

### **The Problem:**

*The Omega* owned by Omega Shipping Ltd. is a general cargo ship registered in Panama and managed from Piraeus, Greece. Risky Trades have chartered *The Omega* under a contract in the NYPE 1946 form for 12 months starting February 1st, 2022.

*The Omega* was ordered by the Charterer to go to Shanghai to load a cargo of rice. When the ship arrived at the pilot station the pilot refused to have his temperature taken or do a rapid test, both of which were required by the health plan established by the shipowner and which was known and agreed by the charterer. Instead, she provided a piece of paper where the temperature was recorded to be normal when she turned up for work at the beginning of the day. The pilot was asked to wait in the boat for 1 hour while the master communicated with the charterers who expressly ordered him to permit the pilot to come onboard.

The master followed the order under protest and the ship docked at the allocated berth with a few hours delay and prepared for loading. The next day the master developed high fever and tested positive for Covid-19. The source of the infection was believed to be the pilot who also tested positive the next day and who may have been infected in one of the ships she brought in before going on *The Omega*.

The master's condition became serious and he self-isolated in his cabin for 10 days with high fever while the ship was quarantined and all loading operations stopped. After the tenth day the master was able to work on his computer and give instructions but another 10 days passed before he tested negative and came out of his cabin. The ship was disinfected at a significant cost over a 2-day operation. It then was allowed to dock again and the loading started.

However, the next day Shanghai went into a complete lockdown and the cargo operations have all but stopped. This was four weeks ago.

Advise the time charterer on their contractual rights and obligations under:

- a) The unamended NYPE 1946,
- b) an amended NYPE1946, which incorporates the INTERTANKO Covid-19 ('Coronavirus') Clause – Time charterparties

The issues that arise:

**1. Is Shanghai a safe port?**

What is the definition of safe port? Is there an express obligation to trade between safe ports?

Does the master have the option to decline going to Shanghai? Or to leave Shanghai? The Shanghai lockdown started in late March 2022.

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**2. Is the vessel off-hire for the delay caused by the dispute with the pilot?**

Consider Clause 15 and Clause 8.

In a case called "*The Houda*" [1994] Vol. 2 LLOYD'S LAW REPORTS 541 where the shipowner delayed in following the charterers' order it was said: "... the right or duty to pause could not safely be confined to specific categories of cases; it was necessary to take a broad and comprehensive view of the duties and responsibilities of the owners and master and to ask: How would a man of reasonable prudence have acted in the circumstances?"

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**3. Was the charterer's order to allow the pilot onboard a legitimate one?**

Consider the contractual nature of the health plan agreed with the charterer. Consider whether the charterer's order could be refused. Consider whether the master's acceptance is negligent.

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**4. Was the vessel off-hire for the period of 10 days when the master was unwell in his cabin?**

Consider the off-hire clause 15. Was there a deficiency of men? Was the vessel at the service of the charterers?

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**5. Was the vessel off-hire for the period of 10 days when the master was testing positive but was otherwise able to work?**

Ask and discuss the questions under (4) again.

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**6. Was the vessel off-hire during the disinfection period?**

Consider clauses 15 and clause 2.

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**7. Who has to pay for the cost of disinfecting the ship?**

Consider clause 2.

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**8. Does charterer have to pay for the four weeks which have passed?**

Is the vessel off-hire?

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**9. What options do the parties have?**

Is Shanghai an unsafe port when the lockdown started? Can the shipowner leave the port with the part of the cargo it has on board? Bills of lading have not been issued yet, does the shipowner have an obligation to take this part cargo to its destination? Is the vessel off-hire while waiting for the lockdown to be lifted?

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

**10. Can the shipowner recover all the losses on the basis of the implied indemnity?**

In "*The Coral Seas*" [2016] EWHC 1506 (Comm) it was held:

"As a general rule a shipowner had an implied right of indemnity against a time charterer in respect of the consequences of complying with the charterer's orders as to the employment of the ship, even if the orders were ones the charterer was contractually entitled to give. However, such indemnity did not extend to the usual perils of the voyage in respect of which the owner must be taken to have accepted the risk."

Would this matter if the INTERTANKO clause is incorporated and why (why not)?

## NYPE 1946 Clauses

“...to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers,..... in such lawful trades, between Safe port and/or ports... as the Charterers or their Agents shall direct, on their following conditions: ”

### Clause 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 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 the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.”

### Clause 2.

That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners.

Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

### Clause 8

That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and 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 cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

### Clause 15.

That in the event of loss of time from deficiency and/or default of men or deficiency of stores, fire, breakdown or damages to hull, machinery or equipment, included but not limited to strikes of Master, officers and crew, 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 directly related extra expenses shall be deducted from the hire.

## 1.1 INTERTANKO Covid-19 ('Coronavirus') Clause – Time 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 virus 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 recent 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.*

3. *Should the Vessel be boycotted, refused admission to port, quarantined, or otherwise delayed in any manner whatsoever by reason of having proceeded to an Coronavirus Affected Area, the Vessel shall remain on-hire for all time lost and any direct losses, damages and/or expenses incurred by Owners as a result 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 been redelivered under this charterparty, then Charterers are to compensate Owners for all time lost as a result as if the Vessel is still on hire, 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.*

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