System when vessel enters Japanese Territorial Waters ("JTW") in order to perform vessel's declaration of entering JTW for crude oil stock piling purpose.	78 79 80
	(d) If under Part I clause (E) of this Charter Japan, or in particular ports or berths in Tokyo Bay and/or the SBM at UBE Refinery, are discharge options and if the vessel is over 220,000 metric tons deadweight and has not previously discharged in Tokyo Bay or the SBM at UBE Refinery then:	81 82 83
	(i) Owners shall submit an application of Safety Pledge Letter confirming that all safety measures will be complied with; and	84 85
	(ii) Present relevant ship data to the Japanese Maritime Safety Agency.	86
	Owners shall comply with the above requirements as soon as possible but always within 4 working days after subjects lifted on this Charter.	87 88
	(e) If Charterers instruct the vessel to make adjustment to vessel's arrival date/time at discharge port(s) in Japan, any adjustments shall be compensated in accordance with Part I clause (L) of this Charter.	89 90
	If vessel is ordered to drift off Japan, at a location in Owners'/master's option, then the following shall apply:-	91 92
	(i) Time from vessel's arrival at drifting location to the time vessel departs, on receipt of Charterers' instructions, from such location shall be for Charterers' account at the demurrage rate stipulated in Part I clause (J) of this Charter.	93 94 95
	(ii) Bunkers consumed whilst drifting as defined in sub clause (e)(i) above shall be for Charterers' account at replacement cost.	96 97
	Owners shall provide full documentation to support any claim under this clause.	98
New Zealand	(7) (a) Owners of vessels carrying Persistent Oil - as defined by the International Group of P&I Clubs - which shall always incorporate Crude and Fuel Oil, Non Persistent Oil as defined by the International Group of P&I Clubs - which shall always incorporate Petroleum Products; and Chemicals, warrant that the vessel shall comply at all times with the Maritime Safety Authority of New Zealand's Voluntary Routeing Code for Shipping whilst transiting the New Zealand coast and / or en route to or from ports in New Zealand and whether laden or in ballast.	99 100 101 102 103 104
	(b) the following voyage routing will apply:	105
	(i) vessel is to keep a minimum of 5 miles off the New Zealand coast (and outlying islands) until approaching the port's pilot station, with the following exceptions:	106 107
	a) to pass a minimum of 4 miles off the coast when transiting Cook Strait;	108
	b) to pass a minimum of 5 miles to the east of Poor Knights Islands and High Peaks Rocks;	109
	c) to pass a minimum of 3 miles from land when transiting the Colville or Jellicoe Channels.	110
	If due to safe navigation and or other weather related reasons the vessel proceeds on a different route to those set out above, the Owners and master shall immediately advise Charterers and Owner's agents in New Zealand of the route being followed and the reasons for such deviation from the above warranted route.	111 112 113
Thailand	(8) If Part I clause (E) of this Charter includes option to discharge at a port/berth in Thailand then the following, which is consistent with industry practice for ships discharging in Thailand, shall apply over and above any other terms contained within this Charter:-	114 115 116
	(a) Laytime shall be 96 running hours	117
	(b) Freight payment under Part II clause 5 of this Charter shall be made within 15 days of receipt by Charterers of notice of completion of final discharge of cargo.	118 119
	(c) Cargo quantity and quality measurements shall be carried out at load and discharge ports by mutually appointed independent surveyors, with costs to be shared equally between Owners and Charterers.	120 121

PART III

	This is additional to any independent surveyors used for the Cargo Retention clause 48 in Part II of this Charter.	122 123
United Kingdom	(9) (a) It is a condition of this Charter that Owners ensure that the vessel fully complies with the latest Sullom Voe regulations, including but not limited to:- i) current minimum bulk loading rates; and ii) pilot boarding ladder arrangements. Owners shall also comply with Charterers' instructions regarding the disposal of ballast from the vessel. Charterers shall accept any deadfreight claim that may arise by complying with such instructions. (b) It is also a condition of this Charter that Owners ensure that the vessel fully complies with the latest Tranmere and Shellhaven regulations, including but not limited to:- i) being able to ballast concurrently with discharge ; or ii) maintaining double valve segregation at all times between cargo and ballast if the vessel has to part discharge, stop to ballast, then resume discharge. (c) In the event of loading or discharge at Tranmere, Shell U.K. Ltd. shall appoint tugs, pilots and boatmen on behalf of Owners. The co-ordinator of these services shall be OBC., who will submit all bills to Owners direct, irrespective of whether OBC are appointed agents or not. Owners warrant they will put OBC in funds accordingly.	124 125 126 127 128 129 130 131 132 133 134 135 136 137 138
United States of America	(10) (a) It is a condition of this Charter that in accordance with U.S. Customs Regulations, 19 CFR 4.7a and 178.2 as amended, Owners have obtained a Standard Carrier Alpha Code (SCAC) and shall include same in the Unique Identifier which they shall enter, in the form set out in the above Customs Regulations, on all the bills of lading, Cargo manifest, Cargo declarations and other cargo documents issued under this Charter allowing carriage of goods to ports in the U.S. Owners shall be liable for all time, costs and expenses and shall indemnify Charterers against all consequences whatsoever arising directly or indirectly from Owners' failure to comply with the above provisions of this clause. Owners warrant that they are aware of the requirements of the U.S Bureau of Customs and Border Protection ruling issued on December 5th 2003 under Federal Register Part II Department of Homeland Security 19 CFR Parts 4, 103, et al. and will comply fully with these requirements for entering U.S ports.	139 140 141 142 143 144 145 146 147 148 149 150
Coastguard compliance	(b) Owners warrant that during the term of this Charter the vessel will comply with all applicable U.S. Coast Guard (USCG) Regulations in effect as of the date the vessel is tendered for first loading hereunder. If waivers are held to any USCG regulation Owners to advise Charterers of such waivers, including period of validation and reason(s) for waiver. All time costs and expense as a result of Owners' failure to comply with the foregoing shall be for Owners' account.	151 152 153 154 155
Laws and regulation	(c) Owners warrant that they will (i) comply with the U.S. Federal Water Pollution Control Act as amended, and any amendments or successors to said Act (ii) comply with all U.S. State Laws and regulations applicable during this Charter, as they apply to the U.S. States that Charterers may order vessel to under Part I clauses (D/E) of this Charter. (iii) have secured, carry aboard the vessel, and keep current any certificates or other evidence of financial responsibility required under applicable U.S. Federal or State Laws and regulations and documentation recording compliance with the requirements of OPA 90, any amendments or succeeding legislation, and any regulations promulgated thereunder. Owners shall confirm that these documents will be valid throughout this Charter.	156 157 158 159 160 161 162 163 164 165
W-8BEN	(d) If the recipient of the freight due under this Charter does not file taxes within the US, then such recipient shall complete an IRS Form W-8BEN and forward the original by mail to Charterers, attention "Freight Payments". Should this not be received in a timely manner, then Charterers shall not be liable for interest on late payment of freight, or be in default of this Charter for such late payment.	166 167 168 169
Vapour Recovery System	Owners warrant that the vessel's vapour recovery system complies with the requirements of the United States Coastguard.	170 171
Vietnam	(11) If required by Charterers, when loading Bach Ho crude oil, Owners will instruct the master to start the cargo heating system(s) prior to loading commencing.	172 173



UNITED NATIONS WORLD FOOD PROGRAMME
VOYAGE CHARTER PARTY
CODE NAME: "WORLDFOOD 99"

PART I

1. Shipbroker		3. Place and date	
2. Vessel's name		5. Charterers and place of business World Food Programme of the United Nations Via Cesare Giulio Viola, 68/70 00148 Parco De' Medici - ROME Tel: +39-06-6513-2988 Fax: +39-06-6513-2844	
4. Owners and place of business (state full style and address)		7. Discharging port(s) or place(s). If applicable, also state number of days prior declaration of actual discharge port(s) or place(s) (Cl. 2)	
6. Loading port(s) or place(s). If applicable, also state number of days prior declaration of actual load port(s) or place(s) (Cl. 2)		9. Vessel's description (see also SCHEDULE A)	
8. Cargo (also state quantity, if full and complete cargo not agreed state "part cargo") (Cl. 3)		12. Present position/ETA first load port (Cl. 4)	
10. Laydays date (Cl. 4)	11. Cancelling date (Cl. 5)	14. Advance notices (discharging) (Cl. 7) to be given to: World Food Programme of the United Nations Fax +39-06-6513-2844 & other parties:	
13. Advance notices (loading) (Cl. 6) to be given to: World Food Programme of the United Nations Fax +39-06-6513-2844 & other parties:		16. Laytime for discharging (Cl. 10)	
15. Laytime for loading (Cl. 10)		18. Freight rate (Cl. 22)	
17. Demurrage (loading and discharging) (Cl. 11)		20. Brokerage commission and to whom payable (Cl. 38)	
19. Freight payment (state currency and method of payment, beneficiary and bank account)(Cl. 22)			
21. Numbers of additional clauses covering special provisions, if agreed			

It is mutually agreed that this Charter Party shall be performed subject to the conditions contained herein consisting of PART I and PART II. The provisions of PART I shall prevail over the terms of PART II to the extent of any conflict between them.

Signature (Owners)	Signature (Charterers)



**"WORLDFOOD 99"
SCHEDULE A**



Vessel's name

Owner's Details

A. Owner's name	The name of the registered Owner if the party identified in Box A is <u>not</u> the registered Owner
Address	Address
Telex	Telex
Phone	Phone
Contact	Contact
Owner's P&I Club	Registered Owner's P&I Club
Owner's Hull & Machinery Insurers/Hull & Machinery value	Registered Owner's Hull & Machinery Insurers/Hull & Machinery value
Certificates attached YES/NO	Certificates attached YES/NO

Vessel's Description

Flag	Year built
Call sign Fax/telex	Class
NT	GT
DWT	Draft
TPC	Speed
Gear	LOA
Beam	Twin hatch
Number of hatches	Hatch dimensions
Number of holds	
Grain cubic	Bale cubic

Supplementary Information

Last special survey	Last dry dock
Last 2 cargoes	
Details of General Average in last 2 years	Previous names in last 12 months

PART II

"Worldfood 99" Charter Party

1. Vessel	1	to a new cancelling date.	82
(a) The Owners shall:	2	If the Charterers do not exercise their option of cancelling, then this	83
(i) before and at the beginning of the voyage exercise due diligence to	3	Charter Party shall be deemed to be amended such that the fourth day	84
make the Vessel seaworthy and in every way fit for the voyage and for	4	after the new date of readiness indicated in the Owners' notification shall	85
the trade for which she is employed, with a full complement of Master,	5	be regarded as the new cancelling date.	86
officers and crew for a vessel of her type, tonnage and flag;	6	(c) The provisions of sub-clause (b) of this Clause shall operate only once	87
(ii) ensure that throughout the currency of this Charter Party the Vessel	7	and, in case of the Vessel's further delay, the Charterers shall have the	88
and her Master, officers and crew will comply with all safety and	8	option of cancelling the Charter Party as per sub-clause (a) above.	89
health regulations and other statutory rules or regulations and	9		
internationally recognized requirements necessary to secure safe	10	6. Advance Notices (Loading)	90
and unhindered loading of the cargo, performance of the voyage and	11	(a) The Owners shall give the following notices of ETA (Estimated Time	91
discharge of the cargo;	12	of Arrival) at first or sole loading port to the Charterers and the Parties	92
(iii) ensure that throughout the currency of this Charter Party the Vessel	13	indicated in Box 13:	93
is fully insured in respect of loss of or damage to or in connection with	14	(i) notice of ETA at time of fixture;	94
cargo by the Protection and Indemnity Class of the P&I Club stated in	15	(ii) 10 days notice of ETA;	95
Schedule A and also insured against hull and machinery risks for a	16	(iii) 72 hours notice of ETA;	96
value not less than that specified in Schedule A.	17	(iv) 24 hours definite notice of arrival.	97
(b) The Vessel as described in Box 9 and in Schedule A shall be classed	18	Notwithstanding provisions to the contrary in Clauses 8 and 9, if the	98
Lloyd's 100 A1 or equivalent as stated in Schedule A. The Owners warrant	19	Owners fail to give notice in accordance with sub-clause 6 (a)(iv), laytime	99
to maintain that class throughout the currency of this Charter Party.	20	shall not start to count until 48 hours after the arrival of the Vessel.	100
		(b) The Master shall give the Vessel's position every 72 hours after fixing	101
2. Voyage	21	and, if transiting the Suez Canal and/or the Panama Canal, the Master	102
(a) The Vessel shall with all reasonable despatch proceed to the loading	22	shall notify the Charterers thereof, stating time of entering and leaving the	103
port(s) or place(s) stated in Box 6 or so near thereto as she may safely get	23	Canal(s).	104
and lie always safe and afloat, and there load the cargo stated in Box 8,	24		
and being so loaded the Vessel shall with all reasonable despatch proceed	25	7. Advance Notices (Discharging)	105
to the discharging port(s) or place(s) stated in Box 7 or so near thereto as	26	(a) The Owners or the Master shall give the following notices of ETA at	106
she may safely get and lie always safe and afloat and there deliver the	27	first or sole discharging port to the Charterers and the Parties indicated in	107
cargo.	28	Box 14:	108
If the Charterers have the right to order the Vessel to load and/or discharge	29	(i) Upon sailing from loading port (or if more than one loading port from	109
at one or more ports out of several named ports or within a specific range,	30	final port of loading) approximate ETA, also stating quantity of cargo	110
the Charterers shall declare the actual port or ports of loading and/or	31	loaded and estimated arrival draft;	111
discharge within the number of days stated in Boxes 6 and 7, respectively.	32	(ii) 10 days notice of ETA;	112
Unless loading and/or discharging ports are named in this Charter Party,	33	(iii) 72 hours notice of ETA;	113
the responsibility for providing safe ports or places of loading and/or	34	(iv) 24 hours definite notice of arrival.	114
discharging lies with the Charterers.	35	Notwithstanding provisions to the contrary in Clauses 8 and 9, if the	115
(b) <i>Rotation of Ports</i>	36	Owners or the Master fail to give notice in accordance with sub-clause 7	116
Unless otherwise agreed, loading and/or discharging at two or more ports	37	(a) (iv), laytime shall not start to count until 48 hours after the arrival of the	117
shall be effected in geographical rotation.	38	Vessel.	118
		(b) The Master shall give to the Charterers the Vessel's position every 72	119
3. Cargo	39	hours en route to the discharging port and, if transiting the Suez Canal and/	120
(a) Unless otherwise stated in Box 8, this Charter Party is for a full and	40	or the Panama Canal, the Master shall notify the Charterers thereof,	121
complete cargo as described in Box 8.	41	stating time of entering and leaving the Canal(s).	122
(b) The Charterers warrant that the cargo referred to in Box 8 is non-	42		
dangerous for carriage according to applicable safety regulations	43	8. Notice of Readiness (Loading and Discharging)	123
including IMO Code(s).	44	(a) At each port of loading or discharging, notice of readiness shall be	124
(c) <i>Part Cargo</i> - if agreed and stated in Box 8 that this Charter Party is for	45	given by the Master to the Charterers and the Parties indicated in Boxes	125
a part cargo, the Owners guarantee that any additional cargo shall be non-	46	13 and 14, as appropriate, when the Vessel is in the loading or discharging	126
hazardous and non-injurious to the cargo carried under this Charter Party	47	berth and has obtained customs clearance and free pratique and is in all	127
and that in any event no fertilisers or chemicals will be loaded.	48	respects ready to load or discharge.	128
Such additional cargo shall be stowed in separate compartments and shall	49	(b) At loading port before tendering notice of readiness, the Owners and	129
not affect the rate of loading and discharging of the cargo under this	50	the Master shall ensure that all holds of the Vessel are clean, dry and free	130
Charter Party as stipulated in Boxes 15 and 16, respectively.	51	from smell and in all respects suitable to receive the cargo to the	131
If cargo other than the Charterers' cargo is loaded/discharged at the same	52	Charterers' satisfaction.	132
port and/or berth and waiting time is incurred, such time shall be calculated	53	(c) If a loading/discharging berth is not designated or if such designated	133
on a pro rata basis according to the quantity of each cargo. If cargo other	54	berth is not available upon the Vessel's arrival at or off the port, notice of	134
than the Charterers' cargo is loaded/discharged at the same berth, time	55	readiness may be given upon arrival at the customary waiting place at or	135
shall only count when the Charterers' cargo is actually being loaded/	56	off the port, whether cleared at customs or not and whether in free pratique	136
discharged. Should cargo other than the Charterers' cargo interfere in any	57	or not.	137
way whatsoever with loading/discharging of the Charterers' cargo, time	58	However, if upon the Vessel's arrival at or off the port she is prevented from	138
shall cease to count entirely if the Charterers' loading/discharging is	59	proceeding to the loading/discharging berth by her inefficiency, weather,	139
stopped completely or on a pro rata basis if partially stopped.	60	tidal conditions, strikes of tugs or pilots, or mandatory regulations, notice	140
The Owners shall pay totally or proportionally the costs of lightening, if any,	61	of readiness may be given only when such hindrance(s) has (have)	141
at the port(s) of discharge incurred due to loading of completion cargo.	62	ceased.	142
(c) Unless otherwise stated in Box 8, all quantities shall be expressed in	63	(d) Notice of readiness to load or discharge shall be tendered between	143
tons of 1,000 kilograms.	64	the hours of 09.00 to 17.00 on ordinary working days, Sundays (or their	144
		local equivalents) excepted and between the hours of 09.00 to 12.00 on	145
4. Laydays Date and Present Position	65	Saturdays (or their local equivalents).	146
(a) Laydays shall not commence before 07.00 hours on the date stated in	66		
Box 10. However, notice of readiness may be given before that date and	67	9. Time Counting (Loading and Discharging)	147
notice time shall run forthwith.	68	(a) At first or sole loading and discharging port, laytime for loading and	148
(b) Present position of the Vessel as per Box 12.	69	discharging shall commence at 07.00 hours on the next working day	149
		following tendering of notice of readiness in accordance with Clause 8.	150
5. Cancelling	70	(b) While at second or subsequent port(s) of loading and discharging,	151
(a) The Charterers shall have the option of cancelling the Charter Party if	71	laytime shall count upon the Master's tendering of notice of readiness,	152
the Vessel has not tendered notice of readiness to load on or before 17.00	72	whether in berth or not, provided the notice of readiness is tendered in	153
hours on the cancelling date stated in Box 11.	73	accordance with Clause 8, otherwise the laytime shall commence at 07.00	154
(b) Should the Owners anticipate that, despite the exercise of due	74	hours on the next working day.	155
diligence, the Vessel will not be ready to load by the cancelling date, they	75	(c) If the notice of readiness has been tendered while the Vessel is at or	156
shall notify the Charterers thereof without delay stating the actual date of	76	off the port, in accordance with Clause 8, the laytime shall commence and	157
sailing or the expected date of the Vessel's readiness to sail from her last	77	shall count as if the Vessel were in berth.	158
discharge port and her expected date of readiness to load.	78	(d) Actual time used for shifting to the loading/discharging berth or to a	159
In notifying the Charterers of the delay the Owners may require the	79	waiting berth in port shall not count as laytime unless the Vessel is already	160
Charterers to declare within two working days after receipt of such notice	80	on demurrage.	161
whether they will exercise their option to cancel the Charter Party or agree	81	(e) If, after tendering notice of readiness and provided the Charterers	162

PART II

"Worldfood 99" Charter Party

have appointed and paid for an independent surveyor to inspect the Vessel's holds as soon as possible, the Vessel is nevertheless found not to be in all respects ready to load/discharge, the actual time lost until the Vessel is in fact ready to load/discharge (including customs clearance and free pratique if applicable) shall not count as laytime or, if the Vessel is already on demurrage, as time on demurrage.	163 164 165 166	satisfaction between loading berths/ports and between discharging berths/ports, respectively. Any expenses resulting therefrom shall be for the Charterers' account and any time used shall count as laytime.	245 246 247
(f) Time lost as a result of inefficiency or any other cause, including strike by officers and crew, attributable to the Vessel, her Master, her crew or the Owners which affects the working of the Vessel, shall not count as laytime or as time on demurrage.	167 168 169 170 171 172	13. Dunnage/Separation	248
(g) In the event that the Vessel is waiting for a loading or discharging berth and notice of readiness has been tendered according to Clause 9(c), no laytime shall be deducted during such period for reasons of weather, unless the vessel occupying the loading or discharging berth in question is actually prevented from working due to weather conditions, in which case laytime so lost shall not count unless the Vessel is already on demurrage.	173 174 175 176 177	(a) <i>Dunnage</i> - The Owners shall provide, lay and erect all dunnage material (including paper, plastic, etc.) required for the proper stowage and protection of the cargo.	249 250 251
(h) <i>Excepted Periods</i> .	178	(b) <i>Separation</i> - The Charterers shall have the right to ship parcels of different qualities or parcels for different receivers in separate holds within the Vessel's natural segregation and suitable for her trim provided that such parcels can be loaded, carried and discharged without affecting the Vessel's seaworthiness. No separation other than natural separation will be required for cargoes carried under this Charter Party.	252 253 254 255 256 257
(i) In those countries in which Sunday is the recognised day of rest, laytime shall not run from either 12.00 hours on Saturday or, where Saturday is a day on which stevedores work only at overtime rates, from the time on Friday at which stevedores cease to be paid at the normal rate, until 07.00 hours on Monday.	179 180 181 182 183 184	14. Opening and Closing of Hatches	258
(ii) In those countries in which Friday is the recognised day of rest, laytime shall not run from either 12.00 hours on Thursday or, where Thursday is a day on which stevedores work only at overtime rates, from the time on Wednesday at which stevedores cease to be paid at the normal rate, until 07.00 hours on Saturday.	185 186 187 188 189	Opening and closing of hatches at loading and discharging ports shall be performed by the Vessel's crew at the Owners' expense. Such operations shall, if required by Charterers, also be performed outside usual stevedore working hours. If use of the Vessel's crew is not permitted by local authorities or local union regulations, shore labour (stevedores) shall be provided and paid for by the Charterers.	259 260 261 262 263 264
(iii) Laytime shall not run from 17.00 hours on a day preceding a national or local holiday until 07.00 hours on the next working day.	190 191	The Master has the responsibility of taking action for closing of hatches in the event of inclement weather or the presence of substances harmful to the cargo during loading and discharging.	265 266 267
(iv) If work is actually carried out during any of the excepted periods specified in sub-paragraphs (i) to (iii) hereof, only half of such time actually used shall count as laytime.	192 193 194	15. Vessel's Cargo Gear	268
10. Loading and Discharging	195	(a) <i>Cargo handling gear</i> - The Owners shall always give free use, throughout the duration of loading and discharging, of all Vessel's cargo handling gear and the Vessel shall have sufficient motive power to operate all cargo handling gear simultaneously. The Owners also to make available all slings as on board.	269 270 271 272 273
(a) <i>Bulk Cargo</i> - If loading bulk cargo, the cargo shall be loaded and spout-trimmed by the Charterers at their expense, but under the supervision of the Master, at the rate stated in Box 15 per weather working day of 24 consecutive hours (subject to excepted periods according to Clause 9).	196 197 198 199 200	(b) <i>Breakdowns</i> - All equipment referred to in (a) above shall be maintained in good working order up to tested capacity and with valid certificates throughout the currency of this Charter Party. Unless caused by negligence of the Charterers' stevedores, time lost by breakdown of Vessel's cargo handling gear - pro rata the total number of cranes/winches required at that time for loading/discharging cargo under this Charter Party - shall not count as laytime or as time on demurrage, and cost of labour standing-by as a result shall be for the Owners' account.	274 275 276 277 278 279 280 281
<i>Other than Bulk Cargo</i> - If loading other than bulk cargo, the cargo shall be loaded and stowed by the Charterers at their expense, but under the supervision of the Master, at the rate stated in Box 15 per weather working day of 24 consecutive hours (subject to excepted periods according to Clause 9).	201 202 203 204 205	(c) <i>Cranemen/winchen</i> - On request, the Owners shall provide, free of charge, cranemen/winchen from the crew to operate the Vessel's cargo handling gear, unless the crew's employment conditions or local union or port regulations prohibit this, in which event shore labourers shall be provided and paid for by the Charterers. Cranemen/winchen, whether crew or shore labourers, shall be deemed the Charterers' servants and shall always work under supervision of the Master, but at the Charterers' risk and responsibility.	282 283 284 285 286 287 288 289
(b) The cargo shall be discharged by the Charterers at their expense, but under the supervision of the Master, at the rate stated in Box 16 per weather working day of 24 consecutive hours (subject to excepted periods according to Clause 9).	206 207 208 209	This Clause shall not apply if Vessel is gearless and stated as such in Schedule A.	290 291
(c) At each loading and discharging port stevedores shall be appointed and paid by the Charterers.	210 211	16. Light	292
(d) <i>Cargo Handling</i> - During the loading and discharging operations, the Master shall supervise the work performed by the stevedores and shall instruct them properly in regard to handling, loading, stowage and discharging of the cargo.	212 213 214 215	Whenever required, the Owners shall provide free of charge, throughout the duration of loading/discharging, light (as on board) for work on and under deck.	293 294 295
Should the stevedores refuse to follow his instructions, the Master shall protest to them in writing and shall advise the Charterers immediately thereof.	216 217 218	17. Loading/Stowing/Trimming and Discharging	296
11. Demurrage/Despatch Money	219	(a) <i>Bulk cargo</i> - The Vessel shall be suitable for grab discharge and no cargo shall be loaded into spaces inaccessible to grabs. However, the Master has the right to load cargo into such places for the purposes of stability of the Vessel. Any extra expense is to be for the Owners' account.	297 298 299 300 301
(a) Demurrage in loading and discharging shall be paid by the Charterers at the rate as stated in Box 17 per running day or pro rata.	220 221	Time used in loading and/or discharging into or from these places shall not count, even if the Vessel is on demurrage.	302
(b) Despatch money at half the demurrage rate shall be paid by the Owners on laytime saved in loading and/or discharging.	222 223	(b) The Owners warrant that the Vessel is approved by the Vessel's classification society or an organisation acceptable thereto for the carriage of bulk grain under the applicable SOLAS regulations. The Owners further warrant that approved information relating to dispensation from trimming end of filled holds will be on board the Vessel on arrival at the loading port.	303 304 305 306 307
(c) Demurrage and Despatch accounts shall be settled when finalizing accounts as per Clause 22.	224 225	Any trimming other than spout trimming (whether spout trimming head is moveable or fixed) shall be for the Owners' expense and time so used shall not count as laytime or demurrage. Any bagging, strapping or securing which may be required is to be supplied and paid for by the Owners and time used shall not count as laytime or demurrage. Bleeding of bags, if any, at discharging port shall be for Owners' time, risk and expense.	308 309 310 311 312 313
(d) Laytime between ports of loading and discharging shall be non-reversible. If the Vessel has to load at two or more ports, the ports shall be regarded as a single one for the purpose of laytime computation and the same principle applies to discharging ports. For the purposes of computing laytime, twin/double hatches shall count as one hatch only.	226 227 228 229 230	(c) <i>Bagged, cartoned and palletised cargo</i> - In the case of bagged, cartoned and palletised cargo, any cargo space into which such cargo is loaded must be accessible to customary loading and discharging equipment.	314 315 316 317
12. Shifting and Warping	231	18. Stevedore Damage	318
(a) <i>Shifting</i> - The Charterers shall have the option of ordering the Vessel to load and/or discharge at a second safe berth if required. The costs of shifting from first to second berth shall be for the Owners' account. Time used for shifting shall count as laytime unless shifting is performed during excepted periods according to Clause 9.	232 233 234 235 236	The Charterers shall be responsible for damage (beyond ordinary wear and tear) caused by stevedores to any part of the Vessel. Such damage shall be notified as soon as reasonably possible, but latest when the Vessel is sailing from her last discharge port, by the Master to the Charterers or their agents and to their stevedores, failing which the	319 320 321 322 323
(b) <i>Warping</i> - The Vessel shall be warped alongside the loading/discharging appliances, as reasonably required, at the Owners' risk and expense, but time shall count as laytime unless warping is performed during excepted periods according to Clause 9.	237 238 239 240		
Overtime expenses for the Vessel's officers and crew and costs for bunkers consumed shall be for the Owners' account.	241 242		
(c) <i>Seaworthy Trim</i> - The Charterers shall leave the Vessel in a seaworthy trim and with cargo on board safely stowed to the Master's	243 244		

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Charterers shall not be held responsible. The Master shall endeavour to obtain the stevedores' written acknowledgment of the damage caused.	324	23. Dues, Taxes and Charges	404
The Charterers have the right to repair any stevedore damage at any time prior to completion of the voyage where practicable, or otherwise at a place mutually agreed between the parties, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.	325 326 327 328 329 330 331 332 333	(a) <i>On the Vessel</i> - The Owners shall pay all dues, duties, taxes and other charges customarily levied on the Vessel, howsoever the amount thereof may be assessed.	405 406 407
		(b) <i>On the cargo</i> - The Charterers shall pay all dues, duties, taxes and charges levied on the cargo at the port of loading/discharging, howsoever the amount thereof may be assessed.	408 409 410
		(c) <i>On the freight</i> - Taxes levied on the freight shall be paid by the Owners.	411 412
19. Overtime	334	24. Extra Insurance	413
(i) <i>Expenses</i> - All overtime expenses at loading and discharging port(s) shall be for the account of the party ordering same.	335 336	Any extra insurance on cargo owing to Vessel's age, class, flag or ownership shall be for the Owners' account and may be deducted from the freight. The Charterers shall furnish evidence of payment supporting any such deduction. Unless a maximum amount has been agreed, such extra insurance shall not exceed the lowest extra premium which would be charged for the Vessel and voyage in the London insurance market.	414 415 416 417 418 419
If overtime is ordered by port authorities or the party (not being the Charterers) controlling the loading and/or discharging terminal or facility, all overtime expenses are to be paid by the Charterers. Overtime expenses for the Vessel's officers and crew shall always be for the Owners' account.	337 338 339 340		
(ii) <i>Time Counting</i> - If overtime ordered by the Owners is worked during excepted periods the actual time used shall count as laytime. If overtime ordered by the Charterers is worked during excepted periods half the actual time used shall count as laytime.	341 342 343 344 345	25. Lien	420
		The Owners shall have a lien on the cargo for freight. The Charterers shall remain responsible for freight, dead freight and demurrage incurred at port(s) of loading and/or discharging.	421 422 423 424
20. Cargo Receipt	346	26. Liberty	425
(i) No bills of lading will be issued for shipments under this Charter Party.	347	The Vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress, to call at any port or place for oil fuel supplies, and to deviate for the purpose of saving life or property, or for any other reasonable purpose whatsoever.	426 427 428
(ii) The Owners agree to issue a Cargo Receipt as per the "Worldfood Receipt 99" Cargo Receipt Form attached hereto incorporating all terms, conditions, liberties, clauses and exceptions of this Charter Party. In the event of a conflict of conditions between the Cargo Receipt and this Charter Party, the provisions of this Charter Party shall prevail to the extent of such conflict but no further.	348 349 350 351 352 353	27. United Nations Emergency Clause	429
		The Charterers have the right in case of an emergency situation arising to change the Vessel's destination, subject only to the Owners' consent, which shall not be unreasonably withheld. In this event, the Owners and the Charterers shall agree on any necessary adjustment in freight rates in consequence of the change of destination. Failing such agreement, the new rate shall be determined by a shipbroker appointed, at the request of either party, by the Institute of Chartered Shipbrokers, London, acting as valuer and not as arbitrator.	430 431 432 433 434 435 436 437
21. Tally	354	28. General Clause Paramount	438
(i) The Cargo Receipt shall be conclusive evidence of the quantity of cargo loaded.	355 356	The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Charter Party. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.	439 440 441 442 443 444 445 446
(ii) If the cargo consists of bags, bales, cases and/or drums, the Vessel shall be responsible for the number of packages shipped and the provisions of sub-clause (a) also to apply.	357 358 359	When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Charter Party save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination, compulsorily applicable to shipments, in which case the provisions of such Rules shall apply.	447 448 449 450 451 452
(iii) At each discharging port, the Charterers shall appoint recognised tallymen to act jointly on behalf of the Owners and the Charterers. Such tallymen shall be binding upon both parties provided that such tally is kept during discharging and all costs shall be for the Charterers' account.	360 361 362 363	The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Charter Party.	453 454 455
(iv) At each loading port the Owners and the Charterers shall accept the standard loading terminal procedures for weighing, control/checking and tally of cargo at the Charterers' expense.	364 365 366	The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.	456 457 458
22. Freight Payment	367	29. P & I Charter Party Pollution Clause	459
(i) The freight at the rate indicated in Box 18 shall be calculated on the gross intaken weight/quantity stated in the Cargo Receipt.	368 369	(a) The Owners warrant that throughout the currency of this Charter Party they will provide the Vessel with certificates issued pursuant to Section 1016 (a) of the Oil Pollution Act 1990, and Section 108 (a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended, in accordance with Part 138 of Coast Guard Regulations 33 CFR.	460 461 462 463 464 465
(ii) 90 (ninety) per cent of the freight is due and payable by the Charterers within 5 (five) working days after release of signed Cargo Receipt.	370 371	(b) Notwithstanding anything whether printed or typed herein to the contrary,	466 467
(iii) The Charterers shall, if the Owners so request, pay any demurrage which is due, every 14 days in arrears.	372 373	(i) save as required for compliance with paragraph (a) hereof, the Owners shall not be required to establish or maintain financial security or responsibility in respect of oil or other pollution damage to enable the Vessel lawfully to enter, remain in or leave any port, place, territorial or contiguous waters of any country, state or territory in performance of this Charter Party.	468 469 470 471 472 473
(iv) The balance of freight with any adjustment for demurrage, despatch money, dead freight and/or any other sums payable to the Owners under this Charter Party and any Cargo Receipt issued hereunder shall be paid promptly by the Charterers upon receipt of the Owners' invoice in duplicate giving details of freight due, despatch/demurrage incurred at loading and discharging ports and supported by all the following documents in duplicate:	374 375 376 377 378 379 380	(ii) The Charterers shall indemnify the Owners and hold them harmless in respect of any loss, damage, liability or expense (including but not limited to the costs of any delay incurred by the Vessel as a result of any failure by the Charterers promptly to give alternative voyage orders) whatsoever and howsoever arising which Owners may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (a) hereof.	474 475 476 477 478 479 480 481 482
(i) Statement of Facts signed by the Master and the Charterers' agent and/or representatives at both ends;	381 382		
(ii) Laytime statements (time sheets);	383		
(iii) Receipted commission invoices from all brokers mentioned in the Charter Party;	384 385		
(iv) A comprehensive Stowage Plan showing gross cargo quantities loaded hold by hold;	386 387		
(v) Surveyor's report on draft and cubic survey in respect of any dead freight claim which shall also be supported by a voucher approved by the Master and the Charterers'/Shippers' representatives at loading port.	388 389 390 391		
(vi) A fully executed copy of the Charter Party.	392		
(e) The Charterers may deduct from any balance payable under (d) above a sufficient amount as security for duly particularised claims against the Owners for loss of or damage to cargo which shall have been established on discharge, but only insofar as the P & I Club stated in Schedule A shall have failed to provide a Letter of Undertaking to meet any proper liability of the Owners for such claims within 48 hours of a request from the Charterers for such Club Letter of Undertaking, which request shall also particularise the alleged claims as above and shall indicate the total amount of the security required.	393 394 395 396 397 398 399 400 401		
(f) The freight and other sums due to the Owners shall be paid in the currency and in the manner stated in Box 19.	402 403		

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(iii) the Owners shall not be liable for any loss, damage, liability or expense whatsoever and howsoever arising which the Charterers and/or the holders of any cargo receipt(s) issued pursuant to this Charter Party may sustain by reason of any requirement to establish or maintain financial security or responsibility in order to enter, remain in or leave any port, place or waters, other than to the extent provided in paragraph (a) hereof.	483 484 485 486 487 488 489	freight on the cargo delivered at the substituted port to be increased in proportion.	564 565
		(c) Except for the obligations described above, neither the Charterers nor the Owners shall be responsible for the consequences of any strikes or lock-outs preventing or affecting the actual loading or discharging of the cargo.	566 567 568 569
30. ISM Clause	490	34. Ice	570
From the date of coming into force of the International Safety Management (ISM) Code in relation to the Vessel and thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and “the Company” (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers.	491 492 493 494 495 496 497	Loading Port	571
Except as otherwise provided in this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or “the Company” to comply with the ISM Code shall be for the Owners’ account.	498 499 500	(a) <i>Before Vessel’s arrival</i> - If the Vessel cannot reach the loading port by reason of ice when she is ready to proceed from her last port, or at any time during the voyage, or on her arrival, or if frost sets in after her arrival, the Master - for fear of the Vessel being frozen in - is at liberty to leave without cargo; in such cases this Charter Party shall be null and void.	572 573 574 575 576
31. Both to Blame Collision Clause	501	(b) <i>During loading</i> - If during loading the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port with option of completing cargo for the Owners’ own account to any port or ports including the port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to its destination at Vessel’s expense against payment of the freight at the rate agreed in Box 18, on quantity delivered (in proportion if lump sum), all other conditions as per the Charter Party.	577 578 579 580 581 582 583 584 585
If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, mariner, pilot, or the servants of the Owners in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Owners against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or Owners.	502 503 504 505 506 507 508 509 510 511 512	(c) <i>Loading at more than one port</i> - In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or the Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for the Owners’ own account as under sub-clause (b) or to declare the Charter Party null and void unless the Charterers agree to load full cargo at the open port.	586 587 588 589 590 591
The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.	513 514 515 516	<i>Voyage and Discharging Port</i>	592
32. General Average and New Jason Clause	517	(d) <i>Before Vessel’s arrival</i> - Should ice prevent the Vessel from reaching the port of discharge, the Charterers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Owners or Master have given notice to the Charterers of impossibility of reaching port of destination.	593 594 595 596 597 598 599
General average shall be adjusted in London according to York-Antwerp Rules 1994 and any subsequent modification thereof.	518 519	(e) <i>During discharging</i> - If during discharging the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest safe and accessible port. Such port to be nominated by Charterers as soon as possible, but not later than 24 running hours, Sundays and holidays excluded, of receipt of Owners’ request for nomination of a substitute discharging port, failing which the Master will himself choose such port.	600 601 602 603 604 605 606
If general average is to be adjusted in accordance with the law and practice of the United States of America, the following clause shall apply: “In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Owners are not responsible, by statute, contract or otherwise, the cargo shippers, consignees or the owners of the cargo shall contribute with the Owners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of cargo. If a salving vessel is owned or operated by the Owners, salvage shall be paid or as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Owners before delivery”.	520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536	(f) <i>Discharging at substitute port</i> - On delivery of the cargo at such port, all conditions of this Charter Party and of the Cargo Receipt shall apply and the Owners shall receive the same freight as if the Vessel had discharged at the original port of destination except that if the distance to the substitute port exceeds 100 nautical miles, the freight on the cargo delivered at that port to be increased in proportion.	607 608 609 610 611 612
33. Strike	537	35. War Risks	613
(a) If there is a strike or lock-out affecting or preventing the actual loading of the cargo, or any part of it, when the Vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, the Master or the Owners may ask the Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Charter Party. If part cargo has already been loaded, the Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.	538 539 540 541 542 543 544 545 546 547 548	(a) For the purpose of this Clause, the words:	614
(b) If there is a strike or lock-out affecting or preventing the actual discharging of the cargo on or after the Vessel’s arrival at or off port of discharge and same has not been settled within 48 hours, the Charterers shall have the option of keeping the Vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging until the strike or lock-out terminates and hereafter full demurrage shall be payable until the completion of discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter Party and of the Cargo Receipt shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance to the substituted port exceeds 100 nautical miles, the	549 550 551 552 553 554 555 556 557 558 559 560 561 562 563	(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and	615 616 617
		(ii) “War Risks” shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	618 619 620 621 622 623 624 625 626 627 628 629
		(b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Charter Party, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Charter Party, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Charter Party provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Charter Party if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.	630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645
		(c) The Owners shall not be required to continue to load cargo for any	646

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vo yage, or to sign Bills of Lading for any port or place, or to proceed or	647	mentioned in Box 20.	729
continue on any voyage, or on any part thereof, or to proceed through any	648	In case of non-execution at least 1/3 of the brokerage on the estimated	730
canal or waterway, or to proceed to or remain at any port or place	649	amount of freight and dead freight to be paid by the party responsible for	731
whatsoever, where it appears, either after the loading of the cargo	650	such non-execution to the Brokers as indemnity for the latter's expenses	732
commences, or at any stage of the voyage thereafter before the discharge	651	and work. In case of more voyages the amount of indemnity to be mutually	733
of the cargo is completed, that, in the reasonable judgement of the Master	652	agreed.	734
and/or the Owners, the Vessel, her cargo (or any part thereof), crew or	653		
other persons on board the Vessel (or any one or more of them) may be,	654	39. Force Majeure	735
or are likely to be, exposed to War Risks. If it should so appear, the	655	Neither the Owners nor the Charterers shall, except as otherwise provided	736
Owners may by notice request the Charterers to nominate a safe port for	656	in this Charter Party, be responsible for any loss, damage, delay or failure	737
the discharge of the cargo or any part thereof, and if within 48 hours of the	657	in performance hereunder arising or resulting from act of God, act of war,	738
receipt of such notice, the Charterers shall not have nominated such a	658	seizure under legal process; quarantine restrictions; strikes; boycotts;	739
port, the Owners may discharge the cargo at any safe port of their choice	659	lockouts; riots, civil commotions and arrest or restraint of princes, rulers or	740
(including the port of loading) in complete fulfilment of the Charter Party.	660	people.	741
The Owners shall be entitled to recover from the Charterers the extra	661		
expenses of such discharge and, if the discharge takes place at any port	662	40. Carriage of Unlawful Substances or Merchandise	742
other than the loading port, to receive the full freight as though the cargo	663	(a) The Owners warrant that they will exercise due diligence in preventing	743
had been carried to the discharging port and if the extra distance exceeds	664	unmanifested narcotic drugs, similar substances or unlawful merchandise	744
100 miles, to additional freight which shall be the same percentage of the	665	to be loaded or concealed on board the Vessel.	745
freight contracted for as the percentage which the extra distance	666	(b) Non-compliance with the provisions of sub-clause (a) above shall	746
represents to the distance of the normal and customary route, the Owners	667	amount to breach of warranty for the consequences of which the Owners	747
having a lien on the cargo for such expenses and freight.	668	shall be liable for all time lost and all expenses incurred and shall keep the	748
(d) If at any stage of the voyage after the loading of the cargo	669	Charterers indemnified against all claims whatsoever which may arise and	749
commences, it appears that, in the reasonable judgement of the Master	670	be made against them as a consequence thereof.	750
and/or the Owners, the Vessel, her cargo, crew or other persons on board	671	(c) The Owners shall also be liable for all time lost and all expenses	751
the Vessel may be, or are likely to be, exposed to War Risks on any part	672	incurred in the event unmanifested drugs, similar substances or unlawful	752
of the route (including any canal or waterway) which is normally and	673	merchandise are found in the possession, or among the effects, of the	753
customarily used in a voyage of the nature contracted for, and there is	674	Vessel's personnel.	754
another longer route to the discharging port, the Owners shall give notice	675	(d) If at any time before the Vessel is loaded, the Vessel is detained as a	755
to the Charterers that this route will be taken. In this event the Owners	676	result of unmanifested narcotic drugs, similar substances or unlawful	756
shall be entitled, if the total extra distance exceeds 100 miles, to additional	677	merchandise being detected on board the Vessel, the Charterers, if such	757
freight which shall be the same percentage of the freight contracted for as	678	detention lasts for more than seventy two running hours, shall have the	758
the percentage which the extra distance represents to the distance of the	679	right to cancel this Charter Party provided such right is exercised latest 24	759
normal and customary route.	680	hours after the expiry of the seventy two running hours. The Charterers'	760
(e) The Vessel shall have liberty:	681	right to cancel this Charter Party in accordance with this sub-clause (d)	761
(i) to comply with all orders, directions, recommendations or advice as to	682	shall not affect their right to claim damages.	762
departure, arrival, routes, sailing in convoy, ports of call, stoppages,	683		
destinations, discharge of cargo, delivery or in any way whatsoever	684	41. Title to Cargo Clause	763
which are given by the Government of the Nation under whose flag	685	It is mutually accepted and agreed that this Charter Party is made between	764
the Vessel sails, or other Government to whose laws the Owners are	686	the Vessel's Owners as specified in Part I of this Charter Party (Box 4) and	765
subject, or any other Government which so requires, or any body or	687	the United Nations World Food Programme as Charterers and that the	766
group acting with the power to compel compliance with their orders or	688	latter have full rights to claim and receive substantial and not merely	767
directions;	689	nominal damages for any damage to and/or loss of cargo carried under	768
(ii) to comply with the orders, directions or recommendations of any war	690	this Charter Party and/or under any Cargo Receipt(s) issued pursuant to	769
risks underwriters who have the authority to give the same under the	691	this Charter Party and/or any claim arising out of this Charter Party and/or	770
terms of the war risks insurance;	692	any non-negotiable Cargo Receipt(s) issued pursuant to this Charter	771
(iii) to comply with the terms of any resolution of the Security Council of	693	Party.	772
the United Nations, any directives of the European Community, the	694		
effective orders of any other Supranational body which has the right	695	42. Fumigation	773
to issue and give the same, and with national laws aimed at enforcing	696	The Charterers shall have the right to fumigate cargo on board after	774
the same to which the Owners are subject, and to obey the orders and	697	completion of loading, prior to or during discharging at Charterers' time,	775
directions of those who are charged with their enforcement;	698	risk and expense.	776
(iv) to discharge at any other port any cargo or part thereof which may	699	Costs of crew accommodation ashore, if required by local authorities, shall	777
render the Vessel liable to confiscation as a contraband cargo;	700	be paid by the Charterers.	778
(v) to call at any other port to change the crew or any part thereof or other	701		
persons on board the Vessel when there is reason to believe that they	702	43. Law and Arbitration	779
may be subject to internment, imprisonment or other sanctions;	703	This Charter Party shall be governed by and construed in accordance with	780
(v) where cargo has not been loaded or has been discharged by the	704	English law and any dispute arising out of or in connection with this Charter	781
Owners under any provisions of this Clause, to load other cargo for the	705	Party shall be referred to arbitration in London in accordance with the	782
Owners' own benefit and carry it to any other port or ports	706	Arbitration Act 1996 or any statutory modification or re-enactment thereof	783
whatsoever, whether backwards or forwards or in a contrary direction	707	save to the extent necessary to give effect to the provisions of this Clause.	784
to the ordinary or customary route.	708	The arbitration shall be conducted in accordance with the London Maritime	785
(f) If in compliance with any of the provisions of sub-clauses (b) to (e) of	709	Arbitrators Association (LMAA) terms current at the time when the	786
this Clause anything is done or not done, such shall not be deemed to be	710	arbitration proceedings are commenced.	787
a deviation, but shall be considered as due fulfilment of the Charter Party.	711	The reference shall be to three arbitrators. A party wishing to refer a	788
		dispute to arbitration shall appoint its arbitrator and send notice of such	789
		appointment in writing to the other party requiring the other party to appoint	790
		its own arbitrator within 14 calendar days of that notice and stating that it	791
		will appoint its arbitrator as sole arbitrator unless the other party appoints	792
		its own arbitrator and gives notice that it has done so within the 14 days	793
		specified. If the other party does not appoint its own arbitrator and give	794
		notice that it has done so within the 14 days specified, the party referring	795
		a dispute to arbitration may, without the requirement of any further prior	796
		notice to the other party, appoint its arbitrator as sole arbitrator and shall	797
		advise the other party accordingly. The award of a sole arbitrator shall be	798
		binding on both parties as if he had been appointed by agreement.	799
		Nothing herein shall prevent the parties agreeing in writing to vary these	800
		provisions to provide for the appointment of a sole arbitrator.	801
		In cases where neither the claim nor any counterclaim exceeds the sum of	802
		USD50,000 (or such other sum as the parties may agree) the arbitration	803
		shall be conducted in accordance with the LMAA small claims procedure	804
		current at the time when the arbitration proceedings are commenced.	805
36. War Risk Premium	712		
War Risk premium for the Vessel and/or crew shall be paid by the Owners.	713		
Any increase or decrease in the premium after the date of fixture shall be	714		
for the Charterers' account or benefit, whichever the case may be. In any	715		
case, the increase shall not be any more, or the decrease any less, than	716		
that obtainable at the relevant time on the London market.	717		
37. Agency	718		
The Owners are to appoint the Charterers' nominated agent(s) with the	719		
Owners paying the customary fee except in ports where national agency	720		
companies are the only licenced agents. In the latter case, agents are to	721		
be nominated and appointed by the Owners. This additional provision will	722		
apply in all countries where applicable, except in China, Vietnam,	723		
Cambodia, DPRK and Burma where the Charterers shall nominate agents	724		
as above.	725		
38. Brokerage	726		
A brokerage commission at the rate stated in Box 20 on the freight, dead	727		
freight and demurrage earned and paid is due to the party or parties	728		

CONTINENT GRAIN CHARTERPARTY

Code name: "SYNACOMEX 2000"

Adopted PARIS 1957 by SYNDICAT NATIONAL DU COMMERCE EXTERIEUR DES CEREALES
amended 1960, 1974, 1990 and 2000 in agreement with COMITE CENTRAL DES ARMATEURS DE FRANCE
In cooperation with Chambre Arbitrale Maritime de Paris and the French Chartering and S. & P. Brokers' Association

PART I

1. Shipbroker(s)	2. Place and date of Charter Party
3. Owners and place of business (state full style and address) (Cl. 1)	4. Charterers and place of business (state full style and address) (Cl. 1)
5. Vessel's name (Cl. 1) flag / built / class: NT/GT: summer DWT:	6. First layday date (Cl. 6) Cancelling date (Cl. 6)
8. Loading port(s) (Cl. 2) a) Always afloat (*) b) "safely aground" (*)	7. Present position / expected ready to load (Cl. 1)
10. Discharging port(s) (Cl. 3) a) Always afloat (*) b) "safely aground" (*)	9. Advance notices (Cl. 7) - at load port to: - at discharging port number of days / to:
11. Cargo nature and quantities (Cl. 2) a) No bags (*) b) Maximum in bags for stowage (*):	12. Freight rate (Cl. 4)
13. Freight payment (state currency and method of payment, beneficiary and bank account) (Cl. 4)	14. Loading rate (Cl. 5)
	15. Discharging rate (Cl. 5)
	16. Demurrage / Despatch money (Cl. 9)
17. Agents at loading port(s) (Cl. 13)	18. Agents at discharging port(s) (Cl. 13)
19. Extra insurance, maximum (Cl. 14)	20. Brokerage commission and to whom payable (Cl. 15)
21. Address Commission (Cl. 16)	a) Deductible (*) b) Non-deductible (*)
22. Numbers of the additional clauses covering special provisions, if any agreed	

It is mutually agreed that this Charter Party shall be performed subject to the conditions contained herein consisting of PART I and PART II including additional clauses if any agreed and stated in Box 22. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further.

For the Owners	For the Charterers

(*) Delete as appropriate; if no deletion, alternative a) to apply.



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1. Owners, Charterers	1	discharging or lightering for the purpose of inspecting the	67
It is this day agreed between the party designated in Box 3,	2	cargo and/or weighing. Charterers and Owners are allowed	68
Owners of the Vessel named and described in Box 5, being	3	to work overtime, such expenses shall be for account of	69
now in position and expected ready to load as mentioned in	4	the party ordering same. If ordered by Port Authorities,	70
Box 7, and the party designated in Box 4 as Charterers, THAT	5	overtime shall be for Charterers' account. Overtime services	71
		rendered by ship's crew shall be in all cases for Owners'	72
	6	account.	73
2. Loading Port(s) and Cargo	7		
The said Vessel being tight, staunch and in every way fit for	8	6. Laydays, Cancelling	74
the voyage, shall with all convenient speed proceed to the	9	At port of loading laytime shall not count before 08.00 hours	75
place designated in Box 8, which in case of named port(s)	10	on the layday date stated in Box 6 and in any case not	76
Owners acknowledge as safe and suitable for this Vessel	11	before the date notified by the 10 days notice as per Clause 7.	77
and there load always afloat, unless "safely aground" has	12	Should the Vessel's notice of readiness not be validly	78
been specifically agreed in Box 8, in such safe berth, dock,	13	tendered as per Clause 8 before 09.00 hours on the	79
wharf or anchorage as Charterers or their Agents or	14	cancelling date stated in Box 6, Charterers shall have the	80
Shippers may direct a full and complete cargo of wheat	15	option of cancelling this charter at any time thereafter, but	81
and/or maize and/or rye and/or barley as described in Box	16	not later than one hour after the notice is validly tendered.	82
11, in metric tons (5 % more or less in Owners' option) in bulk.	17		
Shippers have the option of using a second safe berth. The	18	7. Vessel's Positions, Notices	83
time for shifting between the two berths shall count as	19	Master and/or Owners shall give 10 days and thereafter 5	84
laytime, but shifting expenses shall be for Vessel's account.	20	days notice of Vessel's expected readiness to load to the	85
Owners shall provide and install at their risk and expense	21	party designated in Box 9.	86
and on their time all that is required for safe stowage of	22	Master and/or Owners shall give notice of Vessel's	87
grain according to local and international regulations.	23	Expected Time of Arrival (ETA) at discharging port as	88
The cargo shall not exceed what the Vessel can reasonably	24	specified in Box 9.	89
stow and carry over and above her bunkers, apparel, stores,	25	Master and/or Owners shall give the relevant parties prompt	90
provisions and accommodation. The whole cargo shall be	26	advice of any substantial change in Vessel's ETA at loading	91
carried and stowed under deck in unobstructed main holds.	27	and at discharging ports.	92
All cargo on board to be delivered.	28		
Furthermore, if stowage bags have been specifically agreed,	29	8. Laytime	93
the following shall apply:	30	Vessel's written notice of readiness to load and/or discharge	94
Charterers shall supply for stowage purposes a quantity of	31	shall be tendered by hand or by any means of tele-	95
bagged cargo not exceeding the quantity specified in Box	32	communication at the offices of Shippers/Charterers/	96
11, which shall be stowed at their risk and expense. The	33	Receivers or their Agents between 08.00 and 17.00 hours	97
number of bags signed for on Bills of Lading to be binding	34	on all days except Saturdays, Sundays and Holidays and	98
on Vessel and Owners, unless error or fraud be proved.	35	between 08.00 hours and 12.00 hours on Saturdays unless	99
	36	a Holiday. Such notice of readiness shall be delivered when	100
3. Discharging Port(s)	37	Vessel is in the loading or discharging berth and in all	101
Being so loaded, the Vessel shall proceed with all convenient	38	respects ready to load/discharge. At loading port Shippers/	102
speed direct to the place designated in Box 10, which in	39	Charterers or their Agents have the privilege to inspect	103
case of named port(s) Owners acknowledge as safe and	40	Vessel's holds and reject the notice when holds are not	104
suitable for this Vessel, and there discharge the cargo	41	clean, dry, odourless and in all respects ready to receive	105
always afloat, unless "safely aground" has been specifically	42	the cargo.	106
agreed in Box 10, in such safe berth, dock, wharf or	43	In case of dispute, an independent surveyor shall decide	107
anchorage as Charterers or their Agents or Receivers may	44	about Vessel's readiness to load, the party in the wrong	108
direct. Receivers have the option of using a second safe	45	bearing the costs. If the rejection of notice of readiness is	109
berth. The time for shifting between the two berths shall	46	undisputed or confirmed by surveyor the laytime will only	110
count as laytime, but shifting expenses shall be for Vessel's	47	start to count after the Vessel has validly tendered again	111
account.	48	when ready.	112
	49	Only when the loading and/or discharging berth is	113
4. Freight	50	unavailable, Master may warrant that the Vessel is in all	114
The freight agreed under this Charter Party shall be as	51	respects ready and may tender notice of readiness to load	115
stated in Box 12, per metric ton on nett Bill of Lading weight	52	and/or discharge from any usual waiting place, whether in	116
and shall be deemed earned as cargo is loaded on board,	53	port or not, whether in free pratique or not, whether customs	117
prepaid discountless and non-returnable, Vessel and/or	54	cleared or not.	118
cargo lost or not lost.	55	Laytime shall commence at 14.00 hours if notice of	119
The freight shall be paid as specified in Box 13.	56	readiness to load and/or discharge is validly tendered at or	120
All charges and dues levied on the cargo shall be for		before 12.00 hours and at 08.00 hours on the next working	121
Charterers' account and those levied on the Vessel		day if notice of readiness is validly tendered after 12.00	122
howsoever assessed shall be for Owners' account.		hours. Time used before commencement of laytime shall	123
	57	not count. Laytime shall not count between 12.00 hours on	124
5. Loading and Discharging	58	Saturdays or 17.00 hours on days preceding a Holiday and	125
Cargo shall be loaded, spout-trimmed and/or stowed at the	59	08.00 hours on the following working day, unless used in	126
risk and expense of Shippers/Charterers at the average	60	which case half time actually used shall count.	127
rate stated in Box 14, weather permitting.	61	Any delays caused by ice, floods, quarantine, or by cases	128
Cargo shall be discharged at the risk and expense of	62	of "force majeure" shall not count as laytime unless the	129
Receivers/Charterers at the average rate stated in Box 15,	63	Vessel is already on demurrage.	130
weather permitting.	64	When Master has tendered notice of readiness to load or	131
Stowage shall be under Master's direction and res-	65	discharge from a waiting place and Vessel is subsequently	132
ponsibility. Shippers' and/or Charterers' representatives	66	found unready in application of the above provisions, laytime	133
have the right to be on board the Vessel during loading.			

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or time on demurrage shall not count from the time the Vessel is rejected until the time she is accepted. Additionally, any actual time lost on account of Vessel's obtaining free pratique or customs clearance shall not count as laytime or time on demurrage.	134 135 136 137 138	amount of freight, deadfreight and demurrage earned, is due to the party (ies) designated in Box 20 and is deductible from same unless "non deductible" has been specifically agreed.	198 199 200 201
At second or subsequent port(s) of loading or discharging, laytime or time on demurrage shall resume counting from Vessel's arrival at loading or discharging berth, if available, or from Vessel's arrival at a usual waiting place, if berth is unavailable.	139 140 141 142 143	16. Address Commission	202
At all ports any time lost shifting from waiting place to berth shall not count as laytime or as time on demurrage.	144 145	An address commission as stated in Box 21 on the gross amount of freight, deadfreight and demurrage earned is due to Charterers and is deductible from freight, deadfreight and demurrage.	203 204 205 206
9. Demurrage, Despatch Money	146	17. ISM Clause	207
Demurrage is payable by Charterers at the rate stated in Box 16 per day of 24 consecutive hours or pro rata.	147	From the date of coming into force of the International Safety Management (ISM) Code in relation to the Vessel and thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers.	208 209 210 211 212 213 214 215 216
Owners shall pay to Charterers despatch money for laytime saved in loading/discharging at the rate stated in Box 16 per day of 24 consecutive hours or pro rata.	148 149 150 151	Except as otherwise provided in this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code shall be for the Owners' account.	217 218 219 220
10. Seaworthy Trim	152	18. Bills of Lading	221
If ordered to be loaded or discharged at more than one berth and/or port, the Vessel is to be left in seaworthy trim to Master's reasonable satisfaction for the passage between berths and/or ports at Shippers'/Charterers'/Receivers' expense, and time used for placing Vessel in seaworthy trim shall count as laytime or time on demurrage.	153 154 155 156 157 158	The Master is to sign Bills of Lading as presented without prejudice to the terms, conditions and exceptions of this Charter Party. If the Master delegates the signing of Bills of Lading to his Agents, he shall give them authority to do so in writing, copy of which is to be furnished to Charterers. When Bills of Lading marked "Freight prepaid" are required, same shall be released by Owners immediately upon receipt of a telex from Charterers' Bank confirming that freight payable has been irrevocably transferred.	222 223 224 225 226 227 228 229 230
11. Fumigation	159	19. Relet	231
Charterers have the liberty to fumigate the cargo on board at loading and discharging port(s) or places en route at their risk and expense. Charterers are responsible for ensuring that Officers and Crew as well as all other persons on board the Vessel during and after the fumigation are not exposed to any health hazards whatsoever. Charterers undertake to pay Owners all necessary expenses incurred because of the fumigation and time lost thereby shall count as laytime or time on demurrage. When fumigation has been effected at loading port and has been certified by proper survey or by a competent authority, Bills of Lading shall not be claused by Master for reason of insects having been detected in the cargo prior to such fumigation.	160 161 162 163 164 165 166 167 168 169 170 171 172	Charterers have the right to relet all or part of this Charter Party, they remaining responsible for its due fulfilment.	232 233
12. Lights and Gear	173	20. Deviation	234
Whenever required, Vessel shall supply free use of lights as on board but sufficient to carry on night work. Provided described as geared, Vessel, whenever required, shall supply free use of all cargo handling gear on board, in good working order, with the necessary power, and of runners, ropes and slings as on board. Shore hands shall be used to drive the gear, at Shippers'/Charterers'/Receivers' account. Any time actually lost on account of breakdown of Vessel's gear shall not count as laytime or time on demurrage and any stevedore standby time charges incurred thereby shall be for Owners' account.	174 175 176 177 178 179 180 181 182 183 184	Deviation in saving or attempting to save life or property at sea or for bunkering purposes or any other reasonable deviation shall not be deemed an infringement of this Charter Party and the Owners shall not be liable for any loss or damage resulting therefrom.	235 236 237 238 239
13. Agencies	185	21. Lien Clause	240
At loading port, Vessel shall be consigned to the Agents designated in Box 17.	186	The Owners shall have a lien on the cargo for freight, deadfreight, demurrage, and average contribution due to them under this Charter Party.	241 242 243
At discharging port, Vessel shall be consigned to the Agents designated in Box 18.	187 188 189	22. Responsibilities and Immunities	244
14. Extra Insurance	190	Except as otherwise provided and stipulated in this Charter Party, it is hereby expressly agreed that this Charter Party shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924, as enacted in the country of shipment. These rules shall apply to any Bill of Lading issued under this Charter Party.	245 246 247 248 249 250 251 252
Extra insurance on cargo due to Vessel's age and/or flag and/or class shall be for Owners' account but limited to the amount specified in Box 19; such extra insurance shall be covered by Charterers for Owners' account and shall be deducted from settlement of freight.	191 192 193 194 195	When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.	253 254 255 256 257
15. Brokerage	196	In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd, 1968 - The Hague - Visby Rules - apply compulsorily, the provisions of the respective legislation shall apply.	258 259 260 261
A brokerage commission as stated in Box 20 on the gross	197		

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The Owners shall in no case be responsible for loss of or damage to cargo howsoever arising prior to loading into and after discharge from the Vessel.	262 263 264	shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out.	331 332 333
Save to the extent otherwise in this Charter Party expressly provided, neither party shall be responsible for any loss or damage or delay or failure in performance hereunder resulting from Act of God, war, civil commotion, quarantine, strikes, lockouts, arrest or restraint of princes, rulers and peoples or any other event whatsoever which cannot be avoided or guarded against.	265 266 267 268 269 270 271	In case of any delay by reason of the before-mentioned causes, no claim for damages or demurrage, shall be made by the Charterers / Receivers of the cargo, or Owners of the Vessel. For the purpose, however, of settling despatch money accounts, any time lost by the Vessel through any of the above causes shall be counted as time used in loading or discharging, as the case may be.	334 335 336 337 338 339 340
23. Amended General Ice Clause	272	25. General Average and New Jason Clause	341
<u>Port of Loading</u>	273	General average shall be adjusted according to the York-Antwerp Rules 1994 or any subsequent modification thereof, but where the adjustment is made in accordance with the law and practice of the United States of America, the following Clause shall apply:	342 343 344 345 346
a) In the event of the loading port being inaccessible by reason of ice when Vessel is ready to proceed from her last port or at any time during the voyage or on Vessel's arrival or in case frost sets in after Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.	274 275 276 277 278 279	"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.	347 348 349 350 351 352 353 354 355 356 357
b) If during the loading the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owner's benefit to any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter Party.	280 281 282 283 284 285 286 287 288 289 290	If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his Agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery"	358 359 360 361 362 363 364 365
c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section b) or to declare this Charter Party null and void unless Charterers agree to load full cargo at the open port.	291 292 293 294 295 296	and the Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.	366 367
<u>Port of Discharge</u>	297	26. Both-to-Blame Collision Clause	368
a) Should ice prevent Vessel from reaching port of discharge, Receivers shall have the option of keeping Vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after Master or Owners have given notice to Charterers of the impossibility of reaching port of destination.	298 299 300 301 302 303 304 305 306	If the liability for any collision in which the Vessel is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following Clause shall apply:	369 370 371 372
b) If during discharging the Master for fear of Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.	307 308 309 310	"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.	373 374 375 376 377 378 379 380 381 382 383 384 385
c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.	311 312 313 314 315 316 317	The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact"	386 387 388 389
24. Amended Centrocon Strike Clause	318	and the Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same Clause.	390 391
If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or of a Strike or Lock-out on the Railways, or in the Docks, or other loading places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or Lock-out of the Shippers' and/or Receivers' men	319 320 321 322 323 324 325 326 327 328 329 330	27. War Risks ("Voywar 1993")	392
		a) For the purpose of this Clause, the words:	393
		(i) "Owners" shall include the shipowners, bareboat charterers, disponent-owners, managers or other operators who are charged with the management of the Vessel, and the Master; and	394 395 396 397
		(ii) "War Risks" shall include any war (whether actual or	398

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threatened), act of war, civil war, hostilities, revolution, 399
rebellion, civil commotion, warlike operations, the laying of 400
mines (whether actual or reported), acts of piracy, acts of 401
terrorists, acts of hostility or malicious damage, blockades 402
(whether imposed against all vessels or imposed selectively 403
against vessels of certain flags or ownership, or against 404
certain cargoes or crews or otherwise howsoever), by any 405
person, body, terrorist or political group, or the Government 406
of any state whatsoever, which, in the reasonable judgement 407
of the Master and/or the Owners, may be dangerous or are 408
likely to be or to become dangerous to the Vessel, her cargo, 409
crew or other persons on board the Vessel. 410
b) If at any time before the Vessel commences loading, it 411
appears that, in the reasonable judgement of the Master 412
and/or the Owners, performance of the Charter Party, or 413
any part of it, may expose, or is likely to expose, the Vessel, 414
her cargo, crew or other persons on board the Vessel to 415
War Risks, the Owners may give notice to the Charterers 416
cancelling this Charter Party, or may refuse to perform such 417
part of it as may expose, or may be likely to expose, the 418
Vessel, her cargo, crew or other persons on board the Vessel 419
to War Risks; provided always that if this Contract or 420
Carriage provides that loading or discharging is to take place 421
within a range of ports, and at the port or ports nominated 422
by the Charterers the Vessel, her cargo, crew, or other 423
persons onboard the Vessel may be exposed, or may be 424
likely to be exposed, to War Risks, the Owners shall first 425
require the Charterers to nominate any other safe port which 426
lies within the range for loading or discharging, and may 427
only cancel this Charter Party if the Charterers shall not have 428
nominated such safe port or ports within 48 hours of receipt 429
of notice of such requirement. 430
c) The Owners shall not be required to continue to load 431
cargo for any voyage, or to sign Bills of Lading for any port 432
or place, or to proceed or continue on any voyage, or on 433
any part thereof, or to proceed through any canal or 434
waterway, or to proceed to or remain at any port or place 435
whatsoever, where it appears, either after the loading of 436
the cargo commences, or at any stage of the voyage 437
thereafter before the discharge of the cargo is completed, 438
that, in the reasonable judgement of the Master and/or the 439
Owners, the Vessel, her cargo (or any part thereof), crew 440
or other persons on board the Vessel (or any one or more 441
of them) may be, or are likely to be, exposed to War Risks. 442
If it should so appear, the Owners may by notice request 443
the Charterers to nominate a safe port for the discharge of 444
the cargo or any part thereof, and if within 48 hours of the 445
receipt of such notice, the Charterers shall not have 446
nominated such a port, the Owners may discharge the cargo 447
at any safe port of their choice (including the port of loading) 448
in complete fulfilment of the Charter Party. The Owners shall 449
be entitled to recover from the Charterers the extra expenses 450
of such discharge and, if the discharge takes place at any 451
port other than the loading port, to receive the full freight as 452
though the cargo had been carried to the discharging port 453
and if the extra distance exceeds 100 miles, to additional 454
freight which shall be the same percentage of the freight 455
contracted for as the percentage which the extra distance 456
represents to the distance of the normal and customary 457
route, the Owners having a lien on the cargo for such 458
expenses and freight. 459
d) If at any stage of the voyage after the loading of the 460
cargo commences, it appears that, in the reasonable 461
judgement of the Master and/or the Owners, the Vessel, 462
her cargo, crew or other persons on board the Vessel may 463
be, or are likely to be, exposed to War Risks on any part of 464
the route (including any canal or waterway) which is normally 465
and customarily used in a voyage of the nature contracted 466
for, and there is another longer route to the discharging 467
port, the Owners shall give notice to the Charterers that 468
this route will be taken. In this event the Owners shall be 469
entitled, if the total extra distance exceeds 100 miles, to 470
additional freight which shall be the same percentage of 471
the freight contracted for as the percentage which the extra 472
distance represents to the distance of the normal and 473
customary route. 474
e) The Vessel shall have liberty:- 475
(i) to comply with all orders, directions, recommendations 476
or advice as to departure, arrival, routes, sailing in convoy, 477
ports of call, stoppages, destinations, discharge of cargo, 478
delivery or in any way whatsoever which are given by the 479
Government of the Nation under whose flag the Vessel sails, 480
or other Government to whose laws the Owners are subject, 481
or any other Government which so requires, or any body or 482
group acting with the power to compel compliance with their 483
orders or directions; 484
(ii) to comply with the orders, directions or recom- 485
mendations of any war risks underwriters who have the 486
authority to give the same under the terms of the war risks 487
insurance; 488
(iii) to comply with the terms of any resolution of the Security 489
Council of the United Nations, any directives of the European 490
Community, the effective orders of any other Supranational 491
body which has the right to issue and give the same, and 492
with national laws aimed at enforcing the same to which 493
the Owners are subject, and to obey the orders and 494
directions of those who are charged with their enforcement; 495
(iv) to discharge at any other port any cargo or part thereof 496
which may render the Vessel liable to confiscation as a 497
contraband carrier; 498
(v) to call at any other port to change the crew or any part 499
thereof or other persons on board the Vessel when there is 500
reason to believe that they may be subject to internment, 501
imprisonment or other sanctions; 502
(vi) where cargo has not been loaded or has been 503
discharged by the Owners under any provisions of this 504
Clause, to load other cargo for the Owners' own benefit 505
and carry it to any other port or ports whatsoever, whether 506
backwards or forwards or in a contrary direction to the 507
ordinary or customary route. 508
f) If in compliance with any of the provisions of sub-clauses 509
b) to e) of this Clause anything is done or not done, such 510
shall not be deemed to be a deviation, but shall be 511
considered as due fulfilment of the Charter Party. 512

28. Arbitration 513
Any dispute arising out of the present contract shall be 514
referred to Arbitration of "Chambre Arbitrale Maritime de 515
Paris - 16 rue Daunou - 75002 Paris". 516
The decision rendered according to the rules of Chambre 517
Arbitrale and according to French Law shall be final and 518
binding upon both parties. The right of both parties to refer 519
any disputes to arbitration ceases twelve months after date 520
of completion of discharge or, in case of cancellation or non- 521
performance, twelve months after the cancelling date as per 522
Clause 6 or after the actual date of cancellation whichever is 523
the later. Where this provision is not complied with, the claim 524
shall be deemed to be waived and absolutely barred. 525

Code Name: Norgrain 89

RECOMMENDED BY
THE BALTIMORE AND INTERNATIONAL MARITIME COUNCIL (BIMCO)
THE FEDERATION OF NATIONAL ASSOCIATIONS OF SHIP BROKERS AND
AGENTS (FONASBA)
AMENDED MAY 1989

NORTH AMERICAN GRAIN CHARTER PARTY 1973

ISSUED BY THE ASSOCIATION OF SHIP BROKERS AND AGENTS (U.S.A.) INC.

Owners IT IS THIS DAY MUTUALLY AGREED, between
Note: Delete as Owners
appropriate Disponent Owners } of the
Time-chartered Owners
Chartered Owners

Self/Non Self Trimming Bulk Carrier
Tween Decker
SS M.V. Tanker
Call Sign

Description of Vessel Built at deadweight all told, or thereabouts, and with a grain cubic capacity available for cargo of
self-bleeding wing spaces) cubic feet (including tons of 2,240 lbs.
cubic feet in

Classification Classed

now

Note: Insert
Vessel's
Itinerary

Charterers and of Charterers.

Loading Port(s) 1. that the said vessel, being tight, staunch strong and in every way fit for the voyage, shall with all convenient speed proceed to

and there load

Description of Cargo at always afloat, a full and complete* cargo in bulk of
part* safe loading berth(s) in Charterers' option.

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at Charterers' option tons of $\frac{2,240 \text{ lbs.*}}{1,000 \text{ kilos.*}}$ % more or less quantity at Owners' option.

2. Owners are to give Charterers (or their Agents) (telegraphic address " " telex number:)
15 and 7 days notice of vessel's expected readiness to load date, and approximate quantity of cargo required with the 15 days' notice, such quantity to be based on a cargo of Heavy Grain, unless the
cargo composition has been declared or indicated.

The Charterers are to be kept continuously advised by telegram/telex of any alteration in vessel's readiness to load date.

Master to apply to (telegraphic address " ")
for first or sole loading port orders 144 hours before vessel's expected readiness to load date but not sooner than 144 hours before the laydays in Clause 4 and Charterers or their Agents are to give
orders for first or sole loading port within 72 hours of receipt of Master's application, unless given earlier.

Orders for second port of loading, if used, to be given to the Master not later than

Master is to give Charterers (or their Agents) 72 and 12 hours notice of vessel's estimated time of arrival at first or sole loading port together with vessel's estimated readiness to load date.

3. Vessel is to load under inspection of National Cargo Bureau, Inc in U.S.A. ports or of the Port Warden in Canadian ports. Vessel is also to load under inspection of a Grain Inspector licensed/authorized by
the United States Department of Agriculture pursuant to the U.S. Grain Standards Act and/or of a Grain Inspector employed by the Canada Department of Agriculture as required by the appropriate authorities.

If vessel loads at other than U.S. or Canadian ports, she is to load under inspection of such national and/or regulatory bodies as may be required.

Vessel is to comply with the rules of such authorities, and shall load cargo not exceeding what she can reasonably stow and carry over and above her Cabin, Tackle, Apparel, Provisions, Fuel, Furniture and
Water. Cost of such inspections shall be borne by Owners.

4. Laytime for loading, if required by Charterers, not to commence before 0800 on the day of 19

Should the vessel's notice of readiness not be tendered and accepted as per Clause 18 before 1200 on the day of 19
the Charterers have the option of cancelling this Charterparty any time thereafter, but not later than one hour after the tender of notice of readiness as per Clause 18.

5. On being so loaded, the vessel shall proceed to

*Delete as appropriate.

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as ordered by Charterers/Receivers*, and deliver the cargo, according to Bills of Lading at safe discharging berths in Charterers' option, vessel being always afloat, on being*having been* paid freight as per Clauses 8 and 9.

**Discharging
Port Orders**

Master to apply by radio to
for first or sole discharging port orders 96 hours before vessel is due off/at*
receipt of Master's application unless given earlier. If Master's application is received on a Saturday, the time allowed shall be 52 hours instead of 48 hours.

(telegraphic address *)
and they are to give first or sole discharging port orders by radio within 48 hours of

Orders for second and/or third port(s) of discharge are to be given to the Master not later than vessel's arrival at first or subsequent port.

Master to radio Charterers/Receivers (or their Agents) 72 and 24 hours notice of vessel's estimated time of arrival at first or sole discharging port. Charterers/Receivers (or their Agents) are to be kept continuously advised by radio/telegram/telex of any alterations in such estimated time of arrival.

**Bills of
Lading**

6. The Master is to sign Bills of Lading as presented on the North American Grain Bill of Lading form without prejudice to the terms, conditions and exceptions of this Charterparty. If the Master elects to delegate the signing of Bills of Lading to his Agents he shall give them authority to do so in writing, copy of which is to be furnished to Charterers if so required.

**Rotation of
Ports**

7. Rotation of loading ports is to be in Owners**
Charterers** option.

Rotation of discharging ports is to be in Owners**
Charterers** option, but if more than two (2) ports of discharge are used rotation is to be geographic

to

Freight

8. Freight to be paid as follows:

per ton of 2,240 lbs./1,000 Kilos*
Charterers have the option of ordering the vessel to load at

in which case the rate of freight to be

*Delete as appropriate.

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per ton of 2,240 lbs./1,000 Kilos.*

Charterers/Receivers have the option of ordering the vessel to discharge at

in which case the rate of freight to be

per ton of 2,240 lbs./1,000 Kilos*

If more than one port of loading and/or discharging is used, the rate of freight shall be increased by

per ton of 2,240 lbs./1,000 Kilos* for each additional loading and/or discharging port on the entire cargo.

**Freight
Payment**

9. (a) Freight shall be fully prepaid on surrender of signed Bills of Lading in

in

currency to

on Bill of Lading weight, discountless, not returnable, vessel and/or cargo lost or not/lost. Freight shall be deemed earned as cargo is loaded on board.

Once the Bills of Lading have been signed, and Charterers call for surrender of Original Bills of Lading against freight payment above, it will be incumbent upon Owners or their Agents to comply immediately with such call for surrender during office hours, Mondays to Fridays inclusive.

(Other) (b)

*Delete as appropriate.

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Cost of Loading and Discharging

10. (a)* Cargo is to be loaded and spout trimmed (to Master's satisfaction in respect of seaworthiness) free of expense to the vessel.
Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).

(b)* Cargo is to be loaded and trimmed at Owners' expense.

Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).

Stevedores at Loading

11. Stevedores at loading Port(s) are to be appointed by Charterers* and paid by Owners*

Port(s) and Discharging Port(s)

If stevedores are appointed by Owners, they are to be approved by Charterers at loading port(s), and such approval is not to be unreasonably withheld.
Stevedores at discharging port(s) are to be appointed and paid for by Charterers/Receivers*.

In all cases, stevedores shall be deemed to be the servants of the Owners and shall work under the supervision of the Master.

Bulk Carrier and Wing Spaces

12. (a) The vessel is warranted to be a self-trimming bulk carrier*
non-self-trimming bulk carrier*.

(b) Cargo may be loaded into wing spaces if the cargo can bleed into centerholds. Wing spaces are to be spout trimmed; any further trimming in wing spaces and any additional expenses in discharging are to be for Owners' account, and additional time so used is not to count as laytime or time on demurrage.

Overtime

13. (a) **Expenses**

(i) All overtime expenses at loading and discharging ports shall be for account of the party ordering same.

(ii) If overtime is ordered by port authorities or the party controlling the loading and/or discharging terminal or facility all overtime expenses are to be equally shared between the Owners Charterers* and Receivers*

(iii) Overtime expenses for vessel's officers and crew shall always be for Owners' account.

(b) **Time Counting**

If overtime ordered by Owners be worked during periods excepted from laytime the actual time used shall count; if ordered by Charterers/Receivers, the actual time used shall not count; if ordered by port authorities or the party controlling the loading and/or discharging terminal or facility half the actual time used shall count.

Separations

14. Cost of cargo separations, including labor used for tying same, to be for Charterers' account unless required by Owners, in which case all resultant expenses shall be borne by the Owners.
Separations ordered by Charterers shall be made to Master's satisfaction (but not exceeding the requirements of the competent authorities).

Securing

15. (a) **For Owners' account**

Any securing required by Master, National Cargo Bureau or Port Warden for safe trim/stowage to be supplied by and paid for by Owners, and time so used not to count as laytime or time on demurrage.
Bleeding of bags, if any, at discharge port(s) to be at Owners' expense, and time actually lost is not to count.

(b) **For Charterers' account**

Delete para
(a) or (b) as
appropriate

*Delete as appropriate.

Fumigation	Any securing required by Master, National Cargo Bureau or Port Warden for safe trim/stowage to be supplied by and paid for by Charterers, and time so used to count as laytime or time on demurrage. Bleeding of bags, if any, at discharge port(s) to be at Charterers'/Receivers' expense.	107 108
Fumigation	16. If after loading has commenced, and at any time thereafter until completion of discharge, the cargo is required to be fumigated in vessel's holds, the Owners are to permit same to take place at Charterers' risk and expense, including necessary expenses for accommodating and victualling vessel's personnel ashore.	109 110
Fumigation	The Charterers warrant that the fumigants used will not expose the vessel's personnel to any health hazards whatsoever, and will comply with current IMO regulations.	111
Opening/ Closing Hatches	Time lost to the vessel is to count at the demurrage rate.	112
Opening/ Closing Hatches	17. At each loading and discharging port, cost of first opening and last closing of hatches and removal and replacing of beams, if any, shall be for Owners' account. Cost of all other opening and closing of hatches, removal and replacing of beams shall be for Charterers'/Receivers' account.	113 114
Notice of Readiness	18. (a) Notice of Readiness Notification of vessel's readiness to load and discharge at the first or sole loading and discharging port shall be delivered in writing at the office of Charterers'/Receivers between 0900 and 1700 on all days except Sundays and holidays, and between 0900 and 1200 on Saturdays. Such notice of readiness shall be delivered when the vessel is in the loading or discharging berth if vacant, failing which from a lay berth or anchorage within limits of the port, or otherwise as provided in Clause 18 (b) hereunder.	115 116 117 118
Time Counting	(b) Waiting for Berth Outside Port Limits If the vessel is prevented from entering the limits of the loading/discharging port(s) because the first or sole loading/discharging berth or a lay berth or anchorage is not available within the port limits, or on the order of the Charterers'/Receivers or any competent official body or authority, and the Master warrants that the vessel is physically ready in all respects to load or discharge, the Master may tender vessel's notice of readiness, by radio if desired, from the usual anchorage outside the limits of the port, whether in free pratique or not. If after entering the limits of the loading port, vessel fails to pass inspections as per Clause 18 (e) any time so lost shall not count as laytime or time on demurrage from the time vessel fails inspections until she is passed, but if this delay in obtaining said passes exceeds 24 running hours then all time spent waiting outside the limits of the port shall not count.	119 120 121 122 123 124
Commencement of Laytime	(c) Commencement of Laytime Following receipt of notice of readiness laytime will commence at 0800 on the next day not excepted from laytime. Time (not excepted from laytime) actually used before commencement of laytime shall count.	125 126 127
Subsequent Ports	(d) Subsequent Ports At second or subsequent port(s) of loading and/or discharging, laytime or time on demurrage shall resume counting from vessel's arrival within the limits of the port or as provided in Clause 18 (b) if applicable.	128 129 130
Inspection	(e) Inspection Unless the conditions of Clause 18 (b) apply, at first or sole loading port Master's notice of readiness shall be accompanied by pass of the National Cargo Bureau/Port Warden and Grain Inspector's certificate of vessel's readiness in all compartments to be loaded, for the entire cargo covered by the Charterparty as per Clause 3. In the event that vessel loads in subsequent port(s) and is required to re-pass inspections in these ports, any time lost thereat in securing the required certificates shall not count as laytime or time on demurrage.	131 132 133 134

*Delete as appropriate.

Laytime	19. (a) Vessel is to be loaded and discharged within Sundays and Holidays excepted.	working days of twenty-four (24) consecutive hours each (weather permitting).
	(b) Vessel is to be loaded within Sundays and Holidays excepted.	working days of twenty-four (24) consecutive hours each (weather permitting).
	(c) Vessel is to be discharged at the average rate of (weather permitting), Sundays and Holidays excepted on the basis of the Bill of Lading weight.	tons of 2,240 lbs. * 11,000 kilos. * per working day of twenty-four (24) consecutive hours
	(d) Notwithstanding any custom of the port to the contrary, Saturdays shall not count as laytime at loading and discharging port or ports where stevedoring labor and/or grain handling facilities are unavailable on Saturdays or available only at overtime and/or premium rates.	
Demurrage/ Despatch Money	In ports where only part of Saturdays is affected by such conditions, as described above, laytime shall count until the expiration of the last straight time period.	
	Where six or more hours of work are performed at normal rates, Saturday shall count as a full lay day.	
	(e) In the event that the vessel is waiting for loading or discharging berth, no laytime is to be deducted during such period for reasons of weather unless the vessel occupying the loading or discharging berth in question is actually prevented from working grain due to weather conditions in which case time so lost is not to count.	
	20. Demurrage at loading and/or discharging ports is to be paid at the rate of day and shall be paid by Charterers in respect of loading port(s) and by Charterers/Receivers* in respect of discharging port(s). Despatch money to be paid by Owners at half the demurrage rate for all laytime saved at loading and/or discharging ports.	per day or pro rata for part of a
Shifting	Any time lost for which Charterers/Receivers are responsible, which is not excepted under this Charterparty, shall count as laytime, until same has expired, thence time on demurrage.	
	21. (a) Shifting expenses and time	
	(i) Cost of shifting between loading berths and cost of shifting between discharging berths, including bunker fuel used, to be for Owners* /Charterers*/Receivers** account, time counting.	
	(ii) If vessel is required to shift from one loading or discharging berth to a lay berth or anchorage due to subsequent loading or discharging berth(s) not being available, all such shifting expenses, as defined above shall be for Owners*/Charterers*/Receivers** account, time counting.	
	(iii) If the vessel shifts from the anchorage or waiting place outside the port limits either directly to the first loading or discharging berth or to a lay berth or anchorage within the port limits the cost of that shifting shall be for Owners' account and time so used shall not count even if vessel is on demurrage.	
	(iv) Cost of shifting from lay berth or anchorage within the port limits to first loading or first discharging berth to be for Owners' account, time counting.	
	(b) Shifting in and out of the same berth	
	If vessel is required by Charterers/Receivers* to shift out of the loading berth or the discharging berth and back to the same berth, one berth shall be deemed to have been used, but shifting expenses from and back to the loading or discharging berth so incurred shall be for Charterers*/Receivers** account and laytime or time on demurrage shall count.	

*Delete as appropriate.

(c) Overtime expenses for vessel's officers and crew shall always be for Owners' account.

**Gear and
Lights**

22. If required, the Master is to give free use of vessel's cargo gear, including runners, ropes and slings as on board, and power to operate the same.

Vessel's personnel is to operate the gear if permitted to do so by shore regulations, failing which shore operators are to be used.

Such shore operators are to be for Owners' account at loading port(s) if the provisions of Clause 10 (b) apply, otherwise for Charterers' account at loading and Charterers' / Receivers' account at discharging port(s).

Time lost on account of breakdowns of vessel's gear essential to the loading or discharging of this cargo is not to count as laytime or time on demurrage, and if Clause 10 (a) applies any stevedore standby time charges incurred thereby shall be for Owners' account.

If required, Master shall give free use of the vessel's lighting as on board for night work.

**Seaworthy
Trim**

23. If ordered to be loaded or discharged at two or more ports, the vessel is to be left in seaworthy trim to Master's satisfaction (not exceeding the requirements of the Safety of Life at Sea Convention as applied in the country in which such ports are situated) for the passage between ports at Charterers' expense at loading and at Charterers' / Receivers' expense at discharging ports, and time used for placing vessel in seaworthy trim shall count as laytime or time on demurrage.

**Draft/
Lighterage**

24. Owners warrant the vessel's deepest salt water draft shall not exceed on arrival at first or sole discharging port.

Should the vessel be ordered to discharge at a place in which there is not sufficient water for her to get the first tide after arrival without lightening, and lie always afloat, laytime is to count as per Clause 18 at a safe anchorage for similar vessels bound for such a place and any lighterage expenses incurred to enable her to reach the place of discharge is to be at the expense and risk of the cargo, any custom of the port or place to the contrary notwithstanding, but time occupied in proceeding from the anchorage to the discharging berth is not to count as laytime or time on demurrage. Unless loading and/or discharging ports are named in this Charterparty, the responsibility for providing safe port of loading and/or discharging lies with the Charterers/Receivers* provided Owners have complied with the maximum draft limitations in Lines 173/174.

**Car Decks,
etc.**

25. It is understood that if this vessel is fitted with car decks, container fittings and/or any other special fittings not connected with the carriage of grain in bulk, any extra expenses incurred in loading and/or discharging as a result of the presence of such car decks, container fittings and/or special fittings are to be for Owners' account. Time so lost shall not count as laytime or time on demurrage.

**Dues and/or
Taxes**

26.

Seaway Tolls

27. All St. Lawrence Seaway and/or Welland Canal tolls on vessel and/or cargo assessed by Canadian and United States Authorities are to be paid and borne by Owners.

Water Pollution

28. Any time lost on account of vessel's non-compliance with Government and/or State and/or Provincial regulations pertaining to water pollution shall not count as laytime or time on demurrage.

*Delete as appropriate.

Agents

29. Owners*/Charterers* are to appoint agents at loading port(s) and Owners*/Charterers* are to appoint agents at discharging port(s).

In all instances, agency fees shall be for Owners' account but are not to exceed customary applicable fees.

Strikes, Stoppages, etc.

30. If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or of a Strike or Lock-out on the Railways or in the Docks or other loading places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions, or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or Lock-out of Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labor at rates current before the Strike or Lock-out. In case of any delay by reason of the before mentioned causes, no claim for damages or demurrage shall be made by the Charterers/Receivers of the cargo or Owners of the vessel. For the purpose, however, of settling despatch rebate accounts, any time lost by the vessel through any of the above causes shall be counted as time used in loading, or discharging, as the case may be.

Ice

31. Loading Port

(a) If the Vessel cannot reach the loading port by reason of ice when she is ready to proceed from her last port, or at any time during the voyage, or on her arrival, or if frost sets in after her arrival, the Master - for fear of the Vessel being frozen in - is at liberty to leave without cargo; in such cases this Charterparty shall be null and void.

(b) If during loading, the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has the liberty to do so with what cargo he has on board and to proceed to any other port with option of completing cargo for Owners' own account to any port or ports including the port of discharge. Any part cargo thus loaded under this Charterparty to be forwarded to destination at Vessel's expense against payment of the agreed freight, provided that no extra expenses be thereby caused to the Consignees, freight being paid on quantity delivered (in proportion if lump sum), all other conditions as per Charterparty.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for the Owners' own account as under sub-clause (b) or to declare the Charterparty null and void unless the Charterers agree to load full cargo at the open port.

Voyage and Discharging Port

(d) Should ice prevent the Vessel from reaching the port of discharge, the Charterers/Receivers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Owners or Master have given notice to the Charterers/Receivers of impossibility of reaching port of destination.

(e) If during discharging, the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest safe and accessible port. Such port to be nominated by Charterers/Receivers as soon as possible, but not later than 24 running hours, Sundays and holidays excluded, of receipt of Owners' request for nomination of a substitute discharging port, failing which the Master will himself choose such port.

(f) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Owners shall receive the same freight as if the Vessel had discharged at the original port of destination, except that if the distance to the substitute port exceeds 100 nautical miles the freight on the cargo delivered at that port to be increased in proportion.

Extra Insurance

32. Any extra insurance on cargo incurred owing to vessel's age, class, flag or ownership to be for Owners' account up to a maximum of freight, in Charterers' option. The Charterers shall furnish evidence of payment supporting such deduction.

and may be deducted from the

P. & I.

33. The vessel shall have the liberty as part of the contract voyage to proceed to any port or ports at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever

*Delete as appropriate.

Bunker Clause	and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charterparty and may there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of bunker tanks and deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.	217 218 219
Deviation	34. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Charterparty and the Owners shall not be liable for any loss or damage resulting therefrom; provided, however, that if the deviation is for the purpose of loading or unloading cargo or passengers it shall, <i>prima facie</i> , be regarded as unreasonable.	220 221
Lien and Cesser Clause	35. The Owners shall have a lien on the cargo for freight, deadfreight, demurrage, and average contribution due to them under this Charterparty. Charterers' liability under this Charterparty is to cease on cargo being shipped except for payment of freight, deadfreight, and demurrage at loading, and except for all other matters provided for in this Charterparty where the Charterers' responsibility is specified.	222 223 224
Exceptions	36. Owners shall be bound before and at the beginning of the voyage to exercise due diligence to make the vessel seaworthy and to have her properly manned, equipped and supplied and neither the vessel nor the Master or Owners shall be or shall be held liable for any loss of or damage or delay to the cargo for causes excepted by the U.S. Carriage of Goods by Sea Act, 1936 or the Canadian Carriage of Goods by Water Act, 1970, or any statutory re-enactment thereof. And neither the vessel, her Master or Owners, nor the Charterers or Receivers shall, unless otherwise in this Charterparty expressly provided, be responsible for loss of or damage or delay to or failure to supply, load, discharge or deliver the cargo arising or resulting from: Act of God, act of war, act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; seizure under legal process, provided bond is promptly furnished to release the vessel or cargo; floods; fires; blockades; riots; insurrections; Civil Commotions; earthquakes; explosions. No exception afforded the Charterers or Receivers under this clause shall relieve the Charterers or Receivers of or diminish their obligations for payment of any sums due to the Owners under provisions of this Charterparty.	225 226 227
U.S.A. Clause Paramount	37. If the vessel loads in the U.S.A. the U.S.A. Clause Paramount shall be incorporated in all Bills of Lading and shall read as follows: "This Bill of Lading, shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, or any statutory re-enactment thereof, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent but no further."	228 229 230 231 232
Canadian Clause Paramount	38. If the vessel loads in Canada the Canadian Clause Paramount shall be incorporated in all Bills of Lading and shall read as follows: "This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Carriage of Goods by Water Act, 1970, Revised Statutes of Canada, Chapter C-15, enacted by the Parliament of the Dominion of Canada, or any statutory re-enactment thereof, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further."	233 234 235 236 237 238 239 240
Both-to-Blame Collision Clause	39. If the liability for any collision in which the vessel is involved while performing this Charterparty fails to be determined in accordance with the laws of the United States of America, the following clause shall apply: "If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of	241 242 243 244 245

*Delete as appropriate.

the said goods and set off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or Carrier."

The foregoing provisions shall also apply where the Owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect to a collision or contact."

The Charterers shall procure that all Bills of Lading issued under this Charterparty shall contain the same clause.

40. General Average shall be adjusted according to the York/Antwerp Rules 1974 and shall be settled in

Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for the consequences of which, the Carrier is not responsible, by Statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery."

The Charterers shall procure that all Bills of Lading issued under this Charterparty shall contain the same clause.

41. 1. The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or reach.

2. (A) If any port of loading or of discharge named in this Charterparty or to which the vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(B) if owing to any war, hostilities, warlike operations, civil war, civil commotion, revolutions, or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charterparty (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charterparty or not) and such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charterparty, the Charterparty shall be read in respect of the freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charterparty, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In this latter event the Owners shall have a lien on the cargo for all such extra expenses.

3. The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other

*Delete as appropriate.

wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such directions or recommendations the vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

42. An address commission of
vessel lost or not lost, Charterers having the right to deduct such commission from payment of freight and/or demurrage.

% on gross freight, deadfreight and demurrage is due to Charterers at time freight and/or demurrage is paid,

43. A brokerage commission of

% on gross freight, deadfreight, and demurrage is payable by Owners to
at time of receiving freight payment and/or demurrage payments(s), vessel lost or not lost.

44. Charterers have the privilege of transferring/assigning/reletting all or part of this Charterparty to others (guaranteeing to the Owners the due fulfillment of this Charterparty).

45. (a) New York. All disputes arising out of this contract shall be arbitrated at New York in the following manner, and be subject to U.S. Law:

One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.

For disputes where the total amount claimed by either party does not exceed U.S. \$
Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.

** the arbitration shall be conducted in accordance with the

(b) London. All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.

For disputes where the total amount claimed by either party does not exceed U.S. \$
Small Claims Procedure of the London Maritime Arbitrators Association.

** the arbitration shall be conducted in accordance with the

** Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.

*Delete as appropriate.



1. Shipbroker		RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON"	
		Part I	
		2. Place and date	
3. Owners/Place of business (Cl. 1)		4. Charterers/Place of business (Cl. 1)	
5. Vessel's name (Cl. 1)		6. GT/NT (Cl. 1)	
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1)		8. Present position (Cl. 1)	
9. Expected ready to load (abt.) (Cl. 1)			
10. Loading port or place (Cl. 1)		11. Discharging port or place (Cl. 1)	
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)			
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 4)		14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)	
15. State if vessel's cargo handling gear shall not be used (Cl. 5)		16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl. 6)	
17. Shippers/Place of business (Cl. 6)		a) Laytime for loading	
18. Agents (loading) (Cl. 6)		b) Laytime for discharging	
19. Agents (discharging) (Cl. 6)		c) Total laytime for loading and discharging	
20. Demurrage rate and manner payable (loading and discharging) (Cl. 7)		21. Cancelling date (Cl. 9)	
		22. General Average to be adjusted at (Cl. 12)	
23. Freight Tax (state if for the Owners' account) (Cl. 13 (c))		24. Brokerage commission and to whom payable (Cl. 15)	
25. Law and Arbitration (state 19 (a), 19 (b) or 19 (c) of Cl. 19; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 19)			
(a) State maximum amount for small claims/shortened arbitration (Cl. 19)		26. Additional clauses covering special provisions, if agreed	

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It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

PART II

"Gencon" Charter (As Revised 1922, 1976 and 1994)

1. It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that: The said Vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the Charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.	1 2 3 4 5 6 7 8 9 10 11 12 13 14	always work under the supervision of the Master. (c) <i>Stevedore Damage</i> The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability. The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.	75 76 77 78 79 80 81 82 83 84 85 86 87 88
2. Owners' Responsibility Clause The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager. And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.	15 16 17 18 19 20 21 22 23 24 25 26 27	6. Laytime (a) <i>Separate laytime for loading and discharging</i> The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. (b) <i>Total laytime for loading and discharging</i> The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. (c) <i>Commencement of laytime (loading and discharging)</i> Laytime for loading and discharging shall commence at 13.00 hours, if notice of readiness is given up to and including 12.00 hours, and at 06.00 hours next working day if notice given during office hours after 12.00 hours. Notice of readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19. If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime. If, after inspection, the Vessel is found not to be ready in all respects to load/dischARGE time lost after the discovery thereof until the Vessel is again ready to load/dischARGE shall not count as laytime. Time used before commencement of laytime shall count.	89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121
3. Deviation Clause The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.	28 29 30 31	* <i>Indicate alternative (a) or (b) as agreed, in Box 16.</i>	122
4. Payment of Freight (a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo. (b) <i>Prepaid.</i> If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost. Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid. (c) <i>On delivery.</i> If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally. Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.	32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49	7. Demurrage Demurrage at the loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owners' invoice. In the event the demurrage is not paid in accordance with the above, the Owners shall give the Charterers 96 running hours written notice to rectify the failure. If the demurrage is not paid at the expiration of this time limit and if the vessel is in or at the loading port, the Owners are entitled at any time to terminate the Charter Party and claim damages for any losses caused thereby.	122 123 124 125 126 127 128 129 130 131
5. Loading/Discharging (a) <i>Costs/Risks</i> The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners. The Charterers shall provide and pay all dunnage material as required for the proper stowage and protection of the cargo on board, the Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed. (b) <i>Cargo Handling Gear</i> Unless the Vessel is gearless or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order. Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winches required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage. On request the Owners shall provide free of charge cranesmen/winchen from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranesmen/winchen shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall	50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74	8. Lien Clause The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same. 9. Cancelling Clause (a) Should the Vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party. (b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date. Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that	132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148

"Gencon" Charter (As Revised 1922, 1976 and 1994)

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1. Shipbroker	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM GENERAL CHARTER (AS REVISED 1922 and 1976) INCLUDING "F.I.O." ALTERNATIVE, ETC. (To be used for trades for which no approved form is in force) CODE NAME: "GENCON"		Part I
	2. Place and date		
3. Owners/Place of business (Cl. 1)	4. Charterers/Place of business (Cl. 1)		
5. Vessel's name (Cl. 1)	6. GRT/NRT (Cl. 1)		
7. Deadweight cargo carrying capacity in tons (abt.) (Cl. 1)	8. Present position (Cl. 1)		
9. Expected ready to load (abt.) (Cl. 1)			
10. Loading port or place (Cl. 1)	11. Discharging port or place (Cl. 1)		
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)			
13. Freight rate (also state if payable on delivered or intaken quantity) (Cl. 1)	14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)		
15. Loading and discharging costs (state alternative (a) or (b) of Cl. 5; also indicate if vessel is gearless)	16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl. 6)		
	a) Laytime for loading		
17. Shippers (state name and address) (Cl. 6)	b) Laytime for discharging		
	c) Total laytime for loading and discharging		
18. Demurrage rate (loading and discharging) (Cl. 7)	19. Cancelling date (Cl. 10)		
20. Brokerage commission and to whom payable (Cl. 14)			
21. Additional clauses covering special provisions, if agreed.			

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II.
In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

PART II
"Gencon" Charter (As Revised 1922 and 1976)
Including "F.I.O." Alternative, etc.

1. It is agreed between the party mentioned in Box 3 as Owners of the steamer or motor-vessel named in Box 5, of the gross/nett Register tons indicated in Box 6 and carrying about the number of tons of deadweight cargo stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter about the date indicated in Box 9, and the party mentioned as Charterers in Box 4 that: The said vessel shall proceed to the loading port or place stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at Charterers' risk) as stated in Box 12 (Charterers to provide all mats and/or wood for dunnage and any separations required, the Owners allowing the use of any dunnage wood on board if required) which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to the discharging port or place stated in Box 11 as ordered on signing Bills of Lading or so near thereto as she may safely get and lie always afloat and there deliver the cargo on being paid freight on delivered or intaken quantity as indicated in Box 13 at the rate stated in Box 13.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	The Owners shall provide winches, motive power and winchmen from the Crew if requested and permitted; if not, the Charterers shall provide and pay for winchmen from shore and/or cranes, if any. (This provision shall not apply if vessel is gearless and stated as such in Box 15). * indicate alternative (a) or (b), as agreed, in Box 15.	73 74 75 76 77 78
2. Owners' Responsibility Clause Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers/Charterers or their stevedores or servants) or by personal want of due diligence on the part of the Owners or their Manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager. And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever. Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.	21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40	6. Laytime * (a) <i>Separate laytime for loading and discharging</i> The cargo shall be loaded within the number of running hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time actually used shall count. The cargo shall be discharged within the number of running hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time actually used shall count. * (b) <i>Total laytime for loading and discharging</i> The cargo shall be loaded and discharged within the number of total running hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time actually used shall count. (c) <i>Commencement of laytime (loading and discharging)</i> Laytime for loading and discharging shall commence at 1 p.m. if notice of readiness is given before noon, and at 6 a.m. next working day if notice given during office hours after noon. Notice at loading port to be given to the Shippers named in Box 17. Time actually used before commencement of lay time shall count. Time lost in waiting for berth to count as loading or discharging time, as the case may be. * indicate alternative (a) or (b) as agreed, in Box 16.	79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
3. Deviation Clause The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property.	41 42 43 44 45	7. Demurrage Ten running days on demurrage at the rate stated in Box 18 per day or pro rata for any part of a day, payable day by day, to be allowed Merchants altogether at ports of loading and discharging.	101 102 103 104
4. Payment of Freight The freight to be paid in the manner prescribed in Box 14 in cash without discount on delivery of the cargo at mean rate of exchange ruling on day or days of payment, the receivers of the cargo being bound to pay freight on account during delivery, if required by Captain or Owners. Cash for vessel's ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent. to cover insurance and other expenses.	46 47 48 49 50 51 52 53 54 55	8. Lien Clause Owners shall have a lien on the cargo for freight, dead-freight, demurrage and damages for detention. Charterers shall remain responsible for dead-freight and demurrage (including damages for detention), incurred at port of loading. Charterers shall also remain responsible for freight and demurrage (including damages for detention) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.	105 106 107 108 109 110 111 112 113
5. Loading/Discharging Costs * (a) <i>Gross Terms</i> The cargo to be brought alongside in such a manner as to enable vessel to take the goods with her own tackle. Charterers to procure and pay the necessary men on shore or on board the lighters to do the work there, vessel only heaving the cargo on board. If the loading takes place by elevator, cargo to be put free in vessel's holds, Owners only paying trimming expenses. Any pieces and/or packages of cargo over two tons weight, shall be loaded, stowed and discharged by Charterers at their risk and expense. The cargo to be received by Merchants at their risk and expense alongside the vessel not beyond the reach of her tackle. * (b) <i>F.I.O. and free stowed/trimmed</i> The cargo shall be brought into the holds, loaded, stowed and/or trimmed and taken from the holds and discharged by the Charterers or their Agents, free of any risk, liability and expense whatsoever to the Owners.	56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72	9. Bills of Lading The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight the difference to be paid to the Captain in cash on signing Bills of Lading. 10. Cancelling Clause Should the vessel not be ready to load (whether in berth or not) on or before the date indicated in Box 19, Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of loading. Should the vessel be delayed on account of average or otherwise, Charterers to be informed as soon as possible, and if the vessel is delayed for more than 10 days after the day she is stated to be expected ready to load, Charterers have the option of cancelling this contract, unless a cancelling date has been agreed upon. 11. General Average General average to be settled according to York-Antwerp Rules, 1974, Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see clause 2). 12. Indemnity Indemnity for non-performance of this Charterparty, proved damages, not exceeding estimated amount of freight.	114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137

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13. Agency	138	port in vicinity of the port of discharge as may be ordered by the Charterers. If no such orders shall be received from the Charterers within 48 hours after the Owners have despatched a request by telegram to the Charterers for the nomination of a substitute discharging port, the Owners shall be at liberty to discharge the cargo at any safe port which they may, in their discretion, decide on and such discharge shall be deemed to be due fulfillment of the contract of affreightment. In the event of cargo being discharged at any such other port, the Owners shall be entitled to freight as if the discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.	209
In every case the Owners shall appoint his own Broker or Agent both at the port of loading and the port of discharge.	139 140		210 211 212 213 214 215 216 217 218 219
14. Brokerage	141		
A brokerage commission at the rate stated in Box 20 on the freight earned is due to the party mentioned in Box 20.	142		
In case of non-execution at least 1/3 of the brokerage on the estimated amount of freight and dead-freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be mutually agreed.	143 144 145 146 147		
15. GENERAL STRIKE CLAUSE	148	(5) (a) The Vessel shall have liberty to comply with any directions or recommendations as to loading, departure, arrival, routes, ports of call, stoppages, destination, zones, waters, discharge, delivery or in any other wise whatsoever (including any direction or recommendation not to go to the port of destination or to delay proceeding thereto or to proceed to some other port) given by any Government or by any belligerent or by any organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or purporting to act as or with the authority of any Government or belligerent or of any such organized body or by any committee or person having under the terms of the war risks insurance on the Vessel, the right to give any such directions or recommendations. If, by reason of or in compliance with any such direction or recommendation, anything is done or is not done, such shall not be deemed a deviation.	220 221 222 223 224 225 226 227 228 229 230 231 232 233 234
Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.	149		
If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, Captain or Owners may ask Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, Owners shall have the option of cancelling this contract. If part cargo has already been loaded, Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.	150 151 152 153 154 155 156 157 158 159 160 161 162		
If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charterparty and of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion	163 164 165 166 167 168 169 170 171 172 173 174 175 176 177	(b) If, by reason of or in compliance with any such directions or recommendations, the Vessel does not proceed to the port or ports named in the Bill(s) of Lading or to which she may have been ordered pursuant thereto, the Vessel may proceed to any port as directed or recommended or to any safe port which the Owners in their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.	235 236 237 238 239 240 241 242 243 244 245
16. War Risks ("Voywar 1950")	178	(6) All extra expenses (including insurance costs) involved in discharging cargo at the loading port or in reaching or discharging the cargo at any port as provided in Clauses 4 and 5 (b) hereof shall be paid by the Charterers and/or cargo owners, and the Owners shall have a lien on the cargo for all moneys due under these Clauses.	246 247 248 249 250
(1) In these clauses "War Risks" shall include any blockade or any action which is announced as a blockade by any Government or by any belligerent or by any organized body, sabotage, piracy, and any actual or threatened war, hostilities, warlike operations, civil war, civil commotion, or revolution.	179 180 181 182 183		
(2) If at any time before the Vessel commences loading, it appears that performance of the contract will subject the Vessel or her Master and crew or her cargo to war risks at any stage of the adventure, the Owners shall be entitled by letter or telegram despatched to the Charterers, to cancel this Charter.	184 185 186 187 188		
(3) The Master shall not be required to load cargo or to continue loading or to proceed on or to sign Bill(s) of Lading for any adventure on which or any port at which it appears that the Vessel, her Master and crew or her cargo will be subjected to war risks. In the event of the exercise by the Master of his right under this Clause after part or full cargo has been loaded, the Master shall be at liberty either to discharge such cargo at the loading port or to proceed therewith. In the latter case the Vessel shall have liberty to carry other cargo for Owners' benefit and accordingly to proceed to and load or discharge such other cargo at any other port or ports whatsoever, backwards or forwards, although in a contrary direction to or out of or beyond the ordinary route. In the event of the Master electing to proceed with part cargo under this Clause freight shall in any case be payable on the quantity delivered.	189 190 191 192 193 194 195 196 197 198 199 200 201 202		
(4) If at the time the Master elects to proceed with part or full cargo under Clause 3, or after the Vessel has left the loading port, or the last of the loading ports, if more than one, it appears that further performance of the contract will subject the Vessel, her Master and crew or her cargo, to war risks, the cargo shall be discharged, or if the discharge has been commenced shall be completed, at any safe	203 204 205 206 207 208		
		17. GENERAL ICE CLAUSE	251
		<i>Port of loading</i>	252
		(a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.	253 254 255 256 257 258
		(b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for the Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter to be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter.	259 260 261 262 263 264 265 266 267 268
		(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter null and void unless Charterers agree to load full cargo at the open port.	269 270 271 272 273 274
		(d) This Ice Clause not to apply in the Spring.	275
		<i>Port of discharge</i>	276
		(a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers shall have the option of keeping vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the vessel to a safe and immediately accessible port	277 278 279 280

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where she can safely discharge without risk of detention by ice.
Such orders to be given within 48 hours after Captain or Owners
have given notice to Charterers of the impossibility of reaching port
of destination.

(b) If during discharging the Captain for fear of vessel being frozen
in deems it advisable to leave, he has liberty to do so with what
cargo he has on board and to proceed to the nearest accessible

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port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill
of Lading shall apply and vessel shall receive the same freight as
if she had discharged at the original port of destination, except that if
the distance of the substituted port exceeds 100 nautical miles, the
freight on the cargo delivered at the substituted port to be increased
in proportion.

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Sample copy

October 1977

ASBATANKVOY

TANKER VOYAGE CHARTER PARTY

PREAMBLE

Place

Date

IT IS THIS DAY AGREED between
chartered owner/owner (hereinafter called the "Owner") of the
SS/MS (hereinafter called the "Vessel")
and (hereinafter called the "Charterer")
that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble
and Part I and Part II. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

PART I

A. Description and Position of Vessel:

Deadweight: tons (2240 lbs.) Classed:
Loaded draft of Vessel on assigned summer freeboard ft. in. in salt water.
Capacity for cargo: tons (of 2240 lbs. each) % more or less, Vessel's option.
Coated: ☐ Yes ☐ No
Coiled: ☐ Yes ☐ No Last two cargoes:
Now: Expected Ready:

B. Laydays:

Commencing: Cancelling:

C. Loading Port(s):

Charterer's Option

D. Discharging Port(s):

Charterer's Option

E. Cargo:

Charterer's Option

F. Freight Rate:

per ton (of 2240 lbs. each).

G. Freight Payable to:

at

H. Total Laytime in Running Hours:

I. Demurrage per day:

J. Commission of % is payable by Owner to
on the actual amount freight, when and as freight is paid.

K. The place of General Average and arbitration proceedings to be London/New York (strike out one).

L. Tovalop: Owner warrants Vessel to be a member of TOVALOP scheme and will be so-maintained throughout duration of this charter.

M. Special Provisions:

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of the day and year first above written.

Witness the signature of:

By:

Witness the Signature of:

By:

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PART II

1. **WARRANTY - VOYAGE - CARGO.** The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat), from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

2. **FREIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

3. **DEADFREIGHT.** Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

4. NAMING LOADING AND DISCHARGE PORTS.

(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

ST. KITTS	On a voyage to a port or ports in:
PORT SAID	Caribbean or U.S. Gulf loading port(s)
	Eastern Mediterranean or Persian Gulf loading port(s)
	(from ports west of Port Said.)

(b) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

Place	On a voyage to a port or ports in:
LAND'S END	United Kingdom/Continent (Bordeaux/Hamburg range)
	or Scandinavia (including Denmark)
SUEZ	Mediterranean (from Persian Gulf)
GIBRALTAR	Mediterranean (from Western Hemisphere)

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used Laytime.

5. **LAYDAYS.** Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect.

6. **NOTICE OF READINESS.** Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a seaload or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice or readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. **HOURS FOR LOADING AND DISCHARGING.** The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

8. **DEMURRAGE.** Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

9. **SAFE BERTHING - SHIFTING.** The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

10. **PUMPING IN AND OUT.** The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into its Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

11. **HOSES: MOORING AT SEA TERMINALS.** Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

12. **DUES - TAXES - WHARFAGE.** The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritimo. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo; however, the Owner shall be responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a) **CARGOES EXCLUDED VAPOR PRESSURE.** Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100 deg F.) in excess of thirteen and one-half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-323.

(b) **FLASH POINT.** Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115 deg F.) (closed cup) A.S.T.M. Method D-56 shall not be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a) **ICE.** In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

15. **TWO OR MORE PORTS COUNTING AS ONE.** To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one port for purposes of calculating freight and demurrage only, subject to the

following conditions:

- (a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.
- (b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.
- (c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.
- (d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.
- 16. GENERAL CARGO. The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description; the cargo the Vessel is to load under this Charter is to consist only of liquid bulk cargo as specified in Clause 1.

17. (a). QUARANTINE. Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

(b). FUMIGATION. If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

18. CLEANING. The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

19. GENERAL EXCEPTIONS CLAUSE. The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:- any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Master or owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss of damage or delay or failure in performing hereunder, arising or resulting from:- Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

20. ISSUANCE AND TERMS OF BILLS OF LADING.

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

(i) CLAUSE PARAMOUNT. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to the extent but no further.

(ii) JASON CLAUSE. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

(iii) GENERAL AVERAGE. General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) BOTH TO BLAME. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

(v) LIMITATION OF LIABILITY. Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) WAR RISKS. (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

(vii) DEVIATION CLAUSE. The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. LIEN. The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

22. AGENTS. The Owner shall appoint Vessel's agents at all ports.

23. BREACH. Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder.

24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city abovementioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. SUBLET. Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. OIL POLLUTION CLAUSE. Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

BILL OF LADING

Shipped in apparent good order and condition by
on board the
whereof

Steamship/Motorship
is Master, at the port of

to be delivered at the port of
or so near thereto as the Vessel can safely get, always afloat, unto

or order on payment of freight at the rate of

This shipment is carried under and pursuant to the terms of the contract/charter dated New York/London

between _____ and _____, as Charterer, and
all the terms whatsoever of the said contract/charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

In witness whereof the Master has signed
of this tenor and date, one of which being accomplished, the others will be void.

Bills of Lading

Dated at

this _____ day of

Master

This Charter Party is a computer generated copy of the ASBATANKVOY form, printed under licence from the Association of Ship Brokers & Agents (U.S.A), Inc., using software which is the copyright of Strategic Software Limited.

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APPENDIX

B

TIME CHARTER PARTIES

Code Name: "NYPE 93"

Recommended by:
The Baltic and International Maritime Council (BIMCO)
The Federation of National Associations of
Ship Brokers and Agents (FONASBA)



TIME CHARTER®

New York Produce Exchange Form
Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc.

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946;
Revised June 12th, 1981; September 14th 1993.

THIS CHARTER PARTY , made and concluded in						1
this	day of	19				2
Between						3
<u>Owners</u> of the Vessel described below, and						4
						5
						6
<u>Charterers</u> .						7
						8
<u>Description of Vessel</u>						9
Name	Flag	Built		(year).		10
Port and number of Registry						11
Classed						12
Deadweight			in			13
stores not exceeding			long*/metric* tons (cargo and bunkers, including freshwater and			14
on summer freeboard.			long*/metric* tons) on a salt water draft of			15
Capacity		cubic feet grain		cubic feet bale space.		16
Tonnage		GT/GRT.				17
Speed about		knots, fully laden, in good weather conditions up to and including maximum				18
Force	on the Beaufort wind scale, on a consumption of about			long*/metric*		19
tons of						20
* Delete as appropriate.						21
For further description see Appendix "A" (if applicable)						22
1. <u>Duration</u>						23
The Owners agree to let and the Charterers agree to hire the Vessel from the time of delivery for a period						24
of						25
						26
						27
				within below mentioned trading limits.		28
2. <u>Delivery</u>						29
The Vessel shall be placed at the disposal of the Charterers at						30
						31
						32
				The Vessel on her delivery		33
shall be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted						34
for ordinary cargo service, having water ballast and with sufficient power to operate all cargo-handling gear						35
simultaneously.						36
The Owners shall give the Charterers not less than				days notice of expected date of		37

delivery.	38
3. <u>On-Off Hire Survey</u>	39
Prior to delivery and redelivery the parties shall, unless otherwise agreed, each appoint surveyors, for their respective accounts, who shall not later than at first loading port/last discharging port respectively, conduct joint on-hire/off-hire surveys, for the purpose of ascertaining quantity of bunkers on board and the condition of the Vessel. A single report shall be prepared on each occasion and signed by each surveyor, without prejudice to his right to file a separate report setting forth items upon which the surveyors cannot agree. If either party fails to have a representative attend the survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party. On-hire survey shall be on Charterers' time and off-hire survey on Owners' time.	40 41 42 43 44 45 46 47
4. <u>Dangerous Cargo/Cargo Exclusions</u>	48
(a) The Vessel shall be employed in carrying lawful merchandise excluding any goods of a dangerous, injurious, flammable or corrosive nature unless carried in accordance with the requirements or recommendations of the competent authorities of the country of the Vessel's registry and of ports of shipment and discharge and of any intermediate countries or ports through whose waters the Vessel must pass. Without prejudice to the generality of the foregoing, in addition the following are specifically excluded: livestock of any description, arms, ammunition, explosives, nuclear and radioactive materials,	49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64
(b) If IMO-classified cargo is agreed to be carried, the amount of such cargo shall be limited to tons and the Charterers shall provide the Master with any evidence he may reasonably require to show that the cargo is packaged, labelled, loaded and stowed in accordance with IMO regulations, failing which the Master is entitled to refuse such cargo or, if already loaded, to unload it at the Charterers' risk and expense.	65 66 67 68 69
5. <u>Trading Limits</u>	70
The Vessel shall be employed in such lawful trades between safe ports and safe places within	71 72
excluding	73 74 75
as the Charterers shall direct.	76
6. <u>Owners to Provide</u>	77
The Owners shall provide and pay for the insurance of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, including boiler water; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of officers and crew.	78 79 80 81 82
7. <u>Charterers to Provide</u>	83
The Charterers, while the Vessel is on hire, shall provide and pay for all the bunkers except as otherwise agreed; shall pay for port charges (including compulsory watchmen and cargo watchmen and compulsory garbage disposal), all communication expenses pertaining to the Charterers' business at cost, pilotages,	84 85 86

towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the Vessel), and all other usual expenses except those stated in Clause 6, but when the Vessel puts into a port for causes for which the Vessel is responsible (other than by stress of weather), then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew shall be for the Owners' account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers' account. All other fumigations shall be for the Charterers' account after the Vessel has been on charter for a continuous period of six months or more.

The Charterers shall provide and pay for necessary dunnage and also any extra fittings requisite for a special trade or unusual cargo, but the Owners shall allow them the use of any dunnage already aboard the Vessel. Prior to redelivery the Charterers shall remove their dunnage and fittings at their cost and in their time.

8. Performance of Voyages

(a) The Master shall perform the voyages with due despatch, and shall render all customary assistance with the Vessel's crew. The Master shall be conversant with the English language and (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and the Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashings, discharging, and tallying, at their risk and expense, under the supervision of the Master.

(b) If the Charterers shall have reasonable cause to be dissatisfied with the conduct of the Master or officers, the Owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

9. Bunkers

(a) The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the Vessel as hereunder. The Vessel shall be delivered with: long*/metric tons of fuel oil at the price of per ton; tons of diesel oil at the price of per ton. The vessel shall be redelivered with: tons of fuel oil at the price of per ton; tons of diesel oil at the price of per ton.

* Same tons apply throughout this clause.

(b) The Charterers shall supply bunkers of a quality suitable for burning in the Vessel's engines and auxiliaries and which conform to the specification(s) as set out in Appendix A.

The Owners reserve their right to make a claim against the Charterers for any damage to the main engines or the auxiliaries caused by the use of unsuitable fuels or fuels not complying with the agreed specification(s). Additionally, if bunker fuels supplied do not conform to the mutually agreed specification(s) or otherwise prove unsuitable for burning in the Vessel's engines or auxiliaries, the Owners shall not be held responsible for any reduction in the Vessel's speed performance and/or increased bunker consumption, nor for any time lost and any other consequences.

10. Rate of Hire/Redelivery Areas and Notices

The Charterers shall pay for the use and hire of the said Vessel at the rate of \$ U.S. currency, daily, or \$ U.S. currency per ton on the Vessel's total deadweight carrying capacity, including bunkers and stores, on summer freeboard, per 30 days, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire shall continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless Vessel lost) at

unless otherwise mutually agreed.

The Charterers shall give the Owners not less than	days notice of the Vessel's	135
expected date and probable port of redelivery.		136
For the purpose of hire calculations, the times of delivery, redelivery or termination of charter shall be		137
adjusted to GMT.		138
11. Hire Payment		139
(a) <u>Payment</u>		140
Payment of Hire shall be made so as to be received by the Owners or their designated payee in		141
, viz		142
		143
		144
	in	145
	currency, or in United States Currency, in funds available to the	146
Owners on the due date, 15 days in advance, and for the last month or part of same the approximate		147
amount of hire, and should same not cover the actual time, hire shall be paid for the balance day by day		148
as it becomes due, if so required by the Owners. Failing the punctual and regular payment of the hire,		149
or on any fundamental breach whatsoever of this Charter Party, the Owners shall be at liberty to		150
withdraw the Vessel from the service of the Charterers without prejudice to any claims they (the Owners)		151
may otherwise have on the Charterers.		152
At any time after the expiry of the grace period provided in Sub-clause 11 (b) hereunder and while the		153
hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold		154
the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever		155
for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and hire		156
shall continue to accrue and any extra expenses resulting from such withholding shall be for the		157
Charterers' account.		158
(b) <u>Grace Period</u>		159
Where there is failure to make punctual and regular payment of hire due to oversight, negligence, errors		160
or omissions on the part of the Charterers or their bankers, the Charterers shall be given by the Owners		161
clear banking days (as recognized at the agreed place of payment) written notice to rectify the		162
failure, and when so rectified within those	days following the Owners' notice, the payment shall	163
stand as regular and punctual.		164
Failure by the Charterers to pay the hire within	days of their receiving the Owners' notice as	165
provided herein, shall entitle the Owners to withdraw as set forth in Sub-clause 11 (a) above.		166
(c) <u>Last Hire Payment</u>		167
Should the Vessel be on her voyage towards port of redelivery at the time the last and/or the penultimate		168
payment of hire is/are due, said payment(s) is/are to be made for such length of time as the Owners and		169
the Charterers may agree upon as being the estimated time necessary to complete the voyage, and taking		170
into account bunkers actually on board, to be taken over by the Owners and estimated disbursements for		171
the Owners' account before redelivery. Should same not cover the actual time, hire is to be paid for the		172
balance, day by day, as it becomes due. When the Vessel has been redelivered, any difference is to be		173
refunded by the Owners or paid by the Charterers, as the case may be.		174
(d) <u>Cash Advances</u>		175
Cash for the Vessel's ordinary disbursements at any port may be advanced by the Charterers, as required		176
by the Owners, subject to 2½ percent commission and such advances shall be deducted from the hire.		177
The Charterers, however, shall in no way be responsible for the application of such advances.		178
12. Berths		179

The Vessel shall be loaded and discharged in any safe dock or at any safe berth or safe place that Charterers or their agents may direct, provided the Vessel can safely enter, lie and depart always afloat at any time of tide.

13. Spaces Available

(a) The whole reach of the Vessel's holds, decks, and other cargo spaces (not more than she can reasonably and safely stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for the Vessel's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

(b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature caused to the Vessel as a result of the carriage of deck cargo and which would not have arisen had deck cargo not been loaded.

14. Supercargo and Meals

The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and same fare as provided for the Master's table, the Charterers paying at the rate of per day. The Owners shall victual pilots and customs officers, and also, when authorized by the Charterers or their agents, shall victual tally clerks, stevedore's foreman, etc., Charterers paying at the rate of per meal for all such victualing.

15. Sailing Orders and Logs

The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.

16. Delivery/Cancelling

If required by the Charterers, time shall not commence before Vessel not be ready for delivery on or before the Charterers shall have the option of cancelling this Charter Party.

Extension of Cancelling

If the Owners warrant that, despite the exercise of due diligence by them, the Vessel will not be ready for delivery by the cancelling date, and provided the Owners are able to state with reasonable certainty the date on which the Vessel will be ready, they may, at the earliest seven days before the Vessel is expected to sail for the port or place of delivery, require the Charterers to declare whether or not they will cancel the Charter Party. Should the Charterers elect not to cancel, or should they fail to reply within two days or by the cancelling date, whichever shall first occur, then the seventh day after the expected date of readiness for delivery as notified by the Owners shall replace the original cancelling date. Should the Vessel be further delayed, the Owners shall be entitled to require further declarations of the Charterers in accordance with this Clause.

17. Off Hire

In the event of loss of time from deficiency and/or default and/or strike of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the Vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the Vessel, the payment of

hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, the time so lost, and the cost of any extra bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire.

18. Sublet

Unless otherwise agreed, the Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party.

19. Drydocking

The Vessel was last drydocked

*(a) The Owners shall have the option to place the Vessel in drydock during the currency of this Charter at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances.

*(b) Except in case of emergency no drydocking shall take place during the currency of this Charter Party.

** Delete as appropriate*

20. Total Loss

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

21. Exceptions

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers, and navigation, and errors of navigation throughout this Charter, always mutually excepted.

22. Liberties

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress and to deviate for the purpose of saving life and property.

23. Liens

The Owners shall have a lien upon all cargoes and all sub-freights and/or sub-hire for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessities or services, including any port expenses and bunkers, on the credit of the Owners or in the Owners' time.

24. <u>Salvage</u>	268
All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting Owners' and Charterers' expenses and crew's proportion.	269 270
25. <u>General Average</u>	271
General average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in and settled in currency.	272 273 274
The Charterers shall procure that all bills of lading issued during the currency of the Charter Party will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof and will include the "New Jason Clause" as per Clause 31.	275 276 277 278
Time charter hire shall not contribute to general average.	279
26. <u>Navigation</u>	280
Nothing herein stated is to be construed as a demise of the Vessel to the Time Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.	281 282 283
27. <u>Cargo Claims</u>	284
Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club New York Produce Exchange Agreement of February 1970, as amended May, 1984, or any subsequent modification or replacement thereof.	285 286 287
28. <u>Cargo Gear and Lights</u>	288
The Owners shall maintain the cargo handling gear of the Vessel which is as follows:	289 290 291 292
providing gear (for all derricks or cranes) capable of lifting capacity as described. The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' stevedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on hire.	293 294 295 296 297 298 299 300 301 302
29. <u>Crew Overtime</u>	303
In lieu of any overtime payments to officers and crew for work ordered by the Charterers or their agents, the Charterers shall pay the Owners, concurrently with the hire per month or pro rata.	304 305 306
30. <u>Bills of Lading</u>	307
(a) The Master shall sign the bills of lading or waybills for cargo as presented in conformity with mates or tally clerk's receipts. However, the Charterers may sign bills of lading or waybills on behalf of the Master, with the Owner's prior written authority, always in conformity with mates or tally clerk's receipts.	308 309 310

(b) All bills of lading or waybills shall be without prejudice to this Charter Party and the Charterers shall indemnify the Owners against all consequences or liabilities which may arise from any inconsistency between this Charter Party and any bills of lading or waybills signed by the Charterers or by the Master at their request.

(c) Bills of lading covering deck cargo shall be claused: "Shipped on deck at Charterers', Shippers' and Receivers' risk, expense and responsibility, without liability on the part of the Vessel, or her Owners for any loss, damage, expense or delay howsoever caused."

31. Protective Clauses

This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder:

(a) CLAUSE PARAMOUNT

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague-Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this bill of lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further."

and

(b) BOTH-TO-BLAME COLLISION CLAUSE

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and

(c) NEW JASON CLAUSE

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

and

(d) U.S. TRADE - DRUG CLAUSE

"In pursuance of the provisions of the U.S. Anti Drug Abuse Act 1986 or any re-enactment thereof, the Charterers warrant to exercise the highest degree of care and diligence in preventing unmanifested narcotic drugs and marijuana to be loaded or concealed on board the Vessel."

Non-compliance with the provisions of this clause shall amount to breach of warranty for consequences of which the Charterers shall be liable and shall hold the Owners, the Master and the crew of the Vessel harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them individually or jointly. Furthermore, all time lost and all expenses incurred, including fines, as a result of the Charterers' breach of the provisions of this clause shall be for the Charterer's account and the Vessel shall remain on hire.

Should the Vessel be arrested as a result of the Charterers' non-compliance with the provisions of this clause, the Charterers shall at their expense take all reasonable steps to secure that within a reasonable time the Vessel is released and at their expense put up the bails to secure release of the Vessel.

The Owners shall remain responsible for all time lost and all expenses incurred, including fines, in the event that unmanifested narcotic drugs and marijuana are found in the possession or effects of the Vessel's personnel."

and

(e) WAR CLAUSES

"(i) No contraband of war shall be shipped. The Vessel shall not be required, without the consent of the Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration of war or not, where the Vessel, cargo or crew might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any purported governmental organization maintaining naval, military or air forces).

(ii) If such consent is given by the Owners, the Charterers will pay the provable additional cost of insuring the Vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not exceeding a valuation of . In addition, the Owners may purchase and the Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a government program, the Vessel shall not be required to enter or remain at any such port or zone.

(iii) In the event of the existence of the conditions described in (i) subsequent to the date of this Charter, or while the Vessel is on hire under this Charter, the Charterers shall, in respect of voyages to any such port or zone assume the provable additional cost of wages and insurance properly incurred in connection with master, officers and crew as a consequence of such war, warlike operations or hostilities.

(iv) Any war bonus to officers and crew due to the Vessel's trading or cargo carried shall be for the Charterers' account."

32. War Cancellation

In the event of the outbreak of war (whether there be a declaration of war or not) between any two or more of the following countries:

either the Owners or the Charterers may cancel this Charter Party. Whereupon, the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 10; if she has cargo on board, after discharge thereof at destination, or, if debarred under this Clause from reaching or entering it, at a near open and safe port as directed by the Owners; or, if she has no cargo on board, at the port at which she then is; or, if at sea, at a near open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter Party shall apply until redelivery.

33. Ice

The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area

where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging. Subject to the Owners' prior approval the Vessel is to follow ice-breakers when reasonably required with regard to her size, construction and ice class.

34. Requisition

Should the Vessel be requisitioned by the government of the Vessel's flag during the period of this Charter Party, the Vessel shall be deemed to be off hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by the Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.
If the period of requisition exceeds months, either party shall have the option of cancelling this Charter Party and no consequential claim may be made by either party.

35. Stevedore Damage

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite Charterers to appoint a surveyor to assess the extent of such damage.

(a) In case of any and all damage(s) affecting the Vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the Vessel, the Charterers shall immediately arrange for repairs of such damage(s) at their expense and the Vessel is to remain on hire until such repairs are completed and if required passed by the Vessel's classification society.

(b) Any and all damage(s) not described under point (a) above shall be repaired at the Charterers' option, before or after redelivery concurrently with the Owners' work. In such case no hire and/or expenses will be paid to the Owners except and insofar as the time and/or the expenses required for the repairs for which the Charterers are responsible, exceed the time and/or expenses necessary to carry out the Owners' work.

36. Cleaning of Holds

The Charterers shall provide and pay extra for sweeping and/or washing and/or cleaning of holds between voyages and/or between cargoes provided such work can be undertaken by the crew and is permitted by local regulations, at the rate of per hold.

In connection with any such operation, the Owners shall not be responsible if the Vessel's holds are not accepted or passed by the port or any other authority. The Charterers shall have the option to re-deliver the Vessel with unclean/upswep holds against a lumpsum payment of in lieu of cleaning.

37. Taxes

Charterers to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners).

38. Charterers' Colors

The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.

39. **Laid up Returns** 450

The Charterers shall have the benefit of any return insurance premium receivable by the Owners from their underwriters as and when received from underwriters by reason of the Vessel being in port for a minimum period of 30 days if on full hire for this period or pro rata for the time actually on hire. 451
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40. **Documentation** 454

The Owners shall provide any documentation relating to the Vessel that may be required to permit the Vessel to trade within the agreed trade limits, including, but not limited to certificates of financial responsibility for oil pollution, provided such oil pollution certificates are obtainable from the Owners' P & I club, valid international tonnage certificate, Suez and Panama tonnage certificates, valid certificate of registry and certificates relating to the strength and/or serviceability of the Vessel's gear. 455
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41. **Stowaways** 460

(a) (i) The Charterers warrant to exercise due care and diligence in preventing stowaways in gaining access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers. 461
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(ii) If, despite the exercise of due care and diligence by the Charterers, stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers, this shall amount to breach of charter for the consequences of which the Charterers shall be liable and shall hold the Owners harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them. Furthermore, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Charterers' account and the Vessel shall remain on hire. 464
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(iii) Should the Vessel be arrested as a result of the Charterers' breach of charter according to sub-clause (a)(ii) above, the Charterers shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 471
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(b) (i) If, despite the exercise of due care and diligence by the Owners, stowaways have gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Owners' account and the Vessel shall be off hire. 475
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(ii) Should the Vessel be arrested as a result of stowaways having gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, the Owners shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 479
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42. **Smuggling** 483

In the event of smuggling by the Master, Officers and/or crew, the Owners shall bear the cost of any fines, taxes, or imposts levied and the Vessel shall be off hire for any time lost as a result thereof. 484
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43. **Commissions** 486

A commission of _____ percent is payable by the Vessel and the Owners to _____ 487
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on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter. 491

44. **Address Commission** 492

An address commission of _____ percent is payable to _____ 493

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on hire earned and paid under this Charter.	496
45. Arbitration	497
(a) NEW YORK	498
All disputes arising out of this contract shall be arbitrated at New York in the following manner, and subject to U.S. Law:	499
	500
One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.	501
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For disputes where the total amount claimed by either party does not exceed US \$	** 506
the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.	507
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(b) LONDON	509
All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in Shipping, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.	510
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For disputes where the total amount claimed by either party does not exceed US \$	** 517
the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.	518
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<i>*Delete para (a) or (b) as appropriate</i>	520
<i>** Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.</i>	521
	522
If mutually agreed, clauses to , both inclusive, as attached hereto are fully incorporated in this Charter Party.	523
	524

APPENDIX "A"	525
To Charter Party dated	526
Between	527
and	528
	529
Further details of the Vessel:	530

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913-Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

1 *This Charter Party*, made and concluded in day of 19.....

2 Between.....
3 Owners of the good..... {Steamship/Motorship}..... of.....
4 of tons gross register, and tons net register, having engines of indicated horse power
5 and with hull, machinery and equipment in a thoroughly efficient state, and classed
6 at of about cubic feet bale capacity, and about tons of 2240 lbs.
7 deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity,
8 allowing a minimum of fifty tons) on a draft of feet inches on Summer freeboard, inclusive of permanent bunkers,
9 which are of the capacity of about tons of fuel, and capable of steaming, fully laden, under good weather
10 conditions about knots on a consumption of about tons of the best Welsh coal-best grade fuel oil-best grade Diesel oil,
11 now
12 and Charterers of the City of.....

13 *Witnesseth*, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery,
for
14 about
15 within below mentioned trading limits.

16 Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for
17 the fulfillment of this Charter Party.
18 Vessel to be placed at the disposal of the Charterers, at
19

20 in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as
21 the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be
22 ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and
23 donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same
24 time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchan-
25 dise, including petroleum or its products, in proper containers, excluding
26 (vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk,
27 all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports in British North
28 America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico,
and/or
29 Mexico, and/or South America and/or Europe
30 and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between
31 October 31st and May 15th, Hudson Bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the
Baltic,
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33
34
35 as the Charterers or their Agents shall direct, on the following conditions:
36 1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the
37 insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep
38 the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.
39 2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions,
40 Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts
into
41 a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of
42 illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this
43 charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period
44 of six months or more.
45 Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but
46 Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting
boards
47 for dunnage, they making good any damage thereto.
48 3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on

49 board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than tons and not more than
50 tons and to be re-delivered with not less than tons and not more than tons.

51 4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of.....

52 United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and
53 stores, on summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforeaid, and at
54 and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition ,
ordinary

55 wear and tear excepted, to the Owners (unless lost) at
56 unless otherwise mutually agreed. Charterers are to give Owners not less than..... days

57 notice of vessels expected date of re-delivery, and probable port.

58 5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or
59 part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it
becomes

60 due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the
61 hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Char-
62 terers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day
63 following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they
64 to have the privilege of using vessel at once, such time used to count as hire.

65 Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject
66 to 2 1/2% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application
67 of such advances.

68 6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may
69 direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to
safely

70 lie aground.

71 7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also
72 accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew,
73 tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers
74 paying Owrers per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are
75 incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

76 8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and
77 boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and
78 agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for
79 cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

80 9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on
81 receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

82 10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are
83 prosecuted

84 with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the
85 rate of \$1.00 per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally
86 Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

87 11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the
88 Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the
89 Char-

90 terers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the con-
91 sumption of fuel.

92 12. That the Captain shall use diligence in caring for the ventilation of the cargo.

93 13. That the Charterers shall have the option of continuing this charter for a further period of

94

95 on giving written notice thereof to the Owners or their Agents days previous to the expiration of the first-named term, or any declared option.

96 14. That if required by Charterers, time not to commence before and should vessel

97 not have given written notice of readiness on or before but not later than 4 p.m. Charterers or

98 their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

99 15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment,
100 grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause
101 preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by
102 defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in
103 consequence

104 thereof, and all extra expenses shall be deducted from the hire.

105 16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be
106 returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the
107 Seas,

108 104 Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

109 The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the
110 purpose of saving life and property.

107 17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York,
108 one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for
109 the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

110 18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Aver-
111 age contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or
excess

112 deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which
113 might have priority over the title and interest of the owners in the vessel.

114 19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and
115 Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of
116 York-Antwerp Rules 1974, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by
these

117 Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currency shall be exchanged into
118 United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at
119 the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or
120 bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the
carrier

121 or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if
122 required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the
123 carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the
124 place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in
125 United States money.

126 In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause
whatsoever,

127 whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the
128 goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any
sacrifices,

129 losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the
130 goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or
131 ships belonged to strangers.

132 Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

133 20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the
134 cost of replacing same, to be allowed by Owners.

135 21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a
136 convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from
137 time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

138

139

140 22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to three tons, also
141 providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for
142 same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for
143 night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The
144 Charterers to have the use of any gear on board the vessel.

145 23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging;
146 steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers,
winchmen,

147 deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the
148 port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or
149 insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time
occasioned
150 thereby.

151 24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained
152 in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of
Vessels,

153 etc., in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both
154 of which are to be included in all bills of lading issued hereunder:

155

U.S.A. Clause Paramount

156 This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April

157 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of
158 any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading
159 be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

160

Both-to-Blame Collision Clause

161 If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the
162 Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried
163 hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss
164 or liability represents loss of, or damage to, or any claim whatsoever to the owners of said goods, paid or payable by the other or non-
165 carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her
166 owners as part of their claim against the carrying ship or carrier.
167 25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be with-
168 drawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the
169 port or to get out after having completed loading or discharging.
170 26. Nothing herein stated is to be construed as a demise of the vessel to the TimeCharterers. The owners to remain responsible for the
171 navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.
172 27. A commission of 2 1/2 per cent is payable by the Vessel and Owners to
173
174 on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.
175 28. An address commission of 2 1/2 per cent payable to.....on the hire earned and paid under this
Charter.

OWNERS:

CHARTERERS:

Code word for this Charter Party
"SHELLTIME 4"

Issued December 1984 amended December 2003

Time Charter Party
LONDON 20

	IT IS THIS DAY AGREED between _____	1
	of _____ (hereinafter referred to as "Owners"), being owners	2
	of the good motor/steam* vessel called _____	3
	(hereinafter referred to as "the vessel") described as per <u>Clause 1</u> hereof and _____	4
	of _____ (hereinafter referred to as "Charterers"):	5
Description	1. At the date of delivery of the vessel under this charter and throughout the charter period:	6
And	(a) she shall be classed by a Classification Society which is a member of the International	7
Condition of	Association of Classification Societies;	8
Vessel	(b) she shall be in every way fit to carry crude petroleum and/or its products;	9
	(c) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the	10
	service, with her machinery, boilers, hull and other equipment (including but not limited to hull	11
	stress calculator, radar, computers and computer systems) in a good and efficient state;	12
	(d) her tanks, valves and pipelines shall be oil-tight;	13
	(e) she shall be in every way fitted for burning, in accordance with the grades specified in <u>Clause</u>	14
	<u>29</u> hereof:	15
	(i) at sea, fuel oil for main propulsion and fuel oil/marine diesel oil* for auxiliaries;	16
	(ii) in port, fuel oil/marine diesel oil* for auxiliaries;	17
	(f) she shall comply with the regulations in force so as to enable her to pass through the Suez and	18
	Panama Canals by day and night without delay;	19
	(g) she shall have on board all certificates, documents and equipment required from time to time by	20
	any applicable law to enable her to perform the charter service without delay;	21
	(h) she shall comply with the description in the OCIMF Harmonised Vessel Particulars Questionnaire appended	22
	hereto as Appendix A, provided however that if there is any conflict between the provisions of	23
	this questionnaire and any other provision, including this <u>Clause 1</u> , of this charter such other	24
	provisions shall govern;	25
	(i) her ownership structure, flag, registry, classification society and management company shall	26
	not be changed;	27
Safety	(j) Owners will operate:	28
Management	(i) a safety management system certified to comply with the International Safety	29
	Management Code ("ISM Code") for the Safe Operation of Ships and for	30
	Pollution Prevention;	31
	(ii) a documented safe working procedures system (including procedures for the	32
	identification and mitigation of risks);	33
	(iii) a documented environmental management system;	34
	(iv) documented accident/incident reporting system compliant with flag state	35
	requirements;	36
	(k) Owners shall submit to Charterers a monthly written report detailing all accidents/incidents and	37
	environmental reporting requirements, in accordance with the "Shell Safety and Environmental	38
	Monthly Reporting Template" appended hereto as Appendix B;	39
	(l) Owners shall maintain Health Safety Environmental ("HSE") records sufficient to demonstrate	40
	compliance with the requirements of their HSE system and of this charter. Charterers reserve	41
	the right to confirm compliance with HSE requirements by audit of Owners.	42
	(m) Owners will arrange at their expense for a SIRE inspection to be carried out at intervals of six	43
	months plus or minus thirty days.	44
Shipboard	2. (a) At the date of delivery of the vessel under this charter and throughout the charter period:	45
Personnel	(i) she shall have a full and efficient complement of master, officers and crew for a	46
And their	vessel of her tonnage, who shall in any event be not less than the number required	47
Duties	by the laws of the flag state and who shall be trained to operate the vessel and her	48
	equipment competently and safely;	49
	(ii) all shipboard personnel shall hold valid certificates of competence in accordance	50

* Delete as appropriate.

* Delete as appropriate.

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		with the requirements of the law of the flag state;	51
	(iii)	all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995 or any additions, modifications or subsequent versions thereof;	52 53 54 55
	(iv)	there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging places to be carried out efficiently and safely and to enable communications between the vessel and those loading the vessel or accepting discharge there from to be carried out quickly and efficiently;	56 57 58 59 60
	(v)	the terms of employment of the vessel's staff and crew will always remain acceptable to The International Transport Worker's Federation and the vessel will at all times carry a Blue Card;	61 62 63
	(vi)	the nationality of the vessel's officers given in the OCIMF Vessel Particulars Questionnaire referred to in <u>Clause 1(h)</u> will not change without Charterers' prior agreement.	64 65 66
	(b)	Owners guarantee that throughout the charter service the master shall with the vessel's officers and crew, unless otherwise ordered by Charterers;	67 68
		(i) prosecute all voyages with the utmost despatch;	69
		(ii) render all customary assistance; and	70
		(iii) load and discharge cargo as rapidly as possible when required by Charterers or their agents to do so, by night or by day, but always in accordance with the laws of the place of loading or discharging (as the case may be) and in each case in accordance with any applicable laws of the flag state.	71 72 73 74
Duty to Maintain	3. (a)	Throughout the charter service Owners shall, whenever the passage of time, wear and tear or any event (whether or not coming within <u>Clause 27</u> hereof) requires steps to be taken to maintain or restore the conditions stipulated in <u>Clauses 1</u> and <u>2(a)</u> , exercise due diligence so to maintain or restore the vessel.	75 76 77 78
	(b)	If at any time whilst the vessel is on hire under this charter the vessel fails to comply with the requirements of <u>Clauses 1</u> , <u>2(a)</u> or <u>10</u> then hire shall be reduced to the extent necessary to indemnify Charterers for such failure. If and to the extent that such failure affects the time taken by the vessel to perform any services under this charter, hire shall be reduced by an amount equal to the value, calculated at the rate of hire, of the time so lost. Any reduction of hire under this sub-Clause (b) shall be without prejudice to any other remedy available to Charterers, but where such reduction of hire is in respect of time lost, such time shall be excluded from any calculation under <u>Clause 24</u> .	79 80 81 82 83 84 85 86
	(c)	If Owners are in breach of their obligations under <u>Clause 3(a)</u> , Charterers may so notify Owners in writing and if, after the expiry of 30 days following the receipt by Owners of any such notice, Owners have failed to demonstrate to Charterers' reasonable satisfaction the exercise of due diligence as required in <u>Clause 3(a)</u> , the vessel shall be off-hire, and no further hire payments shall be due, until Owners have so demonstrated that they are exercising such due diligence.	87 88 89 90 91
	(d)	Owners shall advise Charterers immediately, in writing, should the vessel fail an inspection by, but not limited to, a governmental and/or port state authority, and/or terminal and/or major charterer of similar tonnage. Owners shall simultaneously advise Charterers of their proposed course of action to remedy the defects which have caused the failure of such inspection.	92 93 94 95
	(e)	If, in Charterers reasonably held view:	96
		(i) failure of an inspection, or,	97
		(ii) any finding of an inspection,	98
		referred to in <u>Clause 3 (d)</u> , prevents normal commercial operations then Charterers have the option to place the vessel off-hire from the date and time that the vessel fails such inspection, or becomes commercially inoperable, until the date and time that the vessel passes a re-inspection by the same organisation, or becomes commercially operable, which shall be in a position no less favourable to Charterers than at which she went off-hire.	99 100 101 102 103
	(f)	Furthermore, at any time while the vessel is off-hire under this <u>Clause 3</u> (with the exception of <u>Clause 3(e)(ii)</u>), Charterers have the option to terminate this charter by giving notice in writing with effect from the date on which such notice of termination is received by Owners or from any later date stated in such notice. This sub-Clause (f) is without prejudice to any rights of Charterers or obligations of Owners under this charter or otherwise (including without limitation Charterers' rights under <u>Clause 21</u> hereof).	104 105 106 107 108 109

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Period,	4.	(a)	Owners agree to let and Charterers agree to hire the vessel for a period of _____	110
Trading			plus or minus _____ days in Charterers' option, commencing from the time and date of delivery	111
Limits and			of the vessel, for the purpose of carrying all lawful merchandise (subject always to <u>Clause 28</u>)	112
Safe Places			including in particular;	113
			_____	114
			in any part of the world, as Charterers shall direct, subject to the limits of the current British	115
			Institute Warranties and any subsequent amendments thereof. Notwithstanding the foregoing,	116
			but subject to <u>Clause 35</u> , Charterers may order the vessel to ice-bound waters or to any part of	117
			the world outside such limits provided that Owner's consent thereto (such consent not to be	118
			unreasonably withheld) and that Charterers pay for any insurance premium required by the	119
			vessel's underwriters as a consequence of such order.	120
	(b)		Any time during which the vessel is off-hire under this charter may be added to the charter	121
			period in Charterers' option up to the total amount of time spent off-hire. In such cases the rate	122
			of hire will be that prevailing at the time the vessel would, but for the provisions of this Clause,	123
			have been redelivered.	124
	(c)		Charterers shall use due diligence to ensure that the vessel is only employed between and at safe	125
			places (which expression when used in this charter shall include ports, berths, wharves, docks,	126
			anchorage, submarine lines, alongside vessels or lighters, and other locations including	127
			locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in	128
			this or any other clause of this charter, Charterers do not warrant the safety of any place to	129
			which they order the vessel and shall be under no liability in respect thereof except for loss or	130
			damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the	131
			vessel shall be loaded and discharged at any places as Charterers may direct, provided that	132
			Charterers shall exercise due diligence to ensure that any ship-to-ship transfer operations shall	133
			conform to standards not less than those set out in the latest published edition of the	134
			ICS/OCIMF Ship-b-Ship Transfer Guide.	135
	(d)		Unless otherwise agreed, the vessel shall be delivered by Owners dropping outward pilot at a	136
			port in	137
			_____	138
			at Owners' option and redelivered to Owners dropping outward pilot at a port in	139
			_____	140
			at Charterers' option.	141
	(e)		The vessel will deliver with last cargo(es) of _____ and will redeliver with last cargo(es) of _____	142
	(f)		Owners are required to give Charterers _____ days prior notice of delivery and Charterers are	143
			required to give Owners _____ days prior notice of redelivery.	144
Laydays/ Cancelling	5.		The vessel shall not be delivered to Charterers before _____	145
			and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their	146
			disposal on or before _____	147
Owners to Provide	6.		Owners undertake to provide and to pay for all provisions, wages (including but not limited to all	148
			overtime payments), and shipping and discharging fees and all other expenses of the master, officers	149
			and crew; also, except as provided in <u>Clauses 4 and 34</u> hereof, for all insurance on the vessel, for all	150
			deck, cabin and engine-room stores, and for water; for all drydocking, overhaul, maintenance and	151
			repairs to the vessel; and for all fumigation expenses and de-rat certificates. Owners' obligations under	152
			this <u>Clause 6</u> extend to all liabilities for customs or import duties arising at any time during the	153
			performance of this charter in relation to the personal effects of the master, officers and crew, and in	154
			relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for	155
			and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been	156
			compelled to pay in respect of any such liability. Any amounts allowable in general average for wages	157
			and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a	158
			Period when the vessel is on-hire.	159
Charterers to Provide	7.	(a)	Charterers shall provide and pay for all fuel (except fuel used for domestic services), towage	160
			and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and	161
			unloading cargoes, canal dues and all charges other than those payable by Owners in	162
			accordance with <u>Clause 6</u> hereof, provided that all charges for the said items shall be for	163
			Owners' account when such items are consumed, employed or incurred for Owners' purposes or	164
			while the vessel is off-hire (unless such items reasonably relate to any service given or distance	165
			made good and taken into account under <u>Clause 21 or 22</u>); and provided further that any fuel	166
			used in connection with a general average sacrifice or expenditure shall be paid for by Owners.	167
	(b)		In respect of bunkers consumed for Owners' purposes these will be charged on each occasion	168

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		by Charterers on a "firstin-firstout" basis valued on the prices actually paid by Charterers.	169
	(c)	If the trading limits of this charter include ports in the United States of America and/or its protectorates then Charterers shall reimburse Owners for port specific charges relating to additional premiums charged by providers of oil pollution cover, when incurred by the vessel calling at ports in the United States of America and/or its protectorates in accordance with Charterers orders.	170 171 172 173 174
Rate of Hire	8.	Subject as herein provided, Charterers shall pay for the use and hire of the vessel at the rate of United States Dollars _____ per day, and pro rata for any part of a day, from the time and date of her delivery (local time) to Charterers until the time and date of redelivery (local time) to Owners.	175 176 177 178
Payment of Hire	9.	Subject to Clause 3 (c) and 3 (e), payment of hire shall be made in immediately available funds to: _____ Account: _____ _____	179 180 181 182 183 184
		in United States Dollars per calendar month in advance, less:	185
	(i)	any hire paid which Charterers reasonably estimate to relate to off-hire periods, and;	186
	(ii)	any amounts disbursed on Owners' behalf, any advances and commission thereon, and charges which are for Owners' account pursuant to any provision hereof, and;	187 188
	(iii)	any amounts due or reasonably estimated to become due to Charterers under <u>Clause 3 (c)</u> or <u>24</u> hereof,	189 190
		any such adjustments to be made at the due date for the next monthly payment after the facts have been ascertained. Charterers shall not be responsible for any delay or error by Owners' bank in crediting Owners' account provided that Charterers have made proper and timely payment.	191 192 193 194
		In default of such proper and timely payment:	195
	(a)	Owners shall notify Charterers of such default and Charterers shall within seven days of receipt of such notice pay to Owners the amount due, including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise; and;	196 197 198 199
	(b)	Interest on any amount due but not paid on the due date shall accrue from the day after that date up to and including the day when payment is made, at a rate per annum which shall be 1% above the U.S. Prime Interest Rate as published by the Chase Manhattan Bank in New York at 12.00 New York time on the due date, or, if no such interest rate is published on that day, the interest rate published on the next preceding day on which such a rate was so published, computed on the basis of a 360 day year of twelve 30-day months, compounded semi-annually.	200 201 202 203 204 205
Space Available to Charterers	10.	The whole reach, burthen and decks on the vessel and any passenger accommodation (including Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed _____ tonnes at any time during the charter period.	206 207 208 209 210
Segregated Ballast	11.	In connection with the Council of the European Union Regulation on the Implementation of IMO Resolution A747(18) Owners will ensure that the following entry is made on the International Tonnage Certificate (1969) under the section headed "remarks": "The segregated ballast tanks comply with the Regulation 13 of Annex 1 of the International Convention for the prevention of pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto, and the total tonnage of such tanks exclusively used for the carriage of segregated water ballast is _____. The reduced gross tonnage which should be used for the calculation of tonnage based fees is _____".	211 212 213 214 215 216 217 218
Instructions And Logs	12.	Charterers shall from time to time give the master all requisite instructions and sailing directions, and the master shall keep a full and, correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall when required furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.	219 220 221 222 223 224
Bills of Lading	13.	(a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign Bills of Lading as Charterers or their agents may direct (subject always to <u>Clauses 35 (a)</u> and	225 226 227

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	40) without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise;	228
	(i) from signing Bills of Lading in accordance with the directions of Charterers or their agents, to the extent that the terms of such Bills of Lading fail to conform to the requirements of this charter, or (except as provided in <u>Clause 13 (b)</u> from the master otherwise complying with Charterers' or their agents' orders;	229
	(ii) from any irregularities in papers supplied by Charterers or their agents.	230
(b)	If Charterers by telex, facsimile or other form of written communication that specifically refers To this Clause request Owners to discharge a quantity of cargo either without Bills of Lading and/or at a discharge place other than that named in a Bill of Lading and/or that is different from the Bill of Lading quantity, then Owners shall discharge such cargo in accordance with Charterer's instructions in consideration of receiving the following indemnity which shall be deemed to be given by Charterers on each and every such occasion and which is limited in value to 200% of the CIF value of the cargo carried on board;	231
	" (i) Charterers shall indemnify Owners and Owners' servants and agents in respect of any liability loss or damage of whatsoever nature (including legal costs as between attorney or solicitor and client and associated expenses) which Owners may sustain by reason of delivering such cargo in accordance with Charterers' request.	232
	(ii) If any proceeding is commenced against Owners or any of Owners' servants or agents in connection with the vessel having delivered cargo in accordance with such request, Charterers shall provide Owners or any of Owners' servants or agents from time to time on demand with sufficient funds to defend the said proceedings.	233
	(iii) If the vessel or any other vessel or property belonging to Owners should be arrested or detained, or if the arrest or detention thereof should be threatened, by reason of discharge in accordance with Charterers instruction as aforesaid, Charterers shall provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such vessel or property and Charterers shall indemnify Owners in respect of any loss, damage or expenses caused by such arrest or detention whether or not same may be justified.	234
	(iv) Charterers shall, if called upon to do so at any time while such cargo is in Charterers' possession, custody or control, redeliver the same to Owners.	235
	(v) As soon as all original Bills of Lading for the above cargo which name as discharge port the place where delivery actually occurred shall have arrived and/or come into Charterers' possession, Charterers shall produce and deliver the same to Owners whereupon Charterers' liability hereunder shall cease.	236
	Provided however, if Charterers have not received all such original Bills of Lading by 24.00 hours on the day 36 calendar months after the date of discharge, that this indemnity shall terminate at that time unless before that time Charterers have received from Owners written notice that:	237
	aaa) Some person is making a claim in connection with Owners delivering cargo pursuant to Charterers request or,	238
	bbb) Legal proceedings have been commenced against Owners and/or carriers and/or Charterers and/or any of their respective servants or agents and/or the vessel for the same reason.	239
	When Charterers have received such a notice, then this indemnity shall continue in force until such claim or legal proceedings are settled. Termination of this indemnity shall not prejudice any legal rights a party may have outside this indemnity.	240
	(vi) Owners shall promptly notify Charterers if any person (other than a person to whom Charterers ordered cargo to be delivered) claims to be entitled to such cargo and/or if the vessel or any other property belonging to Owners is arrested by reason of any such discharge of cargo.	241
	vii) This indemnity shall be governed and construed in accordance with the English law and each and any dispute arising out of or in connection with this indemnity shall be subject to the jurisdiction of the High Court of Justice of England".	242
(c)	Owners warrant that the Master will comply with orders to carry and discharge against one or more Bills of Lading from a set of original negotiable Bills of Lading should Charterers so require.	243
Conduct of	14. If Charterers complain of the conduct of the master or any of the officers or crew, Owners shall	244
Vessel's	immediately investigate the complaint. If the complaint proves to be well founded, Owners shall,	245
Personnel	without delay, make a change in the appointments and Owners shall in any event communicate the result of their investigations to Charterers as soon as possible.	246

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Bunkers at Delivery and Redelivery	15.	Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery (whether it occurs at the end of the charter or on the earlier termination of this charter) accept and pay for all bunkers remaining on board, at the price actually paid, on a "first-in-first-out" basis. Such prices are to be supported by paid invoices.	287
		Vessel to be delivered to and redelivered from the charter with, at least, a quantity of bunkers on board sufficient to reach the nearest main bunkering port.	288
		Notwithstanding anything contained in this charter all bunkers on board the vessel shall, throughout the duration of this charter, remain the property of Charterers and can only be purchased on the terms specified in the charter at the end of the charter period or, if earlier, at the termination of the charter.	289
Stevedores, Pilots, Tugs	16.	Stevedores, when required, shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers their agents or any affiliated company); provided, however, that;	290
	(a)	the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and;	291
	(b)	Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefor from stevedores.	292
Super-Numeraries	17.	Charterers may send representatives in the vessel's available accommodation upon any voyage made under this charter, Owners finding provisions and all requisites as supplied to officers, except alcohol. Charterers paying at the rate of United States Dollars 15 (fifteen) per day for each representative while on board the vessel.	293
Sub-letting/ Assignment/ Novation	18.	Charterers may sub-let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter. Additionally Charterers may assign or novate this charter to any company of the Royal Dutch/ Shell Group of Companies.	294
Final Voyage	19.	If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the vessel before the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers' reasonable estimate of the time necessary to complete Charterers' programme up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for;	295
	(a)	disbursements on Owners' behalf or charges for Owners' account pursuant to any provision hereof, and;	296
	(b)	bunkers on board at redelivery pursuant to <u>Clause 15</u> .	297
		Promptly after redelivery any overpayment shall be refunded by Owners or any underpayment made good by Charterers.	298
		If at the time this charter would otherwise terminate in accordance with <u>Clause 4</u> the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.	299
Loss of Vessel	20.	Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel's underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port.	300
Off-hire	21.	(a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner);	301
	(i)	due to deficiency of personnel or stores; repairs; gas-freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and	302

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		such loss continues for more than three consecutive hours (if resulting from interruption in the vessel's service) or cumulates to more than three hours (if resulting from partial loss of service); or;	346
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	(ii)	due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or;	349
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	(iii)	for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under <u>Clause 17</u> hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or;	351
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	(iv)	due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or;	355
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	(v)	due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); then;	360
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	(b)	If the vessel fails to proceed at any guaranteed speed pursuant to <u>Clause 24</u> , and such failure arises wholly or partly from any of the causes set out in <u>Clause 21(a)</u> above, then the period for which the vessel shall be off-hire under this <u>Clause 21</u> shall be the difference between;	369
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	(i)	the time the vessel would have required to perform the relevant service at such guaranteed speed, and;	372
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	(ii)	the time actually taken to perform such service (including any loss of time arising from interruption in the performance of such service).	374
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		For the avoidance of doubt, all time included under (ii) above shall be excluded from any computation under <u>Clause 24</u> .	376
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	(c)	Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes without limitation putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or purpose mentioned in <u>Clause 21(a)</u> , the vessel shall be off-hire from the commencement of such deviation until the time when she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced, provided, however, that any service given or distance made good by the vessel whilst so off-hire shall be taken into account in assessing the amount to be deducted from hire. If the vessel, for any cause or purpose mentioned in <u>Clause 21 (a)</u> , puts into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress of weather hire shall continue to be due and payable during any time lost thereby.	378
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	(d)	If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence of such hostilities find it commercially impracticable to employ the vessel and have given Owners written notice thereof then from the date of receipt by Owners of such notice until the termination of such commercial impracticability the vessel shall be off-hire and Owners shall have the right to employ the vessel on their own account.	390
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	(e)	Time during which the vessel is off-hire under this charter shall count as part of the charter period except where Charterers declare their option to add off-hire periods under <u>Clause 4 (b))</u> .	395
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	(f)	All references to "time" in this charter party shall be references to local time except where otherwise stated.	397
			398
Periodical	22. (a)	Owners have the right and obligation to drydock the vessel at regular intervals of _____	399
Drydocking		On each occasion Owners shall propose to Charterers a date on which they wish to drydock the vessel, not less than _____ before such date, and Charterers shall offer a port for such periodical drydocking and shall take all reasonable steps to make the vessel available as near to such date as practicable.	400
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		Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers	404

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	The service speed of the vessel is _____ knots laden and _____ knots in ballast and in the absence of Charterers' orders to the contrary the vessel shall proceed at the service speed. However if more than one laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to steam at any speed within the range set out in the table (the "ordered speed").	464 465 466 467 468
	If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, and the average speed actually attained by the vessel during the currency of such order exceeds such ordered speed plus 0.5 knots (the "maximum recognised speed"), then for the purpose of calculating a decrease of hire under this <u>Clause 24</u> the maximum recognised speed shall be used in place of the average speed actually attained.	469 470 471 472 473
	For the purposes of this charter the "guaranteed speed" at any time shall be the then-current ordered speed or the service speed, as the case may be.	474 475
	The average speeds and bunker consumptions shall for the purposes of this <u>Clause 24</u> be calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each period stipulated in <u>Clause 24 (c)</u> , but excluding any time during which the vessel is (or but for <u>Clause 22 (b) (i)</u> would be) off-hire and also excluding "Adverse Weather Periods", being;	476 477 478 479 480
	(i) any periods during which reduction of speed is necessary for safety in congested waters or in poor visibility;	481 482
	(ii) any days, noon to noon, when winds exceed force 8 on the Beaufort Scale for more than 12 hours.	483 484
	(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) the vessel falls below or exceeds the performance guaranteed in <u>Clause 24 (a)</u> then if such shortfall or excess results;	485 486 487
	(i) from a reduction or an increase in the average speed of the vessel, compared to the speed guaranteed in <u>Clause 24 (a)</u> , then an amount equal to the value at the hire rate of the time so lost or gained, as the case may be, shall be included in the performance calculation;	488 489 490
	(ii) from an increase or a decrease in the total bunkers consumed, compared to the total bunkers which would have been consumed had the vessel performed as guaranteed in <u>Clause 24 (a)</u> , an amount equivalent to the value of the additional bunkers consumed or the bunkers saved, as the case may be, based on the average price paid by Charterers for the vessel's bunkers in such period, shall be included in the performance calculation.	491 492 493 494 495
	The results of the performance calculation for laden and ballast mileage respectively shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather Periods, by dividing such addition or deduction by the number of miles over which the performance has been calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather Periods, in order to establish the total performance calculation for such period.	496 497 498 499 500 501
	Reduction of hire under the foregoing <u>sub-Clause (b)</u> shall be without prejudice to any other remedy available to Charterers.	502 503
	(c) Calculations under this <u>Clause 24</u> shall be made for the yearly periods terminating on each successive anniversary of the date on which the vessel enters service, and for the period between the last such anniversary and the date of termination of this charter if less than a year. Claims in respect of reduction of hire arising under this Clause during the final year or part year of the charter period shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period. Any necessary adjustment after this charter terminates shall be made by payment by Owners to Charterers or by Charterers to Owners as the case may require.	504 505 506 507 508 509 510 511
	(d) Owners and Charterers agree that this <u>Clause 24</u> is assessed on the basis that Owners are not entitled to additional hire for performance in excess of the speeds and consumptions given in this <u>Clause 24</u> .	512 513 514
Salvage	25. Subject to the provisions of <u>Clause 21</u> hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this <u>Clause 25</u> . All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share.	515 516 517 518 519 520 521
Lien	26. Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any	522

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	amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.	523 524 525
Exceptions	27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that <u>Clauses 1, 2, 3 and 24</u> hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restraints of labour, civil commotions or arrest or restraint of princes, rulers or people.	526 527 528 529 530 531 532 533 534 535 536 537
	(b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property.	538 539
	(c) <u>Clause 27(a)</u> shall not apply to, or affect any liability of Owners or the vessel or any other relevant person in respect of;	540 541
	(i) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or;	542 543 544 545
	(ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules or the Hamburg Rules, as the case may be, which ought pursuant to <u>Clause 38</u> hereof to have been incorporated in the relevant Bill of Lading (whether or not such Rules were so incorporated) or, if no such Bill of Lading is issued, to the Hague-Visby Rules unless the Hamburg Rules compulsorily apply in which case to the Hamburg Rules.	546 547 548 549 550 551 552
	(d) In particular and without limitation, the foregoing <u>subsections (a) and (b)</u> of this Clause shall not apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire.	553 554 555
Injurious Cargoes	28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers' account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments.	556 557 558 559
Grade of Bunkers	29. Charterers shall supply fuel oil with a maximum viscosity of _____ centistokes at 50 degrees centigrade and/or marine diesel oil for main propulsion and fuel oil with a maximum viscosity of _____ centistokes at 50 degrees centigrade and/or diesel oil for the auxiliaries. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof. Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with ISO Standard 8217 for Marine Residual Fuels and Marine Distillate Fuels as applicable.	560 561 562 563 564 565 566 567
Disbursements	30. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of two and a half per cent, and all such advances and commission shall be deducted from hire.	568 569 570
Laying-up	31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay up. Charterers may exercise the said option any number of times during the charter period.	571 572 573 574 575
Requisition	32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition, and any hire paid by such governments in respect of such requisition period shall be for Owners' account. Any such requisition period shall count as part of the charter period.	576 577 578 579
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: U.S.A., the countries or republics having been part of the former U.S.S.R (except that declaration of war or	580 581

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		hostilities solely between any two or more of the countries or republics having been part of the former USSR shall be exempted), P.R.C., U.K., Netherlands, then both Owners and Charterers shall have the right to cancel this charter.	582 583 584
Additional War Expenses	34.	If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war, Charterers shall reimburse Owners for any additional insurance premia, crew bonuses and other expenses which are reasonably incurred by Owners as a consequence of such orders, provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers in respect of any claims by Owners under their war risk insurance arising out of compliance with such orders.	585 586 587 588 589 590 591
		Any payments by Charterers under this clause will only be made against proven documentation. Any discount or rebate refunded to Owners, for whatever reason, in respect of additional war risk premium shall be passed on to Charterers.	592 593 594
War Risks	35.	(a) The master shall not be required or bound to sign Bills of Lading for any place which in his or Owners' reasonable opinion is dangerous or impossible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.	595 596 597 598
		(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in Clause 35(a) or by the operation of international law, dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents shall be immediately notified in writing or by radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril). If any place of discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.	599 600 601 602 603 604 605 606 607 608 609 610 611 612
		(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation. If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.	613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628
		Charterers shall procure that all Bills of Lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.	629 630
Both to Blame Collision Clause	36.	If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply: "If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their	631 632 633 634 635 636 637 638 639 640

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		claim against the carrying ship or carrier."	641
		"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship	642
		or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of	643
		a collision or contact."	644
		Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in	645
		the foregoing terms to be applicable where the liability for any collision in which the vessel is	646
		involved falls to be determined in accordance with the laws of the United States of America.	647
New Jason	37.	General average contributions shall be payable according to York/Antwerp Rules, 1994, as amended	648
Clause		from time to time, and shall be adjusted in London in accordance with English law and practice but	649
		should adjustment be made in accordance with the law and practice of the United States of America,	650
		the following position shall apply:	651
		"In the event of accident, danger, damage or disaster before or after the commencement of the	652
		voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the	653
		consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo,	654
		shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the	655
		payment of any sacrifices, losses or expenses of a general average nature that may be made or	656
		incurred and shall pay salvage and special charges incurred in respect of the cargo."	657
		"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said	658
		salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem	659
		sufficient to cover the estimated contribution of the cargo and any salvage and special charges	660
		thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the	661
		carrier before delivery."	662
		Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in	663
		the foregoing terms, to be applicable where adjustment of general average is made in accordance	664
		with the laws and practice of the United States of America.	665
Clause	38.	Charterers shall procure that all Bills of Lading issued pursuant to this charter shall contain the	666
Paramount		following:	667
		"(1)Subject to <u>sub-clause (2) or (3)</u> hereof, this Bill of Lading shall be governed by, and have	668
		effect subject to, the rules contained in the International Convention for the Unification of Certain	669
		Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague	670
		Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the	671
		"Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the	672
		carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities	673
		under the Hague-Visby Rules."	674
		"(2)If there is governing legislation which applies the Hague Rules compulsorily to this Bill of	675
		Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject	676
		to the Hague Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier	677
		of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the	678
		Hague Rules."	679
		"(3) If there is governing legislation which applies the United Nations Convention on the Carriage	680
		of Goods by Sea 1978 (hereafter the "Hamburg Rules") compulsorily to this Bill of Lading, to the	681
		exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hamburg	682
		Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his	683
		rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg	684
		Rules."	685
		"(4)If any term of this Bill of Lading is repugnant to the Hague-Visby Rules, or Hague Rules, or	686
		Hamburg Rules, as applicable, such term shall be void to that extent but no further."	687
		"(5)Nothing in this Bill of Lading shall be construed as in any way restricting, excluding or	688
		waiving the right of any relevant party or person to limit his liability under any available legislation	689
		and/or law."	690
Insurance/	39.	Owners warrant that the vessel is now, and will, throughout the duration of the charter:	691
ITOPF		(a) be owned or demise chartered by a member of the International Tanker Owners Pollution	692
		Federation Limited;	693
		(b) be properly entered in _____ P & I Club, being a member of	694
		the International Group of P and I Clubs;	695
		(c) have in place insurance cover for oil pollution for the maximum on offer through the	696
		International Group of P&I Clubs but always a minimum of United States Dollars	697
		1,000,000,000 (one thousand million);	698
		(d) have in full force and effect Hull and Machinery insurance placed through reputable brokers	699

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Code word for this Charter Party
"SHELLTIME 4"

Issued December 1984 amended December 2003

		on Institute Time Clauses or equivalent for the value of United States Dollars _____ as from	700
		time to time may be amended with Charterers' approval, which shall not be unreasonably	701
		withheld.	702
		Owners will provide, within a reasonable time following a request from Charterers to do so,	703
		documented evidence of compliance with the warranties given in this <u>Clause 39</u> .	704
Export	40.	The master shall not be required or bound to sign Bills of Lading for the carriage of cargo to any	705
Restrictions		place to which export of such cargo is prohibited under the laws, rules or regulations of the country	706
		in which the cargo was produced and/or shipped.	707
		Charterers shall procure that all Bills of Lading issued under this charter shall contain the following	708
		clause:	709
		"If any laws rules or regulations applied by the government of the country in which the cargo was	710
		produced and/or shipped, or any relevant agency thereof, impose a prohibition on export of the cargo	711
		to the place of discharge designated in or ordered under this Bill of Lading, carriers shall be entitled	712
		to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the	713
		cargo, or such part of it as may be affected, which alternative place shall not be subject to the	714
		prohibition, and carriers shall be entitled to accept orders from cargo owners to proceed to and	715
		discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72	716
		hours after they or their agents have received from carriers notice of such prohibition, carriers shall	717
		be at liberty to discharge the cargo or such part of it as may be affected by the prohibition at any safe	718
		place on which they or the master may in their or his absolute discretion decide and which is not	719
		subject to the prohibition, and such discharge shall constitute due performance of the contract	720
		contained in this Bill of Lading so far as the cargo so discharged is concerned".	721
		The foregoing provision shall apply mutatis mutandis to this charter, the references to a Bill of	722
		Lading being deemed to be references to this charter.	723
Business	41.	Owners will co-operate with Charterers to ensure that the "Business Principles", as amended	724
Principles		from time to time, of the Royal Dutch/Shell Group of Companies, which are posted on the Shell	725
		Worldwide Web (www.Shell.com), are complied with.	726
Drugs and	42.	(a) Owners warrant that they have in force an active policy covering the vessel which meets or	727
Alcohol		exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol On	728
		Board Ship" as published by the Oil Companies International Marine Forum (OCIMF) dated	729
		January 1990 (or any subsequent modification, version, or variation of these guidelines) and	730
		that this policy will remain in force throughout the charter period, and Owners will exercise	731
		due diligence to ensure the policy is complied with.	732
		(b) Owners warrant that the current policy concerning drugs and alcohol on board is acceptable	733
		to ExxonMobil and will remain so throughout the charter period.	734
Oil Major	43.	If, at any time during the charter period, the vessel becomes unacceptable to any Oil Major, Charterers	735
Acceptability		shall have the right to terminate the charter.	736
Pollution and	44.	Owners are to advise Charterers of organisational details and names of Owners personnel together	737
Emergency		with their relevant telephone/facsimile/e-mail/telex numbers, including the names and contact details	738
Response		of Qualified Individuals for OPA 90 response, who may be contacted on a 24 hour basis in the event of	739
		oil spills or emergencies.	740
ISPS	45.	(a) (i) From the date of coming into force of the International Code for the Security of Ships	741
Code/US		and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS	742
MTSA 2002		Code) and the US Maritime Transportation Security Act 2002 (MTSA) in relation to the	743
		Vessel and thereafter during the currency of this charter, Owners shall procure that both	744
		the Vessel and "the Company" (as defined by the ISPS Code) and the "owner" (as	745
		defined by the MTSA) shall comply with the requirements of the ISPS Code relating to	746
		the Vessel and "the Company" and the requirements of MTSA relating to the vessel and	747
		the "owner". Upon request Owners shall provide documentary evidence of compliance	748
		with this <u>Clause 45(a) (i)</u> .	749
		(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by	750
		failure on the part of Owners or "the Company"/"owner" to comply with the	751
		requirements of the ISPS Code/MTSA or this Clause shall be for Owners' account.	752
	(b)	(i) Charterers shall provide Owners/Master with their full style contact details and shall	753
		ensure that the contact details of all sub-charterers are likewise provided to	754
		Owners/Master. Furthermore, Charterers shall ensure that all sub-charter parties they	755
		enter into during the period of this charter contain the following provision:	756
		"The Charterers shall provide the Owners with their full style contact details and, where	757
		sub-letting is permitted under the terms of the charter party, shall ensure that the	758

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		contact details of all sub-charterers are likewise provided to the Owners".	759
	(ii)	Except as otherwise provided in this charter, loss, damage, expense or delay, caused by failure on the part of Charterers to comply with this <u>sub-Clause 45(b)</u> shall be for Charterers' account.	760 761 762
	(c)	Notwithstanding anything else contained in this charter costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for Charterers' account, unless such costs or expenses result solely from Owners' negligence in which case such costs or expenses shall be for Owners' account. All measures required by Owners to comply with the security plan required by the ISPS Code/MTSA shall be for Owners' account.	763 764 765 766 767 768 769
	(d)	Notwithstanding any other provision of this charter, the vessel shall not be offhire where there is a loss of time caused by Charterers' failure to comply with the ISPS Code/MTSA (when in force).	770 771 772
	(e)	If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	773 774
Law and Litigation	46. (a)	This charter shall be construed and the relations between the parties determined in accordance with the laws of England.	775 776
	(b)	All disputes arising out of this charter shall be referred to Arbitration in London in accordance with the Arbitration Act 1996 (or any re-enactment or modification thereof for the time being in force) subject to the following appointment procedure:	777 778 779
	(i)	The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so.	780 781
	(ii)	If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.	782 783 784 785 786
	(iii)	If a party fails to appoint an arbitrator within the time specified in (ii) (the "Party in Default"), the party who has duly appointed his arbitrator shall give notice in writing to the Party in Default that he proposes to appoint his arbitrator to act as sole arbitrator.	787 788 789
	(iv)	If the Party in Default does not within 7 days of the notice given pursuant to (iii) make The required appointment and notify the other party that he has done so the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.	790 791 792 793
	(v)	Any Award of the arbitrator(s) shall be final and binding and not subject to appeal.	794
	(vi)	For the purposes of this <u>clause 46(b)</u> any requests or notices in writing shall be sent by fax, e-mail or telex and shall be deemed received on the day of transmission.	795 796
	(c)	It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that that party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.	797 798 799 800
Confidentiality	47.	All terms and conditions of this charter arrangement shall be kept private and confidential	801
Construction	48.	The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof.	802 803
	Appendix A:	OCIMF Vessel Particulars Questionnaire for the vessel, as attached, shall be incorporated herein.	804 805
	Appendix B:	Shell Safety and Environmental Monthly Reporting Template, as attached, shall be incorporated herein.	806 807
	Additional Clauses:	As attached, shall be incorporated herein.	808
	SIGNED FOR OWNERS	SIGNED FOR CHARTERERS	809
	FULL NAME _____	FULL NAME _____	810
	POSITION _____	POSITION _____	811

SHELLTIME 4

Shell Safety and Environmental Monthly Reporting Template	Return to: Charterers marked for the attention of: Fax: Phone: Email:

Time Chartered Vessel Name	
Management Company	
Month	

OIL SPILL INCIDENTS (Any amount entering the water) Approximate volume in barrels and brief details	
ANY OTHER INCIDENTS resulting in or having potential for injury, damage or loss	

FOR DEFINITIONS OF INCIDENT CLASSIFICATION AND EXPOSURE HOURS PLEASE SEE OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF) BOOKLET "Marine Injury Reporting Guidelines" (February 1997) or any subsequent version, amendment, or variation to them

A. No. Of crew:	
B. Days in month / period:	
EXPOSURE HOURS (A x B x 24):	

LOST TIME INJURIES (LTI'S) including brief details / any treatments

TOTAL RECORDABLE CASE INJURIES (TRC'S) including brief details / any treatments

PLEASE CONFIRM YOUR RETURN CONTACT DETAILS:

Name:
Phone:
Fax:
Email:

Return for each calendar month – by 10th of following month.

Shell Safety and Environmental Monthly Reporting Template	Return to:
	Charterers marked for the attention of:
	Fax:
	Phone:
	Email:

Time Chartered Vessel Name	
Management Company	
Month	

Notes : Please enter zero i.e. "0" where any amount is nil (rather than entering "Nil" or N/A")
 Please do not enter a % sign in the entry boxes for Fuel Sulphur content i.e. if it is 3% then just enter "3".
 Cargo loaded for LNG vessels should also be reported as tonnes and not as m³.

Monthly Consumption – Fuel Oil mt	
Sulphur content of Fuel Oil (percentage weight)	
Monthly Consumption – Diesel and/or Gas Oil mt	
Monthly Consumption (LNG ships only) – Fuel Gases mt	

Please do not enter a % sign in the entry boxes for Fuel Sulphur content i.e. if it is 3% then just enter 3".
 Cargo loaded for LNG vessels should also be reported as tonnes and not as m3.

Monthly Distance Steamed	
Monthly Cargo Loaded - mt	

Refrigerant Gas Consumption - Type	
Refrigerant Gas Consumption – Quantity (litres)	

Garbage Disposal m3 – At Sea	
Garbage Disposal m3 – Incinerated on Board	
Garbage Disposal m3 – Sent Ashore	

OIL SPILL INCIDENTS	
(Other than those entering the water) Approx. volume & brief details	

Return for each calendar month – by 10th of following month.



BPTIME3

TIME CHARTERPARTY



PRODUCED IN ASSOCIATION WITH
THE BALTIC AND INTERNATIONAL MARITIME COUNCIL (BIMCO)

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TIME CHARTERPARTY

Date _____

PREAMBLE

- 1 *It is this day agreed between* _____
2 _____
3 of _____
4 ("Owners") being owners/disponent owners of the motor/steam tank vessel (delete as applicable) called
5 _____ ("Vessel")
6 and _____
7 of _____
8 _____
9 ("Charterers") that the service for which provision is herein made shall be subject to the terms and
10 conditions of this Charter which comprises this PREAMBLE, PART 1 and PART 2, together with the
11 OCIMF Vessel Particulars Questionnaire current at the date hereof and the BPTIME3 Questionnaire
12 (together referred to as the "Questionnaire") as attached hereto.
- 13 *Unless the context otherwise requires, words denoting the singular include the plural and vice versa.*
- 14 *In the event of any conflict between the provisions of PART 1 and PART 2 of this Charter, the provisions of*
15 *PART 1 shall prevail.*
- 16 *In the event of any conflict between the provisions of PART 1 or PART 2 of this Charter and any provisions*
17 *in the Questionnaire, the provisions of PART 1 or PART 2 of this Charter shall prevail.*

PART 1

18 A. Name of Vessel: _____

19 B. Charter Period: _____

20 _____

21 _____

22 _____

23 _____

24 C. Laydays/Cancelling:

25 Commencing: 0001 hours local time on _____ ("Commencement Date")

26 Cancelling: 1600 hours local time on _____ ("Cancelling Date")

27 _____

28 _____

29 _____

30 D. Place of Delivery: _____

31 _____

32 _____

33 _____

34 _____

35 _____

36 E. Vessel shall be delivered with the following cargo history: _____

37 _____

38 _____

39 _____

40 F. Place of Redelivery: _____

41 _____

42 _____

43 G. Bunkers on Delivery and Redelivery: _____

44 _____

45 _____

46 _____

47 H. Rate of Hire: _____

48 _____

49 _____

50 _____

51 _____

52 I. **Owners' Payment Details:** _____
53 _____
54 _____
55 _____
56 _____
57 _____
58 _____

59 J. **Bunker Specifications:** _____
60 _____
61 _____
62 _____
63 _____
64 _____

65 K. **Permitted Cargoes:** _____
66 _____
67 _____
68 _____
69 _____
70 _____
71 _____

72 L. **Trading Limits:** _____
73 _____
74 _____
75 _____
76 _____
77 _____

78 M. **Additional Clauses:** _____
79 _____
80 _____

PART 2

81 COMMERCIAL PROVISIONS

82 1. DELIVERY AND CHARTER PERIOD

83 1.1 Owners agree to let and Charterers agree to hire the Vessel from the time of delivery for a Charter
84 Period as set out in PART 1, Section B. The Vessel shall be placed at the disposal of Charterers at
85 the Place of Delivery as set out in PART 1, Section D. The Vessel shall not be delivered to
86 Charterers prior to the Commencement Date.

87 1.2 Upon delivery the Vessel shall be tight, staunch, strong, in every way fitted for service, with cargo
88 spaces, facilities and equipment ready to receive, carry and deliver cargo, and with a full
89 complement of Master, officers and crew fully competent, certified and experienced to perform
90 the services contracted for, and in all material respects meeting the description of the Vessel set
91 out in the Questionnaire. Without prejudice to the aforesaid, upon delivery Owners, Master,
92 officers, crew and all documents shall conform in all parts and in all material respects with the
93 responses submitted in the Questionnaire.

94 2. CANCELLATION

95 2.1 If the Vessel is not ready in accordance with Clause 1 and at Charterers' disposal by the
96 Cancelling Date (which term shall for the purposes of this Clause include any new Cancelling
97 Date determined under this Clause 2) Charterers shall have the option of cancelling this Charter
98 within forty-eight (48) hours after the Cancelling Date.

99 2.2 Owners undertake to notify Charterers promptly if at any time Owners or the Master have reason
100 to believe that the Vessel may not be delivered in accordance with Clause 1 by the Cancelling
101 Date. Such notification is to be in writing and shall state the date and time that Owners expect
102 the Vessel to be ready to be delivered.

103 2.3 If at any time it appears to Charterers that the Vessel will not be delivered in accordance with
104 Clause 1 by the Cancelling Date, Charterers may require Owners to state in writing the date and
105 time that they expect the Vessel to be ready to be delivered, such statement to be given within
106 ninety-six (96) hours of Charterers' request.

107 2.4 If the date and time notified by Owners pursuant to sub-clauses 2.2, 2.3 or 4.1 falls after the
108 Cancelling Date then Charterers shall have the option of cancelling this Charter within one
109 hundred and twenty (120) hours of receipt of the said notice from Owners or within forty-eight
110 (48) hours after the Cancelling Date, whichever is earlier.

111 If Charterers do not exercise their option to cancel this Charter then the new Cancelling Date for
112 the purpose of this Clause 2 shall be twelve (12) hours after the date and time notified by Owners
113 pursuant to sub-clauses 2.2 or 2.3, or such other date and time as may be mutually agreed.

114 2.5 If Owners fail, or fail timeously, to respond in writing to Charterers when required to do so under
115 sub-clause 2.3, Charterers shall have the option of cancelling this Charter within one hundred and
116 twenty (120) hours after the period allowed for Owners' response under sub-clause 2.3, or within
117 forty-eight (48) hours after the Cancelling Date, whichever is earlier.

118 3. REDELIVERY

119 3.1 The Vessel shall be redelivered to Owners at the Place of Redelivery stipulated in PART 1,
120 Section F on the expiry of the Charter Period, on completion of its final voyage on dropping last
121 outward bound pilot, or as may otherwise be agreed.

122 3.2 Notwithstanding the provisions of sub-clauses 1.1 and 3.1 hereof, should the Vessel at the expiry
123 of the Charter Period be on a ballast voyage to the Place of Redelivery or on a laden voyage
124 (which for the purposes of this Clause shall be deemed to have commenced at the end of the sea
125 passage to the first loadport), then Charterers shall have the use of the Vessel at the same rate and
126 conditions for such extended time as may be necessary for the completion of the voyage on which
127 it is engaged and, where required, its ballast voyage to the Place of Redelivery.

- 128 4. **NOTICES OF DELIVERY AND REDELIVERY**
- 129 4.1 The below notices shall be given by Owners to Charterers in the case of delivery, and by
130 Charterers to Owners in the case of redelivery:-
- 131 4.1.1 One calendar month prior to delivery / redelivery, notice shall be given specifying the
132 anticipated date for delivery / redelivery.
- 133 4.1.2 Fifteen days prior to delivery / redelivery, notice shall be given specifying the firm date
134 and estimated time of delivery / redelivery.
- 135 4.1.3 Thereafter seven, three, two and one day(s) prior to delivery / redelivery, notice shall be
136 given reconfirming or advising of any adjustment to the date and time given in
137 accordance with sub-clause 4.1.2. In addition, during the last fourteen days prior to
138 delivery / redelivery, prompt notice shall be given of any variation of more than six (6)
139 hours in the estimated time of delivery / redelivery.
- 140 4.2 If the Charter grants Owners or Charterers an option for the Place of Delivery or Redelivery,
141 notice of the anticipated Place of Delivery / Redelivery shall be given one calendar month before
142 delivery / redelivery, and firm nomination of the Place of Delivery / Redelivery shall be given
143 fifteen days before delivery / redelivery.
- 144 5. **BUNKERS ON DELIVERY AND REDELIVERY**
- 145 5.1 The Vessel shall be delivered with about the quantity of fuels stated in PART 1, Section G and
146 shall be redelivered with about the same quantity.
- 147 5.2 Charterers shall accept and pay for all fuels on board at the time of delivery and Owners shall
148 accept and pay for all fuels on board at redelivery (whether at the end of the Charter Period or
149 upon termination of the Charter for other reasons), all at the price paid (net of all discounts and
150 rebates) as substantiated by such documents as may reasonably be required. Charterers' payment
151 for fuels on board at the time of delivery shall be made together with the first payment of hire.
152 Charterers shall be entitled to deduct from the last payment of hire the value of fuels anticipated
153 to be on board at redelivery.
- 154 6. **CARGOES**
- 155 6.1 Charterers shall have the right to ship all lawful cargoes falling within the description set out in
156 PART 1, Section K.
- 157 6.2 Charterers shall not ship, nor permit to be shipped, any cargo dangerous to the Vessel.
- 158 7. **TRADING LIMITS**
- 159 The Vessel shall be employed in lawful trades within Institute Warranty Limits and within the Trading
160 Limits set out in PART 1, Section L.
- 161 8. **HIRE**
- 162 8.1 Charterers shall pay hire per day or pro rata for part of a day from the time the Vessel is delivered
163 to Charterers until its redelivery to Owners in the currency and at the rate stated in PART 1,
164 Section H. All calculation of hire shall be by reference to Universal Time Co-ordinated (UTC).
- 165 8.2 The first payment of hire shall be made on or about the date of delivery, paying the hire in
166 advance up to, but not including, the first day of the succeeding month. All subsequent payments
167 of hire shall be made monthly in advance on the first day of each calendar month to the account
168 stipulated in PART 1, Section I in funds available to Owners on the due date. If, however, in a
169 given month the due date is a non-banking day in the United States (if hire is to be paid in US
170 Dollars) or in the country stated in PART 1, Section I, then the subject month's hire shall be paid
171 on the next banking day.
- 172 8.3 Hire for the month in which the anticipated date for redelivery falls shall be made up to and
173 including the anticipated date of redelivery. Any necessary adjustments shall be made by payment
174 by Owners to Charterers or by Charterers to Owners, as the case may be, within twenty-eight (28)
175 days after redelivery.

- 176 8.4 Where there is a failure to pay hire by the due date, Owners shall notify Charterers in writing of
177 such failure. Within five (5) banking days of receipt of such notification Charterers shall pay the
178 amount due, failing which Owners shall have the right to suspend the performance of any or all of
179 their obligations under this Charter and/or to withdraw the Vessel. If Owners elect to suspend
180 performance of the Charter in respect of a particular late payment, they may still, notwithstanding
181 that suspension of performance, withdraw the Vessel from the Charter in respect of that late
182 payment provided they give a further twenty-four (24) hours' notice in writing of their intention
183 to withdraw. Under no circumstances shall the act of suspending performance be construed as a
184 waiver by Owners of the right to withdraw in respect of the continuing failure to pay hire or any
185 subsequent late payment of hire under this Charter. Throughout any period of suspended
186 performance under this Clause, the Vessel is to be and shall remain on hire. Charterers undertake
187 to indemnify Owners in respect of any liabilities incurred by Owners under the bill of lading or
188 any other contract of carriage as a consequence of Owners' proper suspension of and/or
189 withdrawal from any or all of their obligations under this Charter.
- 190 8.5 On production of supporting vouchers, Charterers shall be entitled to deduct from hire any
191 expenditure incurred on behalf of Owners which is for Owners' account under this Charter as
192 well as any other costs and expenses due to Charterers which this Charter entitles them to deduct
193 from hire. Charterers shall be entitled to a commission of 2.5% on expenditure settled on behalf
194 of Owners.
- 195 8.6 Charterers may, at any time during the three months prior to the end of the Charter Period set
196 out in PART 1, Section B, deduct from hire any amount which they reasonably estimate will be
197 due to them at the end of the Charter Period in respect of expenditure on behalf of Owners,
198 bunkers on redelivery, anticipated performance claims and any other similar claims Charterers
199 may have against Owners.

200 OWNERS' RIGHTS AND OBLIGATIONS

201 9. OWNERS' OBLIGATIONS

- 202 9.1 Without prejudice to Clause 1, Owners shall exercise due diligence to maintain the Vessel in, or
203 restore the Vessel to, the condition required pursuant to Clause 1 throughout the Charter Period.
- 204 9.2 Owners undertake that from the date of entering into this Charter the classification society, flag,
205 ownership, management (whether technical or commercial) and P&I Insurers of the Vessel shall
206 not change without Charterers' prior consent. Without prejudice to any other right that
207 Charterers may have, a breach of this provision will entitle Charterers to terminate this Charter,
208 whereupon Owners shall reimburse Charterers with any hire paid in advance and not earned.
209 Should Charterers withhold consent under this Clause, then Owners may require Charterers to
210 promptly identify to them an alternative acceptable to Charterers.
- 211 9.3 Owners undertake that from the date of entering into this Charter the amount of Hull and
212 Machinery insurance on the Vessel shall not change without Charterers' prior consent, which shall
213 not be unreasonably withheld.
- 214 9.4 Without prejudice to Clause 1, and provided always that Owners are granted a reasonable time to
215 perform cleaning, Owners shall throughout the Charter Period ensure that the Vessel presents for
216 loading with its tanks, pumps and pipelines properly prepared to the satisfaction of any inspector
217 appointed by or on behalf of Charterers and ready for loading the cargo specified by Charterers.
- 218 9.5 Owners shall remain responsible for the navigation of the Vessel, acts of pilots, tug boats and
219 crew, same as when trading for their own account. Owners undertake that throughout the period
220 of this Charter they will, at their own expense, comply with the regulations in force from time to
221 time so as to enable the Vessel to pass through the Suez and Panama Canals by day and by night
222 without delay.
- 223 9.6 Without limitation to the foregoing, Owners shall provide and pay for:-
- 224 9.6.1 provisions, wages (including overtime), discharging fees and all other expenses related to
225 the Master, officers and crew; and
- 226 9.6.2 cabin, deck, engine-room and other necessary stores, including domestic water; and

- 227 9.6.3 radio traffic and other communication expenses; and
- 228 9.6.4 insurance on the Vessel fully covering P&I risks and (without prejudice to Charterers' rights to freely trade the Vessel) standard oil pollution cover up to the level customarily offered by the International Group of P & I Clubs (currently US\$1,000 million), Hull and Machinery and basic War Risks in accordance with the information set out in the Questionnaire; and
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- 233 9.6.5 all documentation required to permit the Vessel to trade within the Trading Limits set out in PART 1, Section L, including but not limited to the certificates and documentation confirmed by Owners in the Questionnaire to be in place and such documentation shall be maintained in force during the currency of the Charter.
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237 10. MASTER AND CREW

- 238 10.1 The Master, although appointed by Owners, shall throughout the Charter Period be under the orders and directions of Charterers as regards employment, agency or other arrangements and shall render Charterers all reasonable assistance with the officers, crew and equipment (including but not limited to connecting and disconnecting hoses for loading and discharging, verifying fuel samples and the procedure associated with the delivery of fuel) and supply Charterers with such information and documentation as they may from time to time require (including but not limited to logs, time sheets, safety performance information and certification relating to officers, crew or Vessel).
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- 246 10.2 The Master shall, throughout the Charter Period, operate the Vessel and carry out his duties in a manner consistent with good seamanship, complying with the recommendations set out in the latest edition of ISGOTT and maintaining the safety of the Vessel, its crew, the cargo and the environment, and shall prosecute all voyages with due despatch.
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- 250 10.3 The Master shall observe regulations and recommendations as to traffic separation and routing as issued, from time to time, by responsible organisations or regulatory authorities, or as promulgated by the State of the flag of the Vessel or the State in which management of the Vessel is exercised.
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- 253
- 254 10.4 If Charterers are dissatisfied with the conduct of the Master or any officer or crew member, Owners shall on receiving particulars of the complaint, promptly investigate the same, and, if necessary, make a change in the appointment.
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257 11. BILLS OF LADING AND WAYBILLS

- 258 11.1 Bills of lading and waybills shall be signed as Charterers direct, without prejudice to this Charter. Charterers hereby indemnify Owners:
- 259
- 260 11.1.1 against all liabilities that may arise from the signing of bills of lading and waybills in accordance with the directions of Charterers to the extent that the terms of such bills of lading and waybills impose more onerous liabilities than those assumed by Owners under the terms of this Charter; and
- 261
- 262
- 263
- 264 11.1.2 against claims brought by holders of bills of lading and waybills against Owners by reason of any deviation ordered by Charterers.
- 265
- 266 11.2 All bills of lading and waybills issued under this Charter shall include a Clause Paramount and War Risks, New Jason, General Average, and Both-to-Blame Collision clauses, in the form set out in this Charter.
- 267
- 268

269 12. DRUGS AND ALCOHOL POLICY

- 270 12.1 Owners undertake that they have, and shall maintain for the duration of this Charter, a policy on Drugs and Alcohol Abuse applicable to the Vessel (the "D & A Policy") that meets or exceeds the standards in the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship 1995 as amended from time to time.
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- 274 12.2 Owners shall exercise due diligence to ensure that the D & A Policy is understood and complied with on and about the Vessel. An actual impairment, or any test finding of impairment, shall not in and of itself mean that Owners have failed to exercise due diligence.
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- 276

277 13. DRY-DOCKING

278 Without prejudice to Clause 19, Owners shall have the right at their expense to take the Vessel out of
279 service, including placing the Vessel in dry-dock. For emergency repairs this right may be exercised in
280 accordance with Owners' discretion. For routine maintenance and surveys, the right may only be exercised
281 at a time and place mutually agreed upon by Owners and Charterers.

282 14. LIEN

283 Owners shall have a lien upon all cargoes, hire, sub-hire, freights and sub-freights for any amounts owed by
284 Charterers under this Charter.

285 CHARTERERS' RIGHTS AND OBLIGATIONS

286 15. CHARTERERS' OBLIGATIONS

287 15.1 Charterers shall furnish the Master with full and timely instructions.

288 15.2 Charterers shall provide and/or pay for:-

289 15.2.1 all fuels of a quality suitable for burning in the Vessel's engines and auxiliaries (which
290 shall comply with the description in PART 1, Section J) except for quantities of fuel
291 consumed while the Vessel is off-hire which shall be for Owners' account; and

292 15.2.2 port charges, light and canal dues, and all other charges or expenses relating to loading
293 and discharging; and

294 15.2.3 agency fees for normal ship's husbandry at all places or ports of call; and

295 15.2.4 towage, pilotage and all mooring, loading and discharging facilities and services,
296 provided always that Charterers shall bear no liability for the negligence or misconduct
297 exercised by the providers of such services and facilities.

298 15.3 Any additional premiums charged by the providers of oil pollution cover by reason of loading or
299 discharging at ports in the USA or USA-controlled territories shall be for Charterers' account and
300 shall be re-imbursed to Owners together with the instalment of hire next falling due following
301 presentation to Charterers of proper receipts evidencing payment.

302 15.4 Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them
303 or their agents, which might have priority over the title and interest of Owners.

304 16. SPACE AVAILABLE TO CHARTERERS

305 16.1 The whole reach, burthen and decks of the Vessel, and its passenger accommodation (including
306 Owners' suite if any), shall be at Charterers' disposal, reserving only proper and sufficient space
307 for the Vessel's Master, officers, crew, tackle, apparel, furniture, provisions, stores and lubricating
308 oil.

309 16.2 The weight of stores and lubricating oil stored on board shall not at any time during the Charter
310 Period, unless specifically agreed, exceed the tonnage shown in the Questionnaire.

311 17. LOADING AND DISCHARGE / SHIP-TO-SHIP TRANSFERS

312 17.1 The Vessel shall be loaded and discharged at any port (which term for the purpose of this Charter
313 shall include any port, berth, dock, loading or discharging anchorage or offshore location,
314 submarine line, single point or single buoy mooring facility, alongside vessels or lighters or any
315 other place whatsoever as the context requires) in accordance with Charterers' instructions.
316 Before instructing Owners to direct the Vessel to any port, Charterers shall exercise due diligence
317 to ascertain the safety of such port, but Charterers do not warrant the safety of any port and shall
318 be under no liability in respect thereof except for loss or damage caused by Charterers' failure to
319 exercise due diligence.

320 17.2 Charterers shall have the option of transferring the whole or part of the cargo (which shall include
321 topping-off and lightening) to or from any other vessel including, but not limited to, an ocean-
322 going vessel, barge and/or lighter (the "Transfer Vessel").

323 All transfers of cargo to or from Transfer Vessels shall be carried out in accordance with the
324 recommendations set out in the latest edition of the "ICS/OCIMF Ship to Ship Transfer Guide
325 (Petroleum)". Owners undertake that the Vessel and its crew shall comply with such
326 recommendations, and similarly Charterers undertake that the Transfer Vessel and its crew shall
327 comply with such recommendations. Charterers shall provide and pay for all necessary equipment
328 including suitable fenders and cargo hoses. Charterers shall have the right, at their expense, to
329 appoint supervisory personnel to attend on board the Vessel, including a mooring master, to assist
330 in such transfers of cargo.

331 18. PERFORMANCE OF VESSEL - SPEED AND CONSUMPTION

332 18.1 Unless otherwise ordered by Charterers, the Vessel shall perform all voyages at the service speed
333 stated in the Questionnaire.

334 18.2 Owners warrant that the Vessel is and shall remain capable of maintaining, throughout the
335 Charter Period, the speeds and bunker consumptions for propulsion described in the
336 Questionnaire under normal working conditions and in moderate weather (which for the purpose
337 of this Clause shall exclude any periods of winds exceeding Force 5 on the Beaufort Scale).
338 Charterers shall have the right to make deductions from hire in respect of any time lost and any
339 additional bunkers consumed by reason of the Vessel's failure to maintain the warranted
340 capability.

341 19. OFF-HIRE

342 19.1 The Vessel shall be off-hire on each and every occasion that there is a loss of time arising out of
343 or in connection with the Vessel being unable to comply with Charterers' instructions (whether by
344 way of interruption or reduction in the Vessel's services, or in any other manner) on account of:-

345 19.1.1 any damage, defect, breakdown, deficiency of or accident to the Vessel's hull, machinery,
346 equipment or cargo handling facilities, or maintenance thereto; or

347 19.1.2 any default and/or deficiency of the Master, officers or crew, including the failure or
348 refusal or inability of the Master, officers and/or crew to perform the services required;
349 or

350 19.1.3 any breach of sub-clause 9.6.5; or

351 19.1.4 any other cause preventing the full working of the Vessel.

352 Notwithstanding the aforesaid, if the total loss of time pursuant to this sub-clause 19.1 is less than
353 three hours in any one calendar month, the Vessel shall not be off-hire.

354 19.2 If the Vessel deviates, unless ordered to do so by Charterers, it shall be off-hire from the
355 commencement of such deviation until the Vessel is again ready to resume its service from a
356 position not less favourable to Charterers than that at which the deviation commenced. For the
357 purposes of this Clause the term deviation shall include stopping, reducing speed, putting back or
358 putting into any port or place other than that to which it is bound under the instructions of
359 Charterers for any reason whatsoever, including for maintenance, dry-docking, taking on stores or
360 fresh water, but shall exclude deviations made to save life or property. Should the Vessel deviate
361 to avoid bad weather or be driven into port or anchorage by stress of weather, the Vessel shall
362 remain on hire and all port costs thereby incurred and bunkers consumed shall be for Charterers'
363 account. Any service given or distance made good by the Vessel while off-hire shall be taken into
364 account in assessing the amount to be deducted from hire.

365 19.3 Any time during which the Vessel is off-hire under this Charter may be added, at Charterers'
366 option, to the Charter Period. Such option shall be declared in writing not less than one month
367 before the expected date of redelivery, or promptly if such event occurs less than one month
368 before the expiry of the Charter Period. If Charterers exercise their option to extend the Charter
369 Period pursuant to this Clause, the Charter Period shall be deemed to include such extension and
370 hire shall be payable at the rate(s) which would have been payable but for the relevant off-hire
371 event.

372 20. LAYING UP

373 Charterers shall have the option to lay up the Vessel at a place nominated by them and acceptable to
374 Owners. Charterers shall exercise due diligence to ascertain the safety of such place but shall be under no
375 liability in respect thereof except for loss or damage caused by Charterers' failure to exercise due diligence.
376 If Charterers exercise the option to lay up the Vessel then the hire stipulated in PART 1, Section H shall be
377 adjusted to reflect any net increase in expenditure reasonably incurred (including but not limited to costs
378 reasonably incurred in preparing the Vessel for lay up as well as restoring it to the condition in which it was
379 immediately prior to laying up) or net saving which should reasonably be made by Owners as a result of
380 such lay up.

381 21. STORAGE

382 Charterers shall have the option of using the Vessel for floating storage but Charterers undertake not to use
383 the Vessel for floating storage in areas where additional premiums for War Risks Insurance are charged by
384 the Vessel's War Risks Insurance underwriters.

385 22. SUB-LET

386 Charterers may sub-let the Vessel without prejudice to the respective rights and obligations of either party
387 under this Charter.

388 23. SUPERNUMERARIES

389 Charterers may send supernumeraries in the Vessel's available accommodation upon any voyage made
390 under this Charter. In such event Owners shall provide provisions and all requisites, as supplied to
391 officers, except alcohol.

392 24. VESSEL/CARGO INSPECTIONS/BUNKER SURVEYS

393 Charterers shall be entitled to cause their representative (which term includes any independent surveyor
394 appointed by Charterers) to carry out inspections of the Vessel and/or observe cargo operations and/or
395 ascertain the quantity and quality of the cargo, water and residues on board, including the taking of cargo
396 samples, inspection and copying of the Vessel's logs, documents and records (which shall include but not
397 be limited to the personal notes of the Master, officers or crew relating to the operation of the Vessel, the
398 rough log book and computer generated data) at any loading and/or discharge port. Charterers'
399 representative may also conduct any of the aforementioned operations at or off any other port to which
400 Charterers may require the Master to divert the Vessel at any time after leaving any loading port.
401 Charterers shall obtain the consent of the owners of any cargo on board at the time before requiring the
402 Vessel to be diverted.

403 Charterers' representative shall be entitled to survey, and take samples from, any or all of the Vessel's cargo
404 tanks, bunker fuel tanks and non-cargo spaces at any place referred to above.

405 SPECIAL PROVISIONS

406 25. CLAUSE PARAMOUNT

407 Charterers undertake that all bills of lading and waybills issued under this Charter shall contain the
408 following:

409 "CLAUSE PARAMOUNT

410 (1) This Bill of Lading shall have effect subject to any national law making the International Convention
411 for the unification of certain rules of law relating to bills of lading signed at Brussels on 25th August
412 1924 (The Hague Rules) or the Hague Rules as amended by the Protocol signed at Brussels on 23rd
413 February 1968 (The Hague/Visby Rules) compulsorily applicable to this Bill of Lading. If any term
414 of this Bill of Lading be repugnant to that legislation to any extent, such term shall be void to that
415 extent but no further. Neither the Hague Rules nor the Hague/Visby Rules shall apply to this Bill of
416 Lading where the goods carried hereunder consist of live animals or cargo which by this Bill of
417 Lading is stated as being carried on deck and is so carried.

- 418 (2) Save where the Hague or Hague/Visby Rules apply by reason of (1) above, this Bill of Lading shall
419 take effect subject to any national law in force at the port of shipment or place of issue of the Bill of
420 Lading making the United Nations Convention on the Carriage of Goods by Sea 1978 (the Hamburg
421 Rules) compulsorily applicable to this Bill of Lading in which case this Bill of Lading shall have effect
422 subject to the Hamburg Rules which shall nullify any stipulation derogating therefrom to the
423 detriment of the shipper or consignee.
- 424 (3) Where the Hague, Hague/Visby or Hamburg Rules are not compulsorily applicable to this Bill of
425 Lading, the carrier shall be entitled to the benefits of all privileges, rights and immunities contained in
426 Articles I to VIII of the Hague/Visby Rules.
- 427 (4) Nothing in this Bill of Lading shall be construed as in any way restricting, excluding or waiving the
428 right of any relevant party or person to limit his liability under any available legislation and/or law".

429 26. **SALVAGE**

430 The Master is authorised to render assistance to other vessels. All salvage and remuneration for such
431 assistance shall be for Owners' and Charterers' equal benefit after deducting the Master's and Crew's
432 proportion and all costs, expenses and sacrifices (including but not limited to loss of time, off-hire, hire
433 paid, repairs to the Vessel and bunker fuel consumed). Any non-contractual liability to third parties shall
434 be for Owners' account unless it solely affects the salvage remuneration.

435 27. **ICE**

436 The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area
437 where lights, lightships, markers or buoys have been or are about to be withdrawn by reason of ice, nor
438 where on account of ice there is, in the Master's sole discretion, a risk that, in the ordinary course of events,
439 the Vessel will not be able safely to enter and remain at the port or area or to depart after completion of
440 loading or discharging. The Vessel shall not be obliged to force ice but, subject to Owners' prior approval,
441 may follow ice-breakers when reasonably required, with due regard to its size, construction and class. If,
442 on account of ice, the Master in his sole discretion considers it unsafe to proceed to, enter or remain at the
443 place of loading or discharging for fear of the Vessel being frozen in and/or damaged, he shall be at liberty
444 to sail to the nearest ice-free place and there await Charterers' instructions.

445 28. **REQUISITION**

446 Should the Vessel be requisitioned by any government, *de facto* or *de jure*, during the period of this Charter,
447 the Vessel shall be off-hire during the period of such requisition, and any hire paid by such government
448 and costs incurred in respect of such requisition shall be for Owners' account. The option granted to
449 Charterers in sub-clause 19.3 shall not apply to periods of off-hire pursuant to this Clause 28.

450 29. **OUTBREAK OF WAR**

451 Either party may cancel this Charter on the outbreak of war or hostilities between any two or more of the
452 following countries: the United States of America, the Russian Federation, the United Kingdom, France
453 and the People's Republic of China.

454 30. **WAR RISKS**

455 30.1 For the purpose of this Clause, the words:

456 30.1.1 "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or
457 other operators who are charged with the management of the Vessel, and the Master;
458 and

459 30.1.2 "War Risks" shall include any war (whether actual or threatened), act of war, civil war,
460 hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines
461 (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or
462 malicious damage, blockades (whether imposed against all vessels or imposed selectively
463 against vessels of certain flags or ownership, or against certain cargoes or crews or
464 otherwise howsoever), by any person, body, terrorist or political group, or the
465 Government of any state whatsoever, which, in the reasonable judgement of the Master
466 and/or Owners, may be dangerous or are likely to be or to become dangerous to the
467 Vessel, its cargo, crew or other persons on board the Vessel.

468 30.2 The Vessel, unless the written consent of Owners be first obtained, shall not be ordered to or
 469 required to continue to or through, any port, place, area or zone (whether of land or sea), or any
 470 waterway or canal, where it appears that the Vessel, its cargo, crew or other persons on board the
 471 Vessel, in the reasonable judgement of the Master and/or Owners, may be, or are likely to be,
 472 exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only
 473 becomes dangerous, or is likely to be or to become dangerous, after its entry into it, the Vessel
 474 shall be at liberty to leave it.

475 30.3 The Vessel shall not be required to load contraband cargo, or to pass through any blockade,
 476 whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever
 477 against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise
 478 howsoever, or to proceed to an area where it shall be subject, or is likely to be subject to a
 479 belligerent's right of search and/or confiscation.

480 30.4 Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and
 481 their other interests (including, but not limited to, loss of earnings and detention, the crew and
 482 their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their
 483 account.

484 If the Underwriters of such insurance should require payment of premiums and/or calls because,
 485 pursuant to Charterers' orders, the Vessel is within, or is due to enter and remain within, any area
 486 or areas which are specified by such Underwriters as being subject to additional premiums
 487 because of War Risks, then such premiums and/or calls shall be reimbursed by Charterers to
 488 Owners at the same time as the next payment of hire is due.

489 30.5 If Owners become liable under the terms of employment to pay the crew any bonus or additional
 490 wages in respect of sailing into an area which is dangerous in the manner defined by the said
 491 terms, then such bonus or additional wages shall be reimbursed to Owners by Charterers at the
 492 same time as the next payment of hire is due.

493 30.6 The Vessel shall have liberty:-

494 30.6.1 to comply with all orders, directions, recommendations or advice as to departure, arrival,
 495 routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo,
 496 delivery, or in any other way whatsoever, which are given by the Government of the
 497 Nation under whose flag the Vessel sails, or other Government to whose laws Owners
 498 are subject, or any other Government, body or group whatsoever acting with the power
 499 to compel compliance with their orders or directions;

500 30.6.2 to comply with the orders, directions or recommendations of any war risks underwriters
 501 who have the authority to give the same under the terms of the war risks insurance;

502 30.6.3 to comply with the terms of any resolution of the Security Council of the United
 503 Nations, any directives of the European Community, the effective orders of any other
 504 supranational body which has the right to issue and give the same, and with national laws
 505 aimed at enforcing the same to which Owners are subject, and to obey the orders and
 506 directions of those who are charged with their enforcement;

507 30.6.4 to divert and discharge at any other port any cargo or part thereof which may render the
 508 Vessel liable to confiscation as a contraband carrier;

509 30.6.5 to divert and call at any other port to change the crew or any part thereof or other
 510 persons on board the Vessel when there is reason to believe that they may be subject to
 511 internment, imprisonment or other sanctions.

512 30.7 If in accordance with their rights under the foregoing provisions of this Clause, Owners refuse to
 513 proceed to the loading or discharging ports, or any one or more of them, they shall immediately
 514 inform Charterers.

515 31. GENERAL AVERAGE

516 General Average shall be adjusted and settled in London in accordance with the York-Antwerp Rules, 1994
 517 or any subsequent modification thereof.

518 32. NEW JASON

519 If, notwithstanding Clause 31, General Average is adjusted in accordance with the law and practice of the
520 USA, the following provision shall apply:-

521 "In the event of accident, danger, damage or disaster before or after the commencement of the voyage,
522 resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence
523 of which, the carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or
524 owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices,
525 losses or expenses of a general average nature that may be made or incurred and shall pay salvage and
526 special charges incurred in respect of the cargo.

527 If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving
528 ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover
529 the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be
530 made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery."

531 33. BOTH-TO-BLAME COLLISION

532 If the liability for any collision in which the Vessel is involved while performing this Charter falls to be
533 determined in accordance with the laws of the USA, or the laws of any State which applies laws similar to
534 those applied in the USA in the circumstances envisaged by this Clause 33, the following provision shall
535 apply:-

536 "If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and
537 any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in
538 the management of the Vessel, the owners of the goods carried hereunder will indemnify the carrier against
539 all loss or liability to the other or non-carrying vessel or its owners in so far as such loss or liability
540 represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by
541 the other or non-carrying vessel or its owners to the owners of said goods and set off, recouped or
542 recovered by the other or non-carrying vessel or its owners as part of their claim against the carrying vessel
543 or carrier.

544 The foregoing provisions shall also apply where the owner, operators or those in charge of any vessel or
545 vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of
546 collision or contact."

547 Whilst Charterers shall procure that all bills of lading and waybills issued under this Charter shall contain a
548 provision in the foregoing terms, to be applicable where the liability for any collision in which the Vessel is
549 involved falls to be determined under the preamble of this Clause 33, Charterers neither warrant nor
550 undertake that such provision shall be effective. In the event that such provision proves ineffective
551 Charterers shall, notwithstanding anything to the contrary herein provided, not be obliged to indemnify
552 Owners.

556 34. OIL POLLUTION PREVENTION

557 34.1 Owners undertake that the Vessel is a tanker owned by a member of the International Tanker
558 Owners' Pollution Federation Limited and will so remain throughout the period of this Charter.

559 34.2 When an escape or discharge of Oil occurs from the Vessel and causes or threatens to cause
560 Pollution Damage, or when there is the threat of an escape or discharge of Oil (i.e. a grave and
561 imminent danger of the escape or discharge of Oil which, if it occurred, would create a serious
562 danger of Pollution Damage, whether or not an escape or discharge in fact subsequently occurs),
563 then upon notice to Owners or Master, Charterers shall have the right (but shall not be obliged) to
564 place on board the Vessel and/or have in attendance at the incident one or more Charterers'
565 representatives to observe the measures being taken by Owners and/or national or local
566 authorities or their respective servants, agents or contractors to prevent or minimise Pollution
567 Damage and to provide advice, equipment or manpower or undertake such other measures, at
568 Charterers' risk and expense, as are permitted under applicable law and as Charterers believe are
569 reasonably necessary to prevent or minimise such Pollution Damage or to remove the threat of an
570 escape or discharge of Oil.

571 34.3 The provisions of this Clause 34 shall be without prejudice to any other rights and/or duties of
572 Charterers or Owners whether arising under this Charter or under applicable law or under any
573 International Convention.

574 34.4 In this Clause the terms "Oil" and "Pollution Damage" shall have the same meaning as that
575 defined in the Civil Liability Convention 1969 or any Protocol thereto.

576 35. EXCEPTIONS

577 35.1 The provisions of Article III (other than Rule 8 thereof), IV, IV *bis*, VII and VIII of the Schedule
578 to the Carriage of Goods by Sea Act 1971 of the United Kingdom shall apply to this Charter and
579 shall be deemed to be inserted *in extenso* herein. This Charter shall be deemed to be a contract for
580 the carriage of goods by sea to which the said Articles apply, and no regard shall be had to Article
581 I of the said Schedule. However, nothing in this Clause shall be deemed to modify, limit or
582 exclude the parties' rights and obligations as set out in Clauses 1, 9, 10, 11, 18 and 19 hereof.

583 35.2 Where a claim for indemnity is brought under this Charter, the defending party shall be entitled to
584 rely on all defences and limitations, whether founded on contract, tort, legislation or convention,
585 that the claimant could have relied on in the principal action or in relation to the principal claim.

586 35.3 Notwithstanding the aforesaid:

587 35.3.1 Where a claim for indemnity relating to a claim pursued by a third party is brought
588 under this Charter, such claim shall be extinguished unless suit is commenced within
589 twelve (12) months of the principal claim being settled by the parties thereto or
590 determined by the final, unappealable judgment of a competent court.

591 35.3.2 All other claims shall be subject to the statutory limitation period.

592 36. LAW

593 The construction, validity and performance of this Charter shall be governed by English Law. The High
594 Court in London shall have exclusive jurisdiction over any dispute which may arise out of this Charter.

595 Notwithstanding the aforesaid, the parties may jointly elect to have any such dispute referred to arbitration
596 in London pursuant to the Arbitration Act 1996 or any modification or re-enactment thereof for the time
597 being in force and under the Terms of the London Maritime Arbitrators' Association before a tribunal
598 consisting of three arbitrators.

599 *In Witness Whereof* the parties have caused this Charter to be executed as of the date first above written

600
601 for and on behalf of

602
603 OWNERS

604
605 for and on behalf of

606
607 CHARTERERS

Issued 1909; Amended 1911; 1912; 1920; 1939; 1950; 1974; and 2001

1. Shipbroker		BIMCO UNIFORM TIME-CHARTER (AS REVISED 2001) CODE NAME: "BALTIME 1939"		 PART I	
3. Owners/Place of business		2. Place and Date of Charter			
5. Vessel's Name		4. Charterers/Place of business			
7. Class		6. GT/NT			
9. Total tons d.w. (abt.) on summer freeboard		8. Indicated brake horse power (bhp)			
11. Permanent bunkers (abt.)		10. Cubic feet grain/bale capacity			
13. Present position		12. Speed capability in knots (abt.) on a consumption in tons (abt.) of			
15. Port of delivery (Cl. 1)		14. Period of hire (Cl. 1)			
17. (a) Trade limits (Cl. 2)		16. Time of delivery (Cl. 1)			
(b) Cargo exclusions specially agreed					
18. Bunkers on re-delivery (state min. and max. quantity)(Cl. 5)		19. Charter hire (Cl. 6)			
20. Hire payment (state currency, method and place of payment, also beneficiary and bank account) (Cl. 6)					
21. Place or range of re-delivery (Cl. 7)		22. Cancelling date (Cl. 21)			
23. Dispute resolution (state 22(A), 22(B) or 22(C); if 22(C) agreed Place of Arbitration must be stated) (Cl. 22)		24. Brokerage commission and to whom payable (Cl. 24)			
25. Numbers of additional clauses covering special provisions, if agreed					

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I as well as PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

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PART II
"BALTIME 1939" Uniform Time-Charter (as revised 2001)

It is agreed between the party mentioned in Box 3 as Owners of the Vessel named in Box 5 of the gross/net tonnage indicated in Box 6, classed as stated in Box 7 and of indicated brake horse power (bhp) as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on summer freeboard inclusive of bunkers, stores and provisions, having as per builder's plan a cubic-foot grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons fuel oil stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows:		
1. Period/Port of Delivery/Time of Delivery		
The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, the Vessel being in every way fitted for ordinary cargo service. The Vessel shall be delivered at the time indicated in Box 16.		
2. Trade		
The Vessel shall be employed in lawful trades for the carriage of lawful merchandise only between safe ports or places where the Vessel can safely lie always afloat within the limits stated in Box 17. No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) shall be shipped.		
3. Owners' Obligations		
The Owners shall provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service. The Owners shall provide winchmen from the crew to operate the Vessel's cargo handling gear, unless the crew's employment conditions or local union or port regulations prohibit this, in which case qualified shore-winchmen shall be provided and paid for by the Charterers.		
4. Charterers' Obligations		
The Charterers shall provide and pay for all fuel oil, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, officers and crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also shall arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection). All ropes, slings and special runners actually used for loading		
		and discharging and any special gear, including special ropes and chains required by the custom of the port for mooring shall be for the Charterers' account. The Vessel shall be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.
5. Bunkers		
The Charterers at port of delivery and the Owners at port of re-delivery shall take over and pay for all fuel oil remaining in the Vessel's bunkers at current price at the respective ports. The Vessel shall be re-delivered with not less than the number of tons and not exceeding the number of tons of fuel oil in the Vessel's bunkers stated in Box 18.		
6. Hire		
The Charterers shall pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners. Payment of hire shall be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20. In default of payment the Owners shall have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.		
7. Re-delivery		
The Vessel shall be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday. The Charterers shall give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered. Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers shall have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow redelivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers shall pay the market rate if higher than the rate stipulated herein.		
8. Cargo Space		
The whole reach and burthen of the Vessel, including lawful deck-capacity shall be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, officers, crew, tackle, apparel, furniture, provisions and stores.		
9. Master		
The Master shall prosecute all voyages with the utmost despatch and shall render customary assistance with the Vessel's crew. The Master shall be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers shall indemnify the Owners against all consequences or liabilities arising from the Master, officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners shall not be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise. If		

PART II
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the Charterers have reason to be dissatisfied with the	132	able on account of ice to reach the place or to get out	198
conduct of the Master or any officer, the Owners, on	133	after having completed loading or discharging. The	199
receiving particulars of the complaint, promptly to	134	Vessel shall not be obliged to force ice. If on account of	200
investigate the matter, and, if necessary and practicable,	135	ice the Master considers it dangerous to remain at the	201
to make a change in the appointments.	136	loading or discharging place for fear of the Vessel being	202
		frozen in and/or damaged, he has liberty to sail to a	203
10. Directions and Logs	137	convenient open place and await the Charterers fresh	204
The Charterers shall furnish the Master with all	138	instructions. Unforeseen detention through any of above	205
instructions and sailing directions and the Master shall	139	causes shall be for the Charterers account.	206
keep full and correct logs accessible to the Charterers	140		
or their Agents.	141		
11. Suspension of Hire etc.	142	15. Loss of Vessel	207
(A) In the event of drydocking or other necessary	143	Should the Vessel be lost or missing, hire shall cease	208
measures to maintain the efficiency of the Vessel,	144	from the date when she was lost. If the date of loss	209
deficiency of men or Owners stores, breakdown of	145	cannot be ascertained half hire shall be paid from the	210
machinery, damage to hull or other accident, either	146	date the Vessel was last reported until the calculated	211
hindering or preventing the working of the Vessel and	147	date of arrival at the destination. Any hire paid in advance	212
continuing for more than twenty-four consecutive hours,	148	shall be adjusted accordingly.	213
no hire shall be paid in respect of any time lost thereby	149		
during the period in which the Vessel is unable to perform	150	16. Overtime	214
the service immediately required. Any hire paid in	151	The Vessel shall work day and night if required. The	215
advance shall be adjusted accordingly.	152	Charterers shall refund the Owners their outlays for all	216
(B) In the event of the Vessel being driven into port or to	153	overtime paid to officers and crew according to the hours	217
anchorage through stress of weather, trading to shallow	154	and rates stated in the Vessel's articles.	218
harbours or to rivers or ports with bars or suffering an	155		
accident to her cargo, any detention of the Vessel and/or	156	17. Lien	219
expenses resulting from such detention shall be for the	157	The Owners shall have a lien upon all cargoes and	220
Charterers account even if such detention and/or	158	sub-freights belonging to the Time-Charterers and any	221
expenses, or the cause by reason of which either is	159	Bill of Lading freight for all claims under this Charter,	222
incurred, be due to, or be contributed to by, the	160	and the Charterers shall have a lien on the Vessel for all	223
negligence of the Owners servants.	161	moneys paid in advance and not earned.	224
12. Responsibility and Exemption	162	18. Salvage	225
The Owners only shall be responsible for delay in	163	All salvage and assistance to other vessels shall be for	226
delivery of the Vessel or for delay during the currency of	164	the Owners and the Charterers equal benefit after	227
the Charter and for loss or damage to goods onboard, if	165	deducting the Masters, officers and crews proportion	228
such delay or loss has been caused by want of due	166	and all legal and other expenses including hire paid	229
diligence on the part of the Owners or their Manager in	167	under the charter for time lost in the salvage, also repairs	230
making the Vessel seaworthy and fitted for the voyage	168	of damage and fuel oil consumed. The Charterers shall	231
or any other personal act or omission or default of the	169	be bound by all measures taken by the Owners in order	232
Owners or their Manager. The Owners shall not be	170	to secure payment of salvage and to fix its amount.	233
responsible in any other case nor for damage or delay	171		
whatsoever and howsoever caused even if caused by	172	19. Sublet	234
the neglect or default of their servants. The Owners shall	173	The Charterers shall have the option of subletting the	235
not be liable for loss or damage arising or resulting	174	Vessel, giving due notice to the Owners, but the original	236
from strikes, lock-outs or stoppage or restraint of labour	175	Charterers shall always remain responsible to the	237
(including the Master, officers or crew) whether partial	176	Owners for due performance of the Charter.	238
or general. The Charterers shall be responsible for loss	177		
or damage caused to the Vessel or to the Owners by	178	20. War ("Conwartime 1993")	239
goods being loaded contrary to the terms of the Charter	179	(A) For the purpose of this Clause, the words:	240
or by improper or careless bunkering or loading, stowing	180	(i) Owners shall include the shipowners, bareboat	241
or discharging of goods or any other improper or	181	charterers, disponent owners, managers or other	242
negligent act on their part or that of their servants.	182	operators who are charged with the management of the	243
		Vessel, and the Master; and	244
		(ii) War Risks shall include any war (whether actual or	245
		threatened), act of war, civil war, hostilities, revolution,	246
		rebellion, civil commotion, warlike operations, the laying	247
		of mines (whether actual or reported), acts of piracy,	248
		acts of terrorists, acts of hostility or malicious damage,	249
		blockades (whether imposed against all vessels or	250
		imposed selectively against vessels of certain flags or	251
		ownership, or against certain cargoes or crews or	252
		otherwise howsoever), by any person, body, terrorist or	253
		political group, or the Government of any state	254
		whatsoever, which, in the reasonable judgement of the	255
		Master and/or the Owners, may be dangerous or are	256
		likely to be or to become dangerous to the Vessel, her	257
		cargo, crew or other persons on board the Vessel.	258
		(B) The Vessel, unless the written consent of the Owners	259
		be first obtained, shall not be ordered to or required to	260
		continue to or through, any port, place, area or zone	261
		(whether of land or sea), or any waterway or canal, where	262
13. Advances	183		
The Charterers or their Agents shall advance to the	184		
Master, if required, necessary funds for ordinary	185		
disbursements for the Vessel's account at any port	186		
charging only interest at 6 per cent. p.a., such advances	187		
shall be deducted from hire.	188		
14. Excluded Ports	189		
The Vessel shall not be ordered to nor bound to enter:	190		
(A) any place where fever or epidemics are prevalent or	191		
to which the Master, officers and crew by law are not	192		
bound to follow the Vessel;	193		
(B) any ice-bound place or any place where lights,	194		
lightships, marks and buoys are or are likely to be	195		
withdrawn by reason of ice on the Vessel's arrival or	196		
where there is risk that ordinarily the Vessel will not be	197		

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it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.

(C) The Vessel shall not be required to load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.

(D) (i) The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.

(ii) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.

(E) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then such bonus or additional wages shall be reimbursed to the Owners by the Charterers at the same time as the next payment of hire is due.

(F) The Vessel shall have liberty:-

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv) to divert and discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

(v) to divert and call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.

(G) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one

or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.

(H) If in compliance with any of the provisions of sub-clauses (B) to (G) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter.

21. Cancelling

Should the Vessel not be delivered by the date indicated in Box 22, the Charterers shall have the option of cancelling. If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, shall declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

22. Dispute Resolution

*) (A) This Charter shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Charter shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

*) (B) This Charter shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

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In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	403 404 405 406 407 408	necessary to protect its interest.	445
*) (C) This Charter shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Charter shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	409 410 411 412 413 414	(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	446 447 448 449 450
(D) Notwithstanding (A), (B) or (C) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter.	415 416 417 418	(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	451 452 453 454
In the case of a dispute in respect of which arbitration has been commenced under (A), (B) or (C) above, the following shall apply:-	419 420 421	(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	455 456 457 458 459
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the Mediation Notice) calling on the other party to agree to mediation.	422 423 424 425	(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)	460
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (the Tribunal) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	426 427 428 429 430 431 432 433 434 435 436 437 438	(E) If Box 23 in Part I is not appropriately filled in, sub-clause (A) of this Clause shall apply. Sub-clause (D) shall apply in all cases.	461 462 463 464
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	439 440 441 442	*) (A), (B) and (C) are alternatives; indicate alternative agreed in Box 23.	465 466
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers	443 444	23. General Average	467
		General Average shall be settled according to York/Antwerp Rules, 1994 and any subsequent modification thereof. Hire shall not contribute to General Average.	468 469 470
		24. Commission	471
		The Owners shall pay a commission at the rate stated in Box 24 to the party mentioned in Box 24 on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.	472 473 474 475 476 477 478 479 480 481 482 483

1. Shipbroker		THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM TIME-CHARTER (Base Layout 1974) CODE NAME: "BALTIME 1974"		 PART I
		2. Place and date		
3. Owners/Place of business		4. Charterers/Place of business		
5. Vessel's name		6. GRT/NRT		
7. Class		8. Indicated horse power		
9. Total tons d.w. (abt.) on Board of Trade summer freeboard		10. Cubic feet grain/bale capacity		
11. Permanent bunkers (abt.)				
12. Speed capability in knots (abt.) on a consumption in tons (abt.) of				
13. Present position				
14. Period of hire (Cl. 1)		15. Port of delivery (Cl. 1)		
		16. Time of delivery (Cl. 1)		
17. (a) Trade limits (Cl. 2)				
(b) Cargo exclusions specially agreed				
18. Bunkers on re-delivery (state min. and max. quantity) (Cl. 5)				
19. Charter hire (Cl. 6)		20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6)		
21. Place or range of re-delivery (Cl. 7)		22. War (only to be filled in if Section (C) agreed) (Cl. 21)		
23. Cancelling date (Cl. 22)		24. Place of arbitration (only to be filled in if place other than London agreed) (Cl. 23)		
25. Brokerage commission and to whom payable (Cl. 25)		26. Numbers of additional clauses covering special provisions, if agreed		
It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.				
Signature (Owners)		Signature (Charterers)		

PART II

"BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

It is agreed between the party mentioned in Box 3 as owners of the Vessel named in Box 5 of the gross/net Register tonnage indicated in Box 6, classed as stated in Box 7 and of indicated horse power as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on Board of Trade summer freeboard inclusive of bunkers, stores, provisions and boiler water, having as per builder's plan a cubic-feet grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons best Welsh coal or oil-fuel stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1. Period/Port of Delivery/Time of Delivery	19																	
The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, she being in every way fitted for ordinary cargo service.	20	21	22	23	24	25	26	27	28	29	30	31	32					
The Vessel to be delivered at the time indicated in Box 16.																		
2. Trade	33																	
The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat within the limits stated in Box 17.	34	35	36	37	38	39	40	41	42									
No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped.																		
3. Owners to Provide	43																	
The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.	44	45	46	47	48	49	50	51	52	53								
The Owners to provide one winchman per hatch. If further winchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified shore-winchmen.																		
4. Charterers to Provide	54																	
The Charterers to provide and pay for all coals, including galley coal, oil-fuel, water for boilers, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, Officers and Crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection).	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72
All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.	73	74	75	76	77	78	79	80										
5. Bunkers	81																	
The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports. The Vessel to be re-delivered with not less than the number of tons and not exceeding the number of tons of coal or oil-fuel in the Vessel's bunkers stated in Box 18.	82	83	84	85	86	87	88	89	90	91								
6. Hire	92																	
The Charterers to pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners.	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107			
Payment																		
Payment of hire to be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20.																		
In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without notice any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.																		
7. Re-delivery	108																	
The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126
Notice																		
The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.																		
Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.																		
8. Cargo Space	131																	
The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.	132	133	134	135	136													
9. Master	137																	
The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155
If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.																		
10. Directions and Logs	159																	
The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents.	160	161	162	163														
11. Suspension of Hire etc.	164																	
(A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than twentyfour consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182
(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.																		
12. Cleaning Boilers	186																	
Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready.	187	188	189	190	191													
13. Responsibility and Exemption	192																	
The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general.	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210
The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.																		
14. Advances	217																	
The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 per cent. p.a., such advances to be deducted from hire.	218	219	220	221	222													
15. Excluded Ports	223																	
The Vessel not to be ordered to nor bound to enter: a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel Ice	224	225	226	227	228	229	230	231	232	233	234	235	236	237				
b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the																		

PART II
"BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

loading or discharging place for fear of the Ves-	238	filers and/or Crew or the cost of provisions and/	315
sel being frozen in and/or damaged, he has	239	or stores for deck and/or engine room and/or	316
liberty to sail to a convenient open place and	240	insurance premiums being increased by reason	317
await the Charterers' fresh instructions.	241	of or during the existence of any of the matters	318
Unforeseen detention through any of above cau-	242	mentioned in section (A) the amount of any in-	319
ses to be for the Charterers' account.	243	crease to be added to the hire and paid by the	320
		Charterers on production of the Owners' account	321
		therefor, such account being rendered monthly.	322
16. Loss of Vessel	244	(D) The Vessel to have liberty to comply with	323
Should the Vessel be lost or missing, hire to	245	any orders or directions as to departure, arrival,	324
cease from the date when she was lost. If the	246	routes, ports of call, stoppages, destination, de-	325
date of loss cannot be ascertained half hire to	247	livery or in any other wise whatsoever given by	326
be paid from the date the Vessel was last re-	248	the Government of the nation under whose flag	327
ported until the calculated date of arrival at the	249	the Vessel sails or any other Government or any	328
destination. Any hire paid in advance to be ad-	250	person (or body) acting or purporting to act with	329
justed accordingly.	251	the authority of such Government or by any com-	330
		mittee or person having under the terms of the	331
17. Overtime	252	war risks insurance on the Vessel the right to	332
The Vessel to work day and night if required.	253	give any such orders or directions.	333
The Charterers to refund the Owners their out-	254	(E) In the event of the nation under whose flag	334
lays for all overtime paid to Officers and Crew	255	the Vessel sails becoming involved in war, ho-	335
according to the hours and rates stated in the	256	stilities, wartime operations, revolution, or civil	336
Vessel's articles.	257	commotion, both the Owners and the Charterers	337
		may cancel the Charter and, unless otherwise	338
		agreed, the Vessel to be re-delivered to the Owners	339
18. Lien	258	at the port of destination or, if prevented	340
The Owners to have a lien upon all cargoes and	259	through the provisions of section (A) from reach-	341
sub-freights belonging to the Time-Charterers and	260	ing or entering it, then at a near open and safe	342
any Bill of Lading freight for all claims under	261	port at the Owners' option, after discharge of any	343
this Charter, and the Charterers to have a lien	262	cargo on board.	344
on the Vessel for all moneys paid in advance	263	(F) If in compliance with the provisions of this	345
and not earned.	264	clause anything is done or is not done, such not	346
		to be deemed a deviation.	347
19. Salvage	265	<i>Section (C) Is optional and should be considered</i>	348
All salvage and assistance to other vessels to be	266	<i>deleted unless agreed according to Box 22.</i>	349
for the Owners' and the Charterers' equal benefit	267		
after deducting the Master's and Crew's propor-	268		
tion and all legal and other expenses including	269	22. Cancelling	350
hire paid under the charter for time lost in the	270	Should the Vessel not be delivered by the date	351
salvage, also repairs of damage and coal or oil-	271	indicated in Box 23, the Charterers to have the	352
fuel consumed. The Charterers to be bound by	272	option of cancelling.	353
all measures taken by the Owners in order to	273	If the Vessel cannot be delivered by the cancel-	354
secure payment of salvage and to fix its amount.	274	ling date, the Charterers, if required, to declare	355
		within 48 hours after receiving notice thereof	356
		whether they cancel or will take delivery of the	357
20. Sublet	275	Vessel.	358
The Charterers to have the option of subletting	276		
the Vessel, giving due notice to the Owners, but	277		
the original Charterers always to remain respon-	278	23. Arbitration	359
sible to the Owners for due performance of the	279	Any dispute arising under the Charter to be re-	360
Charter.	280	ferred to arbitration in London (or such other	361
		place as may be agreed according to Box 24)	362
21. War	281	one Arbitrator to be nominated by the Owners	363
(A) The Vessel unless the consent of the Owners	282	and the other by the Charterers, and in case the	364
be first obtained not to be ordered nor continue	283	Arbitrators shall not agree then to the decision	365
to any place or on any voyage nor be used on	284	of an Umpire to be appointed by them, the award	366
any service which will bring her within a zone	285	of the Arbitrators or the Umpire to be final and	367
which is dangerous as the result of any actual	286	binding upon both parties.	368
or threatened act of war, war hostilities, wartime	287		
operations, acts of piracy or of hostility or ma-	288	24. General Average	369
licious damage against this or any other vessel	289	General Average to be settled according to York/	370
or its cargo by any person, body or State what-	290	Antwerp Rules, 1974. Hire not to contribute to	371
soever, revolution, civil war, civil commotion or	291	General Average.	372
the operation of International law, nor be ex-	292		
posed in any way to any risks or penalties whatso-	293	25. Commission	373
ever consequent upon the imposition of Sanc-	294	The Owners to pay a commission at the rate	374
tions, nor carry any goods that may in any way	295	stated in Box 25 to the party mentioned in Box	375
expose her to any risks of seizure, capture, pe-	296	25 on any hire paid under the Charter, but in no	376
nalities or any other interference of any kind	297	case less than is necessary to cover the actual	377
whatsoever by the belligerent or fighting powers	298	expenses of the Brokers and a reasonable fee	378
or parties or by any Government or Ruler.	299	for their work. If the full hire is not paid owing	379
(B) Should the Vessel approach or be brought or	300	to breach of Charter by either of the parties the	380
ordered within such zone, or be exposed in any	301	party liable therefor to indemnify the Brokers	381
way to the said risks, (1) the Owners to be en-	302	against their loss of commission.	382
litled from time to time to insure their interests	303	Should the parties agree to cancel the Charter,	383
in the Vessel and/or hire against any of the risks	304	the Owners to indemnify the Brokers against any	384
likely to be involved thereby on such terms as	305	loss of commission but in such case the com-	385
they shall think fit, the Charterers to make a re-	306	mission not to exceed the brokerage on one	386
fund to the Owners of the premium on demand;	307	year's hire.	387
and (2) notwithstanding the terms of Clause 11	308		
hire to be paid for all time lost including any	309		
lost owing to loss of or injury to the Master,	310		
Officers, or Crew or to the action of the Crew in	311		
refusing to proceed to such zone or to be ex-	312		
posed to such risks.	313		
(C) In the event of the wages of the Master, Of-	314		

APPENDIX

C

BILLS OF LADING

BIMCO LINER BILL OF LADING
CODE NAME: "CONLINEBILL 2000"


Amended January 1950; August 1952; January 1973;
July 1974; August 1976; January 1978; November 2000.

Shipper (full style and address)		B/L No.		Reference No.
Consignee (full style and address) or Order		Vessel		
		Port of loading		
Notify Party (full style and address)		Port of discharge		
PARTICULARS DECLARED BY THE SHIPPER BUT NOT ACKNOWLEDGED BY THE CARRIER				
Container No./Seal No./Marks and Numbers	Number and kind of packages; description of cargo	Gross weight, kg	Measurement, m ³	
Sample Copy				
SHIPPED on board in apparent good order and condition (unless otherwise stated herein) the total number of Containers/Packages or Units indicated in the Box opposite entitled "Total number of Containers/Packages or Units received by the Carrier" and the cargo as specified above, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of discharge or so near thereunto as the vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the Port of discharge unto the lawful holder of the Bill of Lading, on payment of freight as indicated to the right plus other charges incurred in accordance with the provisions contained in this Bill of Lading. In accepting this Bill of Lading the Merchant* expressly accepts and agrees to all its stipulations on both Page 1 and Page 2, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant. One original Bill of Lading must be surrendered duly endorsed in exchange for the cargo or delivery order, whereupon all other Bills of Lading to be void. IN WITNESS whereof the Carrier, Master or their Agent has signed the number of original Bills of Lading stated below right, all of this tenor and date.		Total number of Containers/Packages or Units received by the Carrier		
		Shipper's declared value		Declared value charge
		Freight details and charges		
Carrier's name/principal place of business		Date shipped on board		Place and date of issue
		Number of original Bills of Lading		
		Pre-carriage by**		
Signature _____ Carrier or, for the Carrier _____ as Master (Master's name/signature) _____ as Agents (Agent's name/signature)		Place of receipt by pre-carrier**		
		Place of delivery by on-carrier**		

*As defined hereinafter (Cl. 1)

**Applicable only when pre-/on-carriage is arranged in accordance with Clause 8

1. Definition.

"Merchant" includes the shipper, the receiver, the consignor, the consignee, the holder of the Bill of Lading, the owner of the cargo and any person entitled to possession of the cargo.

2. Notification.

Any mention in this Bill of Lading of parties to be notified of the arrival of the cargo is solely for the information of the Carrier and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

3. Liability for Carriage Between Port of Loading and Port of Discharge.

(a) The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or, if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract. The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or with respect to deck cargo and live animals.

(b) If the Carrier is held liable in respect of delay, consequential loss or damage other than loss of or damage to the cargo, the liability of the Carrier shall be limited to the freight for the carriage covered by this Bill of Lading, or to the limitation amount as determined in sub-clause 3(a), whichever is the lesser.

(c) The aggregate liability of the Carrier and/or any of his servants, agents or independent contractors under this Contract shall, in no circumstances, exceed the limits of liability for the total loss of the cargo under sub-clause 3(a) or, if applicable, the Additional Clause.

4. Law and Jurisdiction.

Disputes arising out of or in connection with this Bill of Lading shall be exclusively determined by the courts and in accordance with the law of the place where the Carrier has his principal place of business, as stated on Page 1, except as provided elsewhere herein.

5. The Scope of Carriage.

The intended carriage shall not be limited to the direct route but shall be deemed to include any proceeding or returning to or stopping or slowing down at or off any ports or places for any reasonable purpose connected with the carriage including bunkering, loading, discharging, or other cargo operations and maintenance of Vessel and crew.

6. Substitution of Vessel.

The Carrier shall be at liberty to carry the cargo or part thereof to the Port of discharge by the said or other vessel or vessels either belonging to the Carrier or others, or by other means of transport, proceeding either directly or indirectly to such port.

7. Transhipment.

The Carrier shall be at liberty to tranship, lighten, land and store the cargo either on shore or aboard and re-ship and forward the same to the Port of discharge.

8. Liability for Pre- and On-Carriage.

When the Carrier arranges pre-carriage of the cargo from a place other than the Vessel's Port of loading or on-carriage of the cargo to a place other than the Vessel's Port of discharge, the Carrier shall contract as the Merchant's Agent only and the Carrier shall not be liable for any loss or damage arising during any part of the carriage other than between the Port of loading and the Port of discharge even though the freight for the whole carriage has been collected by him.

9. Loading and Discharging.

(a) Loading and discharging of the cargo shall be arranged by the Carrier or his Agent.

(b) The Merchant shall, at his risk and expense, handle and/or store the cargo before loading and after discharging.

(c) Loading and discharging may commence without prior notice.

(d) The Merchant or his Agent shall tender the cargo when the Vessel is ready to load and as fast as the Vessel can receive including, if required by the Carrier, outside ordinary working hours notwithstanding any custom of the port. If the Merchant or his Agent fails to tender the cargo when the Vessel is ready to load or fails to load as fast as the Vessel can receive the cargo, the Carrier shall be relieved of any obligation to load such cargo, the Vessel shall be entitled to leave the port without further notice and the Merchant shall be liable to the Carrier for deadfreight and/or any overtime charges, losses, costs and expenses incurred by the Carrier.

(e) The Merchant or his Agent shall take delivery of the cargo as fast as the Vessel can discharge including, if required by the Carrier, outside ordinary working hours notwithstanding

any custom of the port. If the Merchant or his Agent fails to take delivery of the cargo the Carrier's discharging of the cargo shall be deemed fulfilment of the contract of carriage. Should the cargo not be applied for within a reasonable time, the Carrier may sell the same privately or by auction. If the Merchant or his Agent fails to take delivery of the cargo as fast as the Vessel can discharge, the Merchant shall be liable to the Carrier for any overtime charges, losses, costs and expenses incurred by the Carrier.

(f) The Merchant shall accept his reasonable proportion of unidentified loose cargo.

10. Freight, Charges, Costs, Expenses, Duties, Taxes and Fines.

(a) Freight, whether paid or not, shall be considered as fully earned upon loading and non-returnable in any event. Unless otherwise specified, freight and/or charges under this Contract are payable by the Merchant to the Carrier on demand. Interest at Libor (or its successor) plus 2 per cent. shall run from fourteen days after the date when freight and charges are payable.

(b) The Merchant shall be liable for all costs and expenses of fumigation, gathering and sorting loose cargo and weighing onboard, repairing damage to and replacing packing due to excepted causes, and any extra handling of the cargo for any of the aforementioned reasons.

(c) The Merchant shall be liable for any dues, duties, taxes and charges which under any denomination may be levied, *inter alia*, on the basis of freight, weight of cargo or tonnage of the Vessel.

(d) The Merchant shall be liable for all fines, penalties, costs, expenses and losses which the Carrier, Vessel or cargo may incur through non-observance of Customs House and/or import or export regulations.

(e) The Carrier is entitled in case of incorrect declaration of contents, weights, measurements or value of the cargo to claim double the amount of freight which would have been due if such declaration had been correctly given. For the purpose of ascertaining the actual facts, the Carrier shall have the right to obtain from the Merchant the original invoice and to have the cargo inspected and its contents, weight, measurement or value verified.

11. Lien.

The Carrier shall have a lien on all cargo for any amount due under this contract and the costs of recovering the same and shall be entitled to sell the cargo privately or by auction to satisfy any such claims.

12. General Average and Salvage.

General Average shall be adjusted, stated and settled in London according to the York-Antwerp Rules 1994, or any modification thereof, in respect of all cargo, whether carried on or under deck. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Carrier is not responsible by statute, contract or otherwise, the Merchant shall contribute with the Carrier in General Average to the payment of any sacrifice, losses or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

13. Both-to-Blame Collision Clause.

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, negligence or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the Merchant will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her Owner in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the cargo paid or payable by the other or non-carrying vessel or her Owner to the owner of the cargo and set-off, recouped or recovered by the other or non-carrying vessel or her Owner as part of his claim against the carrying vessel or Carrier. The foregoing provisions shall also apply where the Owner, operator or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

14. Government directions, War, Epidemics, Ice, Strikes, etc.

(a) The Master and the Carrier shall have liberty to comply with any order or directions or recommendations in connection with the carriage under this Contract given by any Government or Authority, or anybody acting or purporting to act on behalf of such Government or Authority, or having under the terms of the insurance on the Vessel the right to give such orders or directions or recommendations.

(b) Should it appear that the performance of the carriage would expose the Vessel or any cargo onboard to risk of seizure, damage or delay, in consequence of war, wartime operations, blockade, riots, civil commotions or piracy, or any person onboard to risk of loss of life or freedom, or that any such risk has increased, the Master may discharge the cargo at the Port of loading or any other safe and convenient port.

(c) Should it appear that epidemics; quarantine; ice; labour troubles, labour obstruction, strikes, lockouts (whether

onboard or on shore); difficulties in loading or discharging would prevent the Vessel from leaving the Port of loading or reaching or entering the Port of discharge or there discharging in the usual manner and departing therefrom, all of which safely and without unreasonable delay, the Master may discharge the cargo at the Port of loading or any other safe and convenient port.

(d) The discharge, under the provisions of this Clause, of any cargo shall be deemed due fulfilment of the contract of carriage.

(e) If in connection with the exercise of any liberty under this Clause any extra expenses are incurred they shall be paid by the Merchant in addition to the freight, together with return freight, if any, and a reasonable compensation for any extra services rendered to the cargo.

15. Defences and Limits of Liability for the Carrier, Servants and Agents.

(a) It is hereby expressly agreed that no servant or agent of the Carrier (which for the purpose of this Clause includes every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Merchant under this Contract of carriage for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment.

(b) Without prejudice to the generality of the foregoing provisions in this Clause, every exemption from liability, limitation, condition and liberty herein contained and every right, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled, shall also be available and shall extend to protect every such servant and agent of the Carrier acting as aforesaid.

(c) The Merchant undertakes that no claim shall be made against any servant or agent of the Carrier and, if any claim should nevertheless be made, to indemnify the Carrier against all consequences thereof.

(d) For the purpose of all the foregoing provisions of this Clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who might be his servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to this Contract of carriage.

16. Stowage.

(a) The Carrier shall have the right to stow cargo by means of containers, trailers, transportable tanks, flats, pallets, or similar articles of transport used to consolidate goods.

(b) The Carrier shall have the right to carry containers, trailers, transportable tanks and covered flats, whether stowed by the Carrier or received by him in a stowed condition from the Merchant, on or under deck without notice to the Merchant.

17. Shipper-Packed Containers, trailers, transportable tanks, flats and pallets.

(a) If a container has not been filled, packed or stowed by the Carrier, the Carrier shall not be liable for any loss of or damage to its contents and the Merchant shall cover any loss or expense incurred by the Carrier, if such loss, damage or expense has been caused by:

- (i) negligent filling, packing or stowing of the container;
- (ii) the contents being unsuitable for carriage in container; or
- (iii) the unsuitability or defective condition of the container unless the container has been supplied by the Carrier and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed.

(b) The provisions of sub-clause (i) of this Clause also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the Carrier.

(c) The Carrier does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Merchant.

18. Return of Containers.

(a) Containers, pallets or similar articles of transport supplied by or on behalf of the Carrier shall be returned to the Carrier in the same order and condition as handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed in the Carrier's tariff or elsewhere.

(b) The Merchant shall be liable to the Carrier for any loss, damage to, or delay, including demurrage and detention incurred by or sustained to containers, pallets or similar articles of transport during the period between handing over to the Merchant and return to the Carrier.

ADDITIONAL CLAUSE

U.S. Trade. Period of Responsibility.

(i) In case the Contract evidenced by this Bill of Lading is subject to the Carriage of Goods by Sea Act of the United States of America, 1936 (U.S. COGSA), then the provisions stated in said Act shall govern before loading and after discharge and throughout the entire time the cargo is in the Carrier's custody and in which event freight shall be payable on the cargo coming into the Carrier's custody.

(ii) If the U.S. COGSA applies, and unless the nature and value of the cargo has been declared by the shipper before the cargo has been handed over to the Carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss or damage to the cargo in an amount exceeding USD 500 per package or customary freight unit.



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BILL OF LADING

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Shipper		Bill of Lading No.	Reference No.
Consignee		Vessel	
Notify address		Port of loading	
		Port of discharge	
Shipper's description of goods		Gross weight	
(of which on deck at shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)			
Freight payable as per CHARTER PARTY dated:		SHIPPED at the Port of Loading in apparent good order and condition on the Vessel for carriage to the Port of Discharge or so near thereto as the Vessel may safely get the goods specified above.	
FREIGHT ADVANCE Received on account of freight:		Weight, measure, quality, quantity, condition, contents and value unknown. IN WITNESS whereof the Master or Agent of the said vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void. FOR CONDITIONS OF CARRIAGE SEE OVERLEAF.	
		Date shipped on board	Place and date of issue Number of original Bills of Lading
Signature:		(i) Master Master's name and signature Or (ii) as Agent for the Master Agent's name and signature Or (iii) as Agent for the Owner* Agent's name and signature Owner *if option (iii) filled in, state Owner's name above	

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Conditions of Carriage

- (1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated.

(2) **General Paramount Clause**

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(3) **General Average**

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or Crew.

(4) **New Jason Clause**

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as in the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier, or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Carrier before delivery.

(5) **Both-to-Blame Collision Clause**

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

For particulars of cargo, freight, destination, etc., see overleaf

APPENDIX

D

BIMCO APPROVED CLAUSES FOR THE ISPS CODE

BIMCO ISPS/MTSA CLAUSE FOR VOYAGE CHARTER PARTIES 2005

(a)(i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and “the Company” (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the “Owner” (as defined by the MTSA).

(ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).

(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or “the Company”/“Owner” to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners’ account, except as otherwise provided in this Charter Party.

(b)(i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA.

(ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers’ account, except as otherwise provided in this Charter Party, and any delay caused by such failure shall count as laytime or time on demurrage.

(c) Provided that the delay is not caused by the Owners’ failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall count as laytime or time on demurrage, unless such measures result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners’ managers.

(d) Notwithstanding anything to the contrary provided in this Charter Party, any costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers’ account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners’ managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners’ account.

(e) If either party makes any payment which is for the other party’s account according to this Clause, the other party shall indemnify the paying party.

Footnote: This Clause replaces previously published ISPS Clause for Voyage Charter Parties AND the US Security Clause for Voyage Charter Parties, both of which are now officially withdrawn.

BIMCO ISPS/MTSA CLAUSE FOR TIME CHARTER PARTIES 2005

(a)(i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and “the Company” (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the “Owner” (as defined by the MTSA).

(ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).

(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or “the Company”/“Owner” to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners’ account, except as otherwise provided in this Charter Party.

(b)(i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Charter Party, the Charterers shall ensure that the contact details of all sub-charterers are likewise provided to the Owners and the Master. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

“The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners”.

(ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers’ account, except as otherwise provided in this Charter Party.

(c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers’ account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners’ account.

(d) If either party makes any payment which is for the other party’s account according to this Clause, the other party shall indemnify the paying party.

Footnote: This Clause replaces previously published ISPS Clause for Time Charter Parties AND the US Security Clause for Time Charter Parties, both of which are now officially withdrawn.