

Time charters – “The Omega”



A case study

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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 facts

- NYPE 1946 form for 12 months starting February 1st, 2022.
- *The Omega* ordered by the Charterer to Shanghai.
- Problem with pilot
- Delay to communicate with charterer 1 hour delay
- Charterer's order
- Master ill and self isolating unable to work - 10 day delay
- Master testing positive but able to work – 10 day delay
- Ship disinfected at a significant cost - 2-day
- Loading starts
- Lockdown- 4 weeks have passed

The NYPE 1946

- “...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.**”

The NYPE 1946

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.



The NYPE 1946

whatsoever ?

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.

The order to Shanghai

- Is Shanghai a prospectively safe port?
- Has it become at any stage an unsafe port?
- Would getting an illness make the port unsafe in the context of the charterparty?
- Does the imposition of a quarantine on the ship make the port unsafe?
- Does the imposition of the lockdown make the ship unsafe?

The delay to get instructions

- Consider Clause 15 and Clause 8.
- “The Houda”

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whatsoever ?

The order of the charterer

- Is it legitimate?
- Is it causative?
- Does it matter if it is causative?

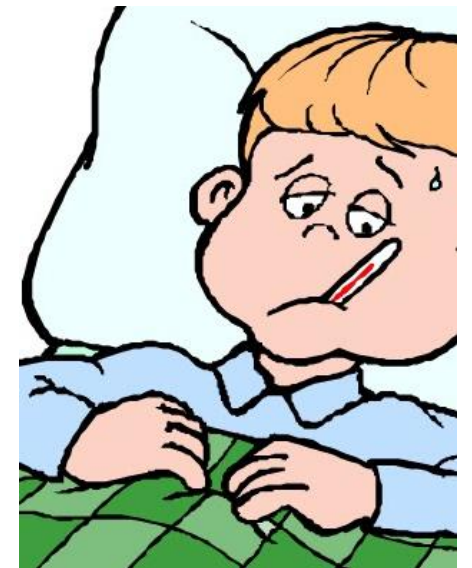
The Coral Seas

“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.”

The 10 day fever

Ship under quarantine

- Is the vessel off-hire?



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.

whatsoever ?

The 10-days of recovery Ship under quarantine

- Is the vessel off-hire?

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whatsoever ?

The disinfection Ship under quarantine

- Is the vessel off hire?
- Who pays?



Clause 2.

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The 4 weeks which have passed Shanghai in lockdown

- Is the ship off hire?
- Has the contract been frustrated?

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.

whatsoever ?

The future

- 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?
- When will the contract be frustrated?



The Intertanko Clause

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:

Does the clause apply?

The Intertanko Clause

(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.

Is the “level of risk of exposure” unacceptable?

- illness of master
- conduct of the pilot
- orders of the charterer



What can the master do?
What if charterers order again to go to
Shanghai?

The Intertanko Clause

(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.

Who pays?

The Intertanko Clause

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. 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.



Who pays?
Is there scope for the implied indemnity?

The Intertanko Clause

What will happen to the cargo?

Charterers fresh orders

What if charterparty repudiated?

Is shipowner entitled to payment?

Can shipowner discharge the cargo? Where?

Who will pay for storage and transhipment?



What if “whatsoever” + INTERTANKO Clause?

Conclusions

- NYPE 1946
- Off-hire for 2/12/22 days ?
- Possibility of recovery under the implied indemnity
 - But for which order?
- Cost of disinfection on shipowner
- No option to leave without committing a repudiatory breach unless the port is unsafe
- Contract may become frustrated at some point in time



- INTERTANKO (the International Association of Independent Tanker Owners) is a trade association that has served as the voice for independent tanker owners since 1970, representing the interests of its Members at national, regional and international levels.

INTERTANKO CLAUSE

BIMCO 2022

- | | |
|-----------------------------------------|-----------|
| • Ship on-hire | Depends |
| • All expenses on time-charterer | Depends |
| • Ship can leave and ask for orders | Possibly |
| • No contractual frustration | Not clear |
| • If time-charterer insists on the port | Same |
| • Repudiatory breach | |
| • Damages | |