

COVID-19. The implications for Voyage Charters (2). Pandemic clauses.



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

Pandemic Clauses. What owners would like?

The BIMCO and INTERTANKO Clauses

BIMCO Infectious or Contagious Diseases Clause for Voyage Charter Parties 2015

”The voyage charter version expressly limits application of the clause to situations arising after the date of the charter party. This is because parties should know about events that arise prior to or during negotiations and make appropriate arrangements accordingly. Events arising post-fixture may be more problematic and so the clause sets out a regime to address such changed circumstances.”

Pandemic Clauses. What owners would like?

The BIMCO and INTERTANKO Clauses

BIMCO Force Majeure Clause 2022

The clause lists various force majeure events including “plague, epidemic, pandemic” but requires the affected party to prove that the Force Majeure Event could not reasonably have been foreseen at the time of the conclusion of the contract.

Unlikely to be applicable in the current pandemic.

INTERTANKO

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').

Only applies to COVID-19. No reference to risk of quarantine or other restrictions. Not limited to when a place becomes affected after date of charter

INTERTANKO

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.

*Prior to reaching the affected port. **Unacceptable risk** of exposure. Right to request fresh voyage orders. No cancellation rights.*

INTERTANKO

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.

Post tender NOR. Right to go to safe waiting place and request fresh orders.

INTERTANKO

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.

2 (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.

2 (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.

Owners' rights if charterers fail to provide alternative voyage orders within 48 hours.

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.

Wide ranging rights of compensation for consequences of having proceeded to an affected area. Includes events occurring within 30 days of completion of discharge.

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.

Limited to Bills of lading.

Effect of incorporation of the clause into bill of lading

The Miramar 1984 AC 676 bill of lading incorporated all terms and conditions of a voyage charterparty which provided for charterers to pay demurrage.

- The House of Lords rejected any manipulation of language to extend the liability for demurrage to the bill of lading consignee.

The Polar [2021] EWCA Civ 1828 as to the effect of the incorporation of a war risks and a Gulf of Aden clause into the bills of lading.

- The liberties given to the shipowner not to continue with the voyage or to deviate from the usual route were germane to the loading, carriage and discharge of the cargo and were therefore incorporated into the bills of lading.
- The obligation of the “charterer” to bear the expenses caused by the exercise of such liberties was not incorporated and the court declined to manipulate the language of the charter so as to impose an obligation on the bill of lading holders.

Problems for charterers with the INTERTANKO Clause

- Time for obtaining free pratique to be for charterers' account.
- Clause 3 Very wide compensation provisions for consequences of going into an affected port - would probably cover owners settling a cargo claim due to cargo deteriorating due to lengthy waiting time at disport (the type of claim in *The Eternal Bliss*). Reference to 'charterer' means this won't affect b/l holders where clause is incorporated into b/l.
- Very wide power of redirection for owners under 2(f) which will affect charterers and b/l holders if clause is incorporated.

What charterers would like

Charterers' Club. Contagious Disease Clause (Voyage Charterparty)

“Notwithstanding any other provision in this charter party the Charterers **shall not be liable for any damage and/or delay** due to voyage orders that result in the Vessel calling at a port where fever and/or epidemics and/or contagious disease are prevalent **in the circumstances where such fever and/or epidemics are widely publicised.**

It will be the responsibility of the Master and/or crew to maintain an up to date knowledge of the spread of these fevers and/or epidemics and/or contagious disease and advise the Charterers of any issues with the voyage order as soon as possible once the voyage order has been made. Should any other provision in this charter party conflict with this clause then this clause **shall be considered paramount** and as such will override any contrary provision.”

Adapted Contagious Disease Clause

a) The Vessel shall not be obliged to proceed to or from, or continue to, or through, or remain at, any port, place, area or country (hereinafter “Affected Area”) which will expose the Vessel and crew, or other persons on board the Vessel, to the risk of infection from *highly infectious diseases as determined and notified by the World Health Organization to be harmful to human health*;

Adapted Contagious Disease Clause

b) The Vessel should not proceed, or continue to, or through, or remain in an Affected Area *provided Owners are able to document through competent international authorities the risk of infection in which case they must immediately contact the Charterers.*

Wherever legally permissible, bearing in mind obligations under insurances and other contracts, including but not limited to Bills of Lading (under which Owners may also have binding obligations and a need to maintain insurance coverage) Charterers shall use *reasonable endeavors to issue alternative voyage orders;*

Adapted Contagious Disease Clause

c) The Vessel shall have liberty to comply with all orders, directions, recommendations or advice of competent authorities and/ or the Flag State of the Vessel in respect of arrival, routes, ports of call, destinations, discharge of cargo, delivery, or in any other respect whatsoever relating to issues arising as a result of the Vessel being ordered to an Affected Area;

Adapted Contagious Disease Clause

d) Any additional *costs and expenses* arising out of the Vessel visiting an Affected Area, including but not limited to screening, cleaning, fumigating and/ or quarantining the Vessel and its crew for such diseases either in the Affected Area, or at subsequent ports of call, shall be for the Charterers' account *provided said costs are reasonably incurred* and are fully documented and provided further they have *not been generated by Vessel/Crew/Owners' fault or negligence in complying with this Clause.*

Adapted Contagious Disease Clause

e) If in compliance with 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 Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

Thank you!

