

## COVID-19 VOYAGE CHARTERPARTY PROBLEM

In September 2022 the 'Always Accessible' is chartered on Gencon 1976 form for a voyage carrying soya beans from "Tubarao, Brazil, or so near thereto as she may safely get and lie always afloat", to "Longkau, China, or so near thereto as she may safely get and lie always afloat". The charter is subject to English law and provides for all disputes to be subject to LMAA Arbitration. The charter has a clause paramount which incorporates the Hague-Visby Rules. The charter also contains a force majeure clause which reads.

*"Strikes or lockouts of men, or any accidents or stoppages on railway and/or canal and/or river by ice or frost or any other force majeure causes including Government interferences, occurring beyond the control of the shippers of consignees, which may prevent or delay the loading and discharging of the vessel, always excepted".*

On the approach voyage to Brazil a new COVID variant breaks out which is twice as transmissible as omicron and is twice as lethal as any previous variant. It might also be vaccine resistant. Port work is continuing in Brazil but with stringent safety protocols which have had the effect of doubling the time taken to load and discharge vessels. Vessels that have called at Brazilian ports are being subject to automatic 21 day quarantines at many ports, including those in China. Free pratique is not given until a further six days, following confirmation from the PCR tests that all the crew are free from COVID. NOR is then given and three hours later the vessel is called into berth. The cargo is loaded and two days demurrage is incurred. A bill of lading is issued on behalf of the shipowner, which incorporates all the terms and conditions of the charter.

### **STAGE ONE. Approach voyage and loading**

*Issue one. Can owners refuse to enter port? Is there any safe port warranty? If so, is the port safe? Effect on crew of going in, effect on vessel of going in? If no safety warranty, could owners still refuse to enter port?*

*Issue two. How does laytime run and is it affected by the doubling of the time taken to load at the port? What is the effect of the general force majeure laytime exception in the charter?*

Halfway through the voyage to China the chief officer experiences breathing problems and soon becomes seriously ill. He is found to have contracted COVID, probably through contact with a stevedore during the loading of the cargo. The vessel calls into Durban to arrange for the chief officer to go to a hospital for medical treatment. A replacement chief officer is flown to South Africa and after health checks which take place while the vessel is waiting at anchorage, is allowed to join the vessel.

### **STAGE TWO. Carrying voyage**

*Issue three. Is it a deviation under (a) the voyage charter and (b) the bill of lading contract? Is it a breach of owners' obligation to proceed on the carrying voyage with reasonable dispatch?*

*Issue four. Is the presence of a crew member with COVID on the vessel at the start of loading something which makes the vessel unseaworthy and if so, have the owners taken due diligence to make the vessel seaworthy before and at the commencement of the voyage?*

On arrival at the Chinese discharge port the vessel waits at anchorage for a 21 day quarantine. The vessel then obtains free pratique, gives NOR and shortly afterwards is called into berth. Due to strict working protocols and the suspension of night working, discharge proceeds more slowly than usual. When half the cargo has been discharged, all vessels are ordered off the berth as two stevedores are found to have the new COVID variant, and the port is temporarily closed. At this point the vessel has gone on demurrage. The vessel waits for ten days, and is then allowed back to berth to complete discharge.

The cargo is found to be damaged and the vessel is arrested and owners' P&I Club provides security for \$5.65m. The owners later settle the claim with the receivers for \$0.8m. Both surveyors say the cause of the damage is the lengthy delays on the voyage and during discharge. Due to these delays the owners lose their follow-on charter as they miss their cancellation date. They perform a ballast voyage to a different port for their replacement fixture, which is at a lower freight rate to that in the cancelled fixture.

### **STAGE THREE. Discharge**

*Issue five. When can NOR be given? Could owners go to another port to discharge pursuant to the 'near clause'?*

*Issue six. What interrupts laytime/demurrage?*

*Issue seven. Can owners claim from charterers (a) the cargo claim they settled (b) the losses due to the cancellation of their next fixture?*

A comparison will be made throughout the discussion of the issues with the position had the Intertanko clause been incorporated into the charter. Which party would benefit from the incorporation of this clause?

## **INTERTANKO Covid-19 ('Coronavirus') Clause – Voyage charterparties**

1. Notwithstanding any other term to the contrary in this charterparty, the Vessel will not be required to call at any port, place, country or region if in the Master's or Owners' reasonable judgement there may be a risk of exposure of the crew or other persons on board to Covid-19 ('Coronavirus').

2. Should Charterers order the Vessel to a port, place, country or region which is presently or subsequently becomes affected by the Coronavirus virus (the 'Coronavirus Affected Area') and if such order has not been refused in accordance with sub-clause 1 hereof, then the following provisions to apply:

a) If, prior to reaching the load or discharge port, in the reasonable judgement of the Master or Owners, the level of risk of exposure of the crew and other persons on board to the Coronavirus virus becomes unacceptable, Owners shall be entitled to request fresh voyage orders from Charterers.

b) If, following tender of notice of readiness, either prior to or during loading or discharge, in the reasonable judgment of the Master or Owners, the level of risk of exposure of the crew or other persons on board to the Coronavirus becomes unacceptable, the Vessel may proceed to a safe waiting place and Owners shall be entitled to request fresh orders from Charterers.

c) Any time taken for the purposes of obtaining free pratique shall be for Charterers' account and shall not prevent the tender of a valid and effective notice of readiness.

d) Charterers shall arrange at their time and expense for all appropriate inspections and certification including but not limited to screening, cleaning, fumigation, quarantine of the Vessel and/or crew or other persons on board and the obtaining of medical advice and/or treatment, as required at any port or place where the Vessel calls under this charterparty.

e) Owners shall promptly provide any crew health records, evidence of the Vessel's prior trading pattern, and other existing documentation required by the port authorities for the purposes of free pratique. Owners shall ensure that shore leave for any crew member in a Coronavirus Affected Area shall be prohibited.

(f) In the event Charterers fail to provide alternative voyage orders as required in sub-clause 2 (a) or (b) above within 48 hours of receiving the request for new orders, Owners shall be entitled to discharge the cargo at any safe port of their choice (including at the loading port) which shall be considered as complete fulfilment of this charterparty. Owners shall be entitled to recover from Charterers the extra expenses of such discharge and to receive the full freight as though the cargo had been carried to the discharge port, Owners shall have a lien on the cargo for such expenses and freight.

3. Should the Vessel be boycotted, refused admission to port, quarantined, or otherwise delayed in any manner whatsoever by reason of having proceeded to a Coronavirus Affected Area, for all time lost Owners to be compensated by Charterers at the demurrage rate and all direct losses, damages and/or expenses incurred by Owners shall be paid by Charterers. In the event that the Vessel is boycotted, refused admission, or otherwise delayed as stated above within 30 days after having completed discharge under this charterparty, then Charterers are to compensate Owners for all time lost as a result at the demurrage rate in addition to compensating Owners for all direct losses, damages, and or expenses which may arise as a result of the above.

4. Owners and Charterers agree that the outbreak of Coronavirus virus shall not be considered as force majeure or as a frustrating event of the charterparty.

5. The Vessel shall have liberty to comply with all orders, directions, recommendations, precautionary measures or advice of any governmental or International authority and/or the Flag State of the Vessel relating to or arising as a result of the Vessel being ordered to a Coronavirus Affected Area.

6. Charterers shall ensure that all Bills of Lading for cargo to be carried under this charterparty shall incorporate the above provisions.