

# COVID-19. The implications for Voyage Charters.



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Training course on Implications of the COVID-19 Pandemic for Commercial Contracts

Current effect of the public health emergency on international carriage of goods by sea.

Distinguish the initial stage of the coronavirus outbreak from the global pandemic.

DELAY. 14 day Quarantine of vessels. Quarantine if crew test positive. Quarantine if vessel has come from certain countries within last 14 days.

Indirect effects – congestion at container ports

Temporary closure of ports

Reuters 16 March 2022

## **SUPPLY CHAIN CRISIS**

Container loading is “decreasing massively” at Shenzhen's Yantian port, the world's fourth largest container terminal, as port workers, truckers and factory workers stayed at home, said Jasmine Wall, Asia-Pacific manager at SEKO Logistics.

“This implies that it will become difficult to get cargo to and from the ports and hence whether the terminals are open or not becomes a moot point,” said Lars Jensen, CEO at Vespucci Maritime, a container shipping advisor.

"It will have a disruptive impact on the supply chain - in turn prolonging the current supply chain crisis.”

Currently there are 34 vessels off Shenzhen waiting to dock, compared to an average of seven a year ago, according to Refinitiv ship tracking data. At Qingdao, an eastern Chinese port city, there are around 30 vessels waiting to dock compared to an average of seven last year.

## Allocation of risk under voyage charter

Approach voyage: Shipowner

Loading: Charterer

Carrying voyage: Shipowner

Discharge: Charterer

# ISSUE 1. Getting to the port. Is it safe to go in?

## Voyage charters and safe port warranties

*The APJ Priti* [1987] 2 Lloyd's Rep 37

*The Reborn* [2009] EWCA Civ 531

No implied warranty of safety as regards ports specified in charter.

A safe *berth* warranty won't lead to a warranty of the safety of the port or the approach to the port.

It is possible that a warranty of safety may be implied where the charter provides for nomination of a port within a range which is not specified by name. dicta of Donaldson J in *The Evaggelos Th*, 1971 2 Lloyds Rep 200, 204, a time charter case

If there is a power to nominate ports, charterers should not nominate a port that is impossible to enter. *The Springbank* [1919] KB 162

# ISSUE 1. Getting to the port. Is it safe to go in?

## Voyage charters and safe port warranties

### What is an unsafe port?

Sellers L.J. in *The Eastern City* [1958] 2 Lloyd's Rep 127:

A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use 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

Port must be prospectively safe at time order is given. If so shipowner must comply with it. If not shipowner can refuse to comply with it.

What about safety of the crew?

Delay? *Unitramp v. Garnac Grain (The Hermine)* [\[1979\] 1 Lloyd's Rep. 212](#) (C.A.)

Economic unsafety for the ship? Exposure to future denial of entry to ports, quarantine.

If there is an implied warranty of safety.

Renomination. *The Evia (no 2)*. [1982] 1 Lloyd's Rep 334. A time charter case, but dicta that probably no duty to renominate in a voyage charter

But. No obligation to proceed into a port that has become unsafe.

*The Teutonia* (1872) LR 4 PC 171

## The 'near' clause:

' . . . or so near thereto as she may safely get and lie always afloat' .

Clause will entitle the shipowner to discharge at a nearby alternative port if the charter port is unusable and thereby claim: the freight due on 'right and true delivery' of the cargo; demurrage if discharge at the alternative port exceeds the permitted laytime for the contractual discharge port.

- the alternative port must be within the 'ambit' of the named port *The Athamas* [1963] 1 Lloyd's Rep 287
- the delay in getting into the port must have been unforeseeable to the parties *Metcalfe v Britannia Ironworks* [1877] 2 QBD 423
- the time ship would have to wait before it could enter the contractual port would amount to an 'unreasonable' period of delay



## **Issue 2. Giving NOR and starting laytime.**

### **Risk of COVID delays on shipowner**

NOR. Free pratique

*“official permission from the port health authorities that the ship is without infectious disease or plague and the crew is allowed to make physical contact with the shore; otherwise the ship may be required to wait at quarantine anchorage for clearance.” (“The Eagle Valencia [2010]).*

*The “Delian Spirit” [1972] 1 QB 103.*

Lord Denning MR said, obiter at p.124:

*I can understand that if a ship is known to be infected by a disease such as to prevent her getting her pratique she would not be ready to load or discharge. But if she has apparently a clean bill of health, such that there is no reason to fear delay, then even though she has not been given her pratique, she is entitled to give notice of readiness, and lay time will begin to run.*

But obtaining Free Pratique not a mere formality in the new normal of COVID 19.

Effect of a WIFPON (*whether in free pratique or not*) clause?

London Arbitration 11/00 (2000) 545 LMLN 3

After NOR was tendered, it became clear that four crew members did not have valid vaccination certificates. The crew members were required to be vaccinated and only then was free pratique granted. This was 13 days after the grant of NOR. The tribunal held that the clause assumed that the vessel obtaining free pratique was a mere formality. As this was not the case, the NOR given was invalid.

*The Linardos* [1994] 1 Lloyd's Rep. 28(QB).

“4. Time commencing . . . 18 hours after Notice of Readiness has been given by the Master, certifying that the vessel has arrived and is in all respects ready to load whether in berth or not . . .

Any time lost subsequently by vessel not fulfilling requirements requirements for Free Pratique or readiness to load in all respects, including Marine Surveyor’s Certificate . . . or for any other reason for which the vessel is responsible, shall NOT count as notice time, or as time allowed for loading.. . .”

Colman J: “...a notice of readiness proved to be given by the master or chief officer with knowledge that it was untrue, that is to say in the knowledge that the vessel was not then ready would be ineffective to start time running. There must by implication be a requirement of good faith.”

Colman J in *The Jay Ganesh* [1994] 2 Lloyd's Rep 358, considering a similar clause.

*The assumption is thus that a valid notice of readiness could be given at a time when the vessel was objectively in such a condition that she could not get free pratique. Thus if unknown to the master when he gave his notice, members of the crew were suffering from a disqualifying disease, which was only discovered after the vessel berthed and time was lost until they were cured or evacuated, cl. 9(e) would operate to the effect that time lost by reason of the disqualification did not count as laytime. The notice of readiness would remain valid and time not lost by reason of that disqualification would count as laytime and, if applicable, demurrage time.*

If the master knows that she is not in that condition, which will entitle her to free pratique as a mere formality, he cannot give that notice.

## Quarantine.

*White v Winchester* (1886) 13 Rettie 524 (a decision of the Scottish Court of Session)

The *Winchester* arrived to load a cargo, her previous port of call being Port Said. As a result, quarantine restrictions were placed upon her so that access to the ship was prevented. Vessel not an arrived ship, and not able to give notice of readiness to start laytime.

## Quarantine clauses

Various tanker charters provide for quarantine to count against laytime where the charterers order the vessel to a port which is already quarantined, but not when the port nominated subsequently becomes subject to quarantine – eg ASBATANKVOY cl.17(a):

*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.*

BP Voy 5 cl.37, Exxonmobilvoy 2012 cl.23

Free Pratique will also affect charterer's right to cancel if vessel not 'ready' at the load port by the cancelling date. Not ready due to not obtaining free pratique

*The "Austin Friars"* (1894) 10 TLR 633

the port authority prohibited loading until the doctor had visited the vessel and pronounced her free from infection. That occurred the day after the date in the cancelling clause, and the charterers had therefore validly brought the contract to an end.



## Issue 3. Running of laytime

### Risk of COVID Delays on Charterer

Once laytime starts it will run through the agreed laydays unless interrupted by (a) Laytime exceptions or (b) some fault of the shipowner.

#### (a) Laytime exceptions

Irrelevance of general charter exceptions

- *The Johs Stove [1984] 1 Lloyd's Rep 38,*

Irrelevance of provisions of Hague Rules under a clause paramount

- *Leeds Shipping v Duncan, Fox & Co [1932] 42 Ll.L. Rep 123.*

Laytime exceptions and delay due to cargo being delayed in getting into the port

- *Grant v Coverdale (1884) 9 App Cas 470*

## (b) Fault of shipowner

Non-actionable fault.

- *The Union Amsterdam* [1982] 2 Lloyd's Rep. 432.

Non-availability of ship to charterer.

- *The Stolt Spur* [2002] 1 Lloyd's Rep 786

Cargo damage and demurrage.

- *The Santa Isabella* [2020] 1 Lloyd's Rep. 603

- Once laytime expires vessel is on demurrage until completion of discharge/disconnection of hoses
- ‘Once on demurrage always on demurrage’
- Subject only to specific exceptions covering time on demurrage, or delay caused by fault of shipowner.

## **Issue 4. Deviation and unseaworthiness**

Crew infections and deviation.

Justified deviations

Reasonable deviations Art IV (4) HR

## **Crew infections and unseaworthiness.**

*Ciampa v British India Steam Navigation Co Ltd* [1915] 2 K.B. 774.

Infection of crew members with COVID-19 may make vessel unseaworthy.

Clause paramount. Art IV (1) HVR. Due diligence? By whom?

Non-delegable duty.

## **Issue 5. Knock-on losses**

Cargo claims against owners due to delay in discharge.

Recovery from charterers?

Breach? --- failure to discharge during laytime.

## Is demurrage the exclusive remedy?

*The Eternal Bliss*

[2020] EWHC 2373 (Comm) Andrew Baker J.: NO

[2021] EWCA Civ 1712, Court of Appeal: YES

no implied indemnity if demurrage is the exclusive remedy

# Thank you!

