



1

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## INTRODUCTION

---

Ship owners insurance requirements

---

History of P&I insurance

---

P&I clubs

---

P&I departments and correspondents

---

International Group of P&I Clubs

---

Other insurance facilities

2

## SHIPOWNERS INSURANCE REQUIREMENTS



3

## SHIPOWNERS INSURANCE REQUIREMENTS

P&I provides cover for shipowners' third party liabilities

**Protection** Term generally used to describe cover for risks arising from people, ships and others

**Indemnity** Term generally used to describe cover for shipowners' liabilities from the carriage of cargo

4



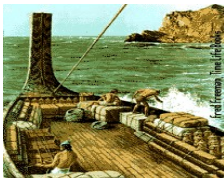
5

## HISTORY OF P&I INSURANCE

1000BC – Phoenicians accredited with rudimentary marine insurance practices

1688 – Edward Lloyd opened first coffee house in London

1720 – Act of Parliament – restricted marine insurance to two companies until 1825



6

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## HISTORY OF P&I INSURANCE (SHIPS) – 1836

---

Hull policies did not cover damage to other vessel

---

Running Down Clause (RDC)

---

Other vessel collision liability – limited to 3/4

---

Remaining 1/4 would be picked up by Mutuels



7

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## HISTORY OF P&I INSURANCE (PEOPLE) – 1846

---

Act of parliament – Lord Campbell's Act  
1846

---

Allowed relatives of people killed by  
wrongdoing of others to recover damages

---

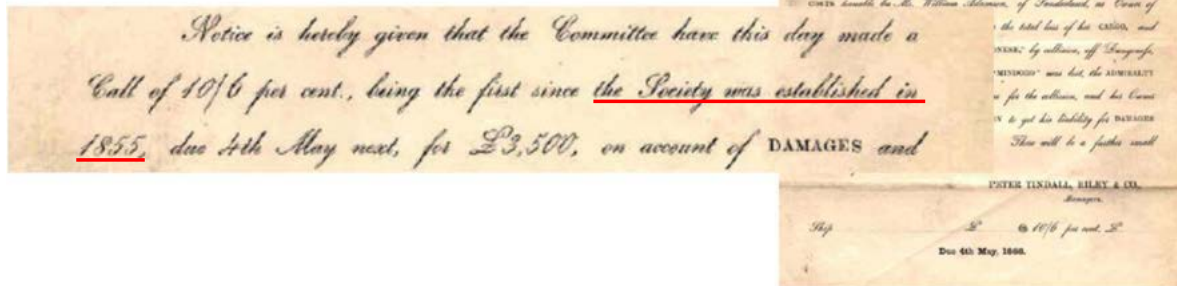
Crew and passengers carried by ships

8



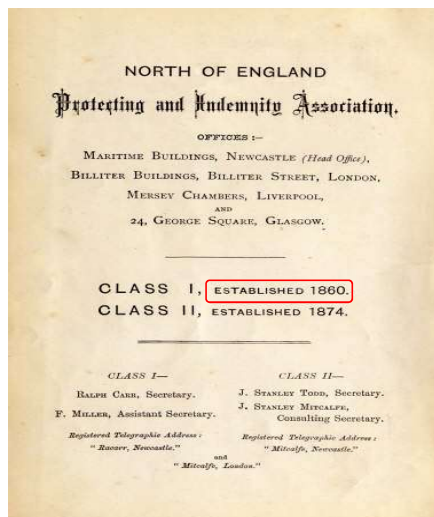
## HISTORY OF P&I INSURANCE – 1855

1855 – First protecting club formed



9

## HISTORY OF P&I INSURANCE – 1860



10

## HISTORY OF P&I INSURANCE (CARGO) – 1870

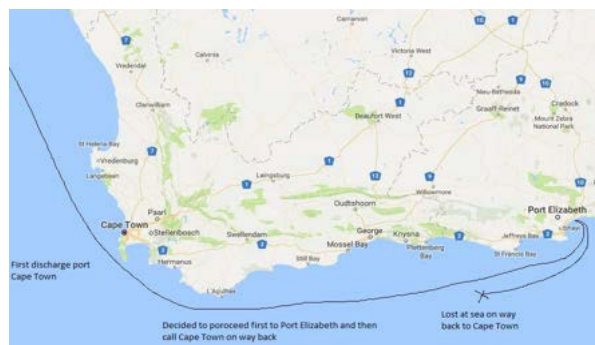
Common law

Freedom of contract

Few cargo claims

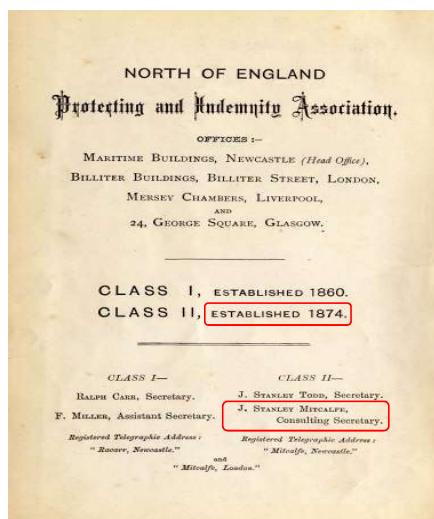
**Westerhope incident of 1870**

Deviation



11

## HISTORY OF P&I INSURANCE – 1860



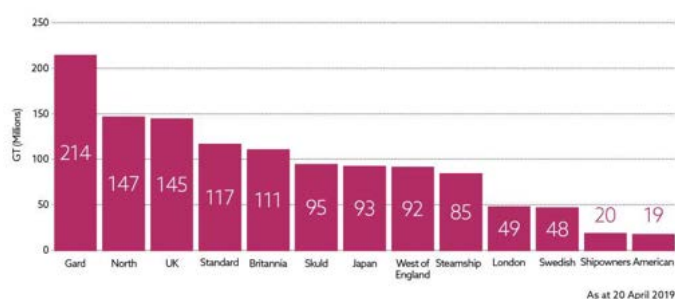
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## HISTORY OF P&I INSURANCE

Global fleet of 4,000 ships

400 member groups

Providing P&I insurance to 12% of the world's owned shipping tonnage



Newcastle, United Kingdom



Athens, Greece



Singapore



Hong Kong



Tokyo, Japan



Shanghai, China

13

## HISTORY OF P&I INSURANCE

Increase in overseas trade and changes in the Law

- Workmen's Compensation Act
- Factory Acts and Industrial Injuries Act
- Merchant Shipping Acts
- COGSA 1924 (Hague Rules)

14



15

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## **P&I CLUBS**

---

An Association of Shipowners

---

Providing third party liability insurance cover

---

On a mutual basis (sharing of risks)

---

Non – profit making

16

---

## **P&I CLUBS**

---

Owned by their shipowner members

---

Controlled by their shipowner members

---

Exist solely for the benefit of their members

---

A service provider as well as providing insurance

17

---

## **P&I CLUBS**

---

Managed Clubs

---

- Thomas R. Miller manage UK P&I Club

---

Mutually Owned Club

---

- North of England P&I Association

18

---

## **P&I CLUBS**

---

**A Member may be a:**

---

Shipowner

---

Ship manager

---

Ship operator

---

Charterer

19

---

## **P&I CLUBS**

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P&I policy is a TIME policy:

---

- From Noon GMT on 20 February

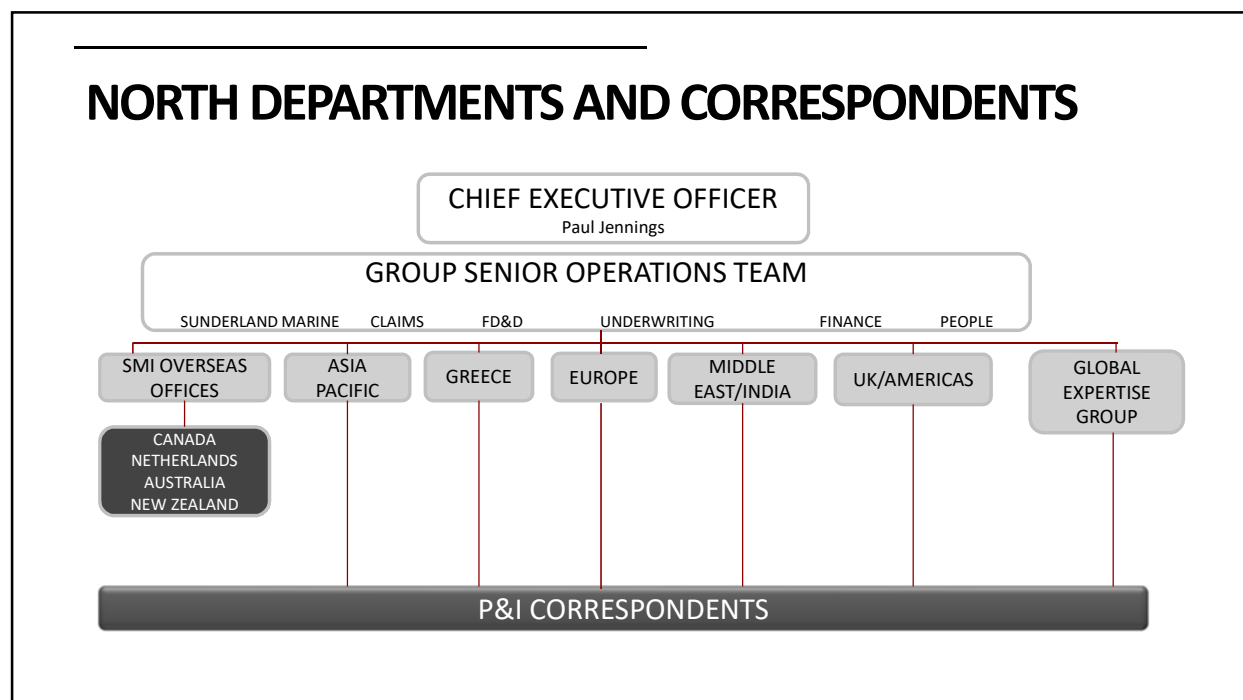
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- To Noon GMT on following 20 February

20



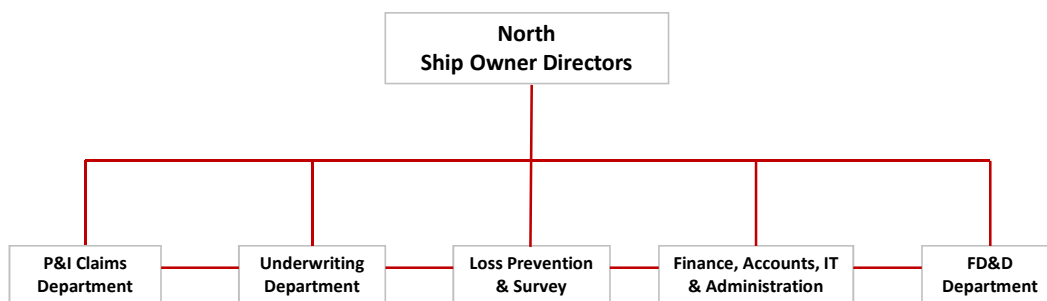
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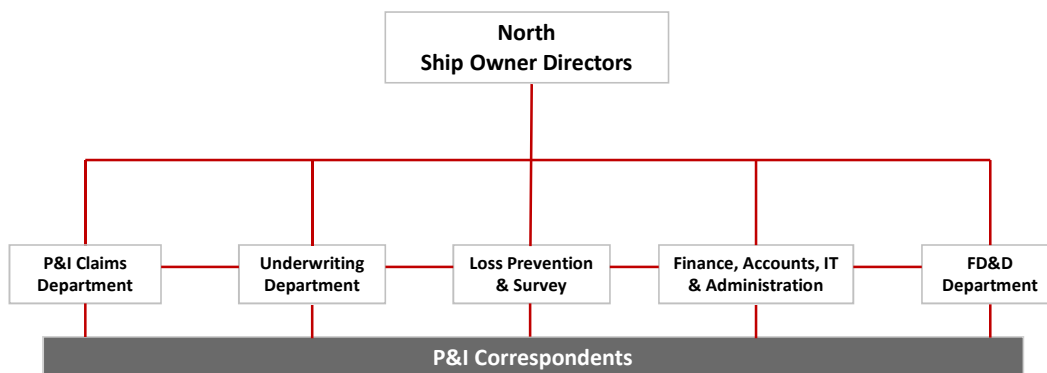


## NORTH DEPARTMENTS AND CORRESPONDENTS



23

## NORTH DEPARTMENTS AND CORRESPONDENTS



24

## P&I DEPARTMENTS AND CORRESPONDENTS

### Correspondents

- Representatives – not agents
- When to call a correspondent?
- Clubs eyes and ears
- Report to claims handler
- Protect the shipowners position

**\*\*Commercial Correspondents**

**\*\*Legal Correspondents**

25

## P&I DEPARTMENTS AND CORRESPONDENTS

### Correspondents

Immediate advice to Members and Masters

Legal representation and advice

Arrangement of surveys

Advice on defence and legal aspect of claims

Negotiation with local interests (cargo claimants / underwriters, customs / immigration officials, harbour and other authorities)

Keeping P&I Club fully informed

Assisting with release of a vessel under arrest – occasionally provision of security

26



27

## INTERNATIONAL GROUP OF P&I CLUBS (IG)

13 Member Clubs

Over 90% of world tonnage

Exchange information

Collective insurance and reinsurance

Represent view of shipowners

28

## INTERNATIONAL GROUP OF P&I CLUBS (IG)

---

North of England

---

American Steamship

---

Gard

---

Skuld

---

Britannia Steamship

---

Japan

---

London Steamship

---

Shipowners

---

Standard Club

---

Steamship

---

Swedish

---

UK

---

West of England

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## INTERNATIONAL GROUP OF P&I CLUBS (IG)

---

[Limits of available cover](#)

---

Oil Pollution

---

- US \$1,000 million for a single claim

---

Passenger claim

---

- US \$2,000 million

---

Passenger and crew claim

---

- US \$3,000 million

32

## INTERNATIONAL GROUP OF P&I CLUBS (IG)

Standing Committees

Ad hoc Committees

Bills of Lading

Asbestosis

Personal Injury

NYPE Charterparty

Maritime Security

Claims Co-Operation

Pilotage

33

## OTHER INSURANCE FACILITIES

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---

## OTHER INSURANCE FACILITIES

---

Clubs and facilities for Shipowners, or others, who do not require the extent of cover provided by International Group Clubs

---

Clubs and facilities who may be prepared to take tonnage which the International Group will not accept

35

---

## SUMMARY



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## SUMMARY

Ship owners insurance requirements

Owned by their shipowner members

History of P&I insurance

Controlled by their shipowner members

P&I clubs

Exist solely for the benefit of their members

P&I departments and correspondents

A service provider as well as providing insurance

International Group of P&I Clubs

Other insurance facilities

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## THANK YOU

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1

## INTRODUCTION

- Scope of P&I Cover
- Risks not covered
- Underlying principles of marine insurance

2

## RISKS COVERED



3

## RISKS COVERED – RULE 19

- |                        |   |
|------------------------|---|
| 1. Seamen              | 14. Wreck Removal                       |
| 2. Supernumeraries     | 15. Towage                              |
| 3. Passengers          | 16. Contracts, Indemnities & Guarantees |
| 4. Third Parties       | 17. Cargo                               |
| 5. Stowaways           | 18. General Average                     |
| 6. Diversion Expenses  | 19. Fines                               |
| 7. Life Salvage        | 20. Legal Costs, Sue & Labour           |
| 8. Persons in Distress | 21. Risks Incidental to Ship owning     |
| 9. Quarantine          | 22. Special Cover (s/c)                 |
| 10. Collisions         | 23. s/c - Salvors                       |
| 11. Non-contact Damage | 24. s/c - Containers                    |
| 12. Damage to Property | 25. s/c - Time Charterers.              |
| 13. Pollution          |   |

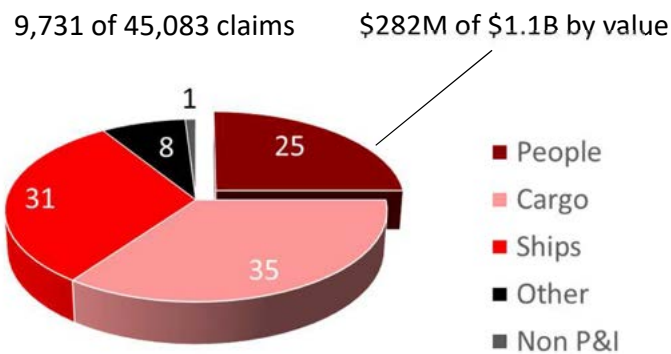
4

## RISKS COVERED – RULE 19

People	1. Seamen	14. Wreck Removal
	2. Supernumeraries	15. Towage
	3. Passengers	16. Contracts, Indemnities & Guarantees
	4. Third Parties	17. Cargo
	5. Stowaways	18. General Average
	6. Diversion Expenses	19. Fines
	7. Life Salvage	20. Legal Costs, Sue & Labour
	8. Persons in Distress	21. Risks Incidental to Ship owning
	9. Quarantine	22. Special Cover (s/c)
	10. Collisions	23. s/c - Salvors
Ships	11. Non-contact Damage	24. s/c - Containers
	12. Damage to Property	25. s/c - Time Charterers
	13. Pollution	
	Other	

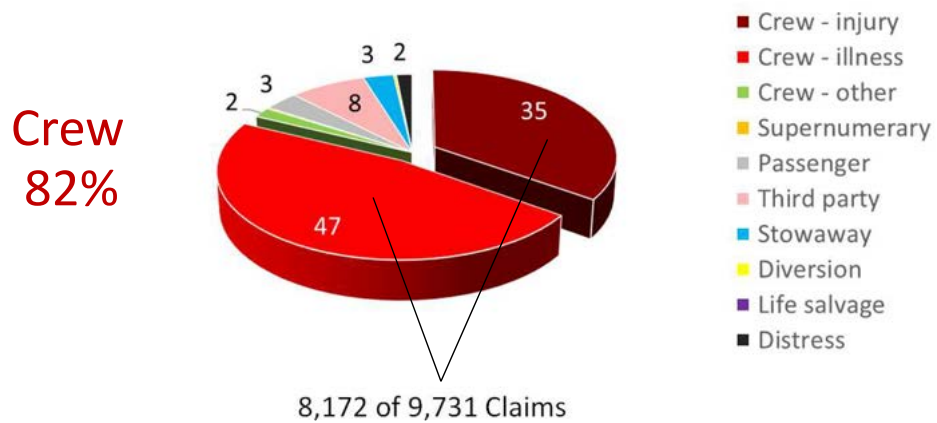
5

## PEOPLE CLAIMS BY COST (%)



6

## PEOPLE CLAIMS BY NUMBER (%)



7

## PEOPLE 19 (1-5)

- Seamen
- Supernumeraries
- Passengers
- Third Parties



8

## PEOPLE 19 (1-5)

Pay damages or compensation for death, personal injury or illness

	Statutory	Contractual	Duty of Care
Crew	✓	✓ Contract of employment and crew agreement	✓
Supernumeraries	Depends Some jurisdictions?	X Possibly if stowaway put to work?	✓
Passengers	Possibly Merchant Shipping Act	✓ Passenger ticket	✓
Third Party	Depends Some jurisdiction?	X	✓

9

## STOWAWAYS 19 (5)



10

## PERSONS IN DISTRESS 19 (8)

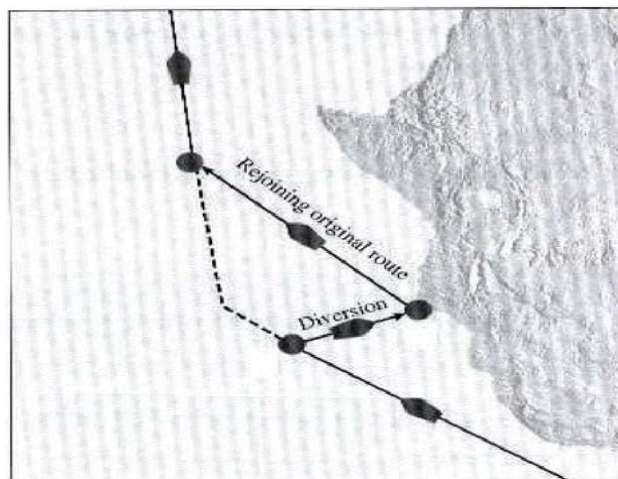


11

## DIVERSION EXPENSES 19 (6)

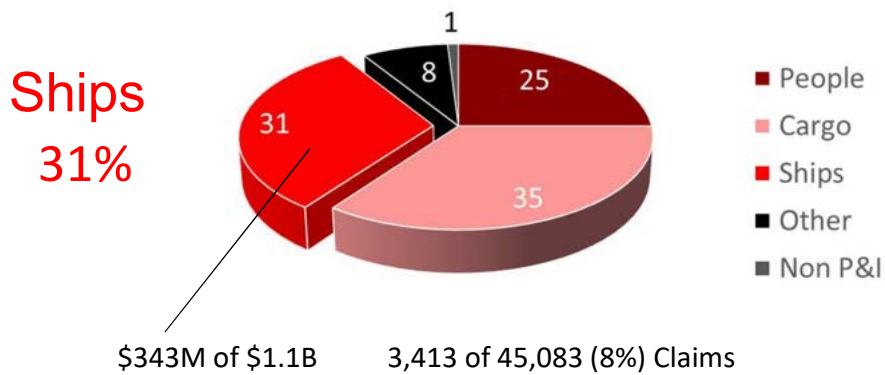
Expenses for:

- Landing injured or sick persons
- Assisting persons in distress
- Landing stowaways or refugees



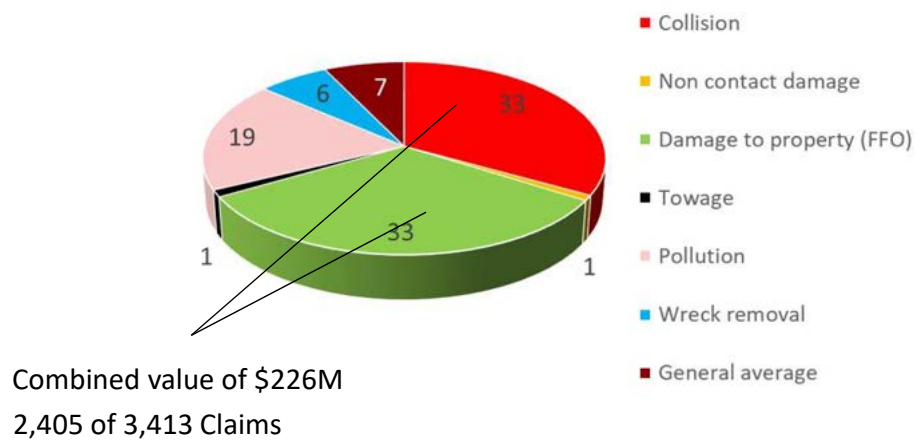
12

## SHIPS CLAIMS BY VALUE (%)



13

## SHIPS CLAIMS BY TYPE - COST(%)



14



## COLLISIONS 19 (10)



15

## COLLISIONS 19 (10)

**Institute time clauses hulls 1/10/83     $\frac{3}{4}$  Hull and Machinery  
 $\frac{1}{4}$  P&I**

### **Clause 8 - $\frac{3}{4}$ Collision Liability - Running down clause (RDC)**

8.1 - The underwriters agree to indemnify the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for

8.1.1 - Damage to the OTHER ship (includes property/cargo on OTHER ship)

8.1.2 - Delay or loss of use of the OTHER ship

8.1.3 - General average or salvage of the OTHER ship

16

## COLLISIONS 19 (10)

**Institute time clauses hulls 1/10/83      4/4 P&I**

### **Clause 8 – EXCLUSIONS 3/4 Collision Liability - Running down clause (RDC)**

- 8.4 – Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of
  - 8.4.1 – Wreck removal
  - 8.4.2 – Property **not on** the OTHER ship
  - 8.4.3 – Cargo on own ship
  - 8.4.4 – Loss of life, personal injury or illness
  - 8.4.5 – Pollution

17

## NON-CONTACT DAMAGE 19 (11)

- Wash damage
- Loss of Use
- Prevention of access
- Nuisance

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## DAMAGE TO PROPERTY 19 (12)



19

## POLLUTION 19 (13)

- Damages
- Clean-up costs
- Contractual obligations
- Government Orders
- Salvor's expenses
- Fines (accidental incidents)

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Torrey Canyon (1967)

Amoco Cadiz (1978)

Exxon Valdez (1989)

Braer (1993)

Sea Empress (1996)

Erika (1999)

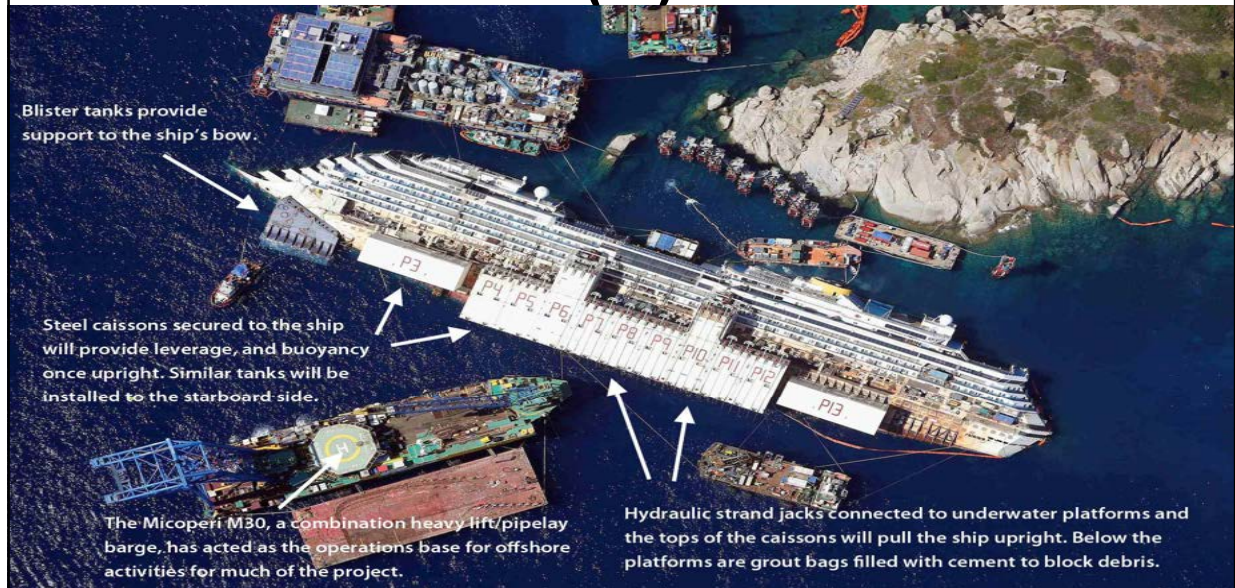
Prestige (2002)

Tasman Spirit (2003)

20



## WRECK REMOVAL 19 (14)



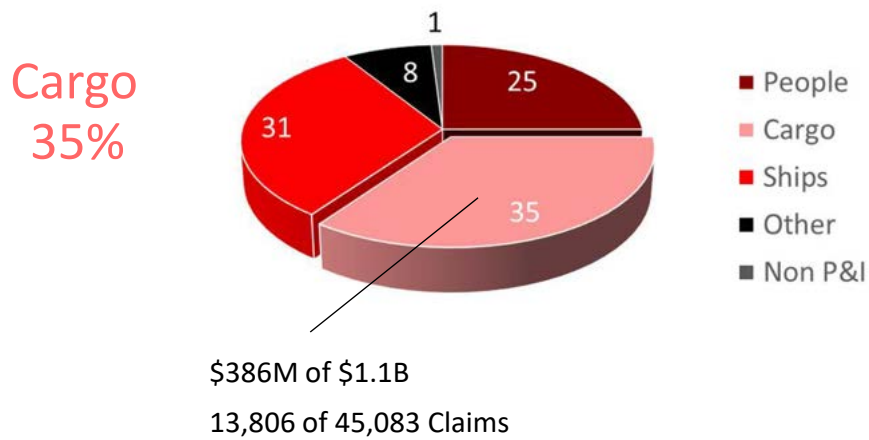
21

## DURING TOWAGE 19 (15)



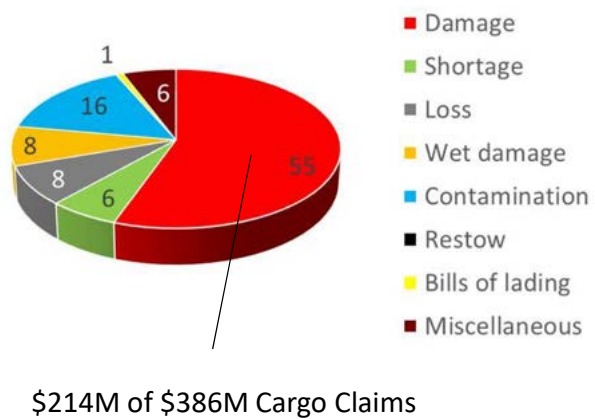
22

## CARGO CLAIMS BY VALUE (%)



23

## CARGO CLAIMS BY TYPE – VALUE (%)



24

## CARGO 19 (17)

- Loss, shortage or damage arising from any breach of the contract of carriage
- Hague Visby Rules
- Care for the cargo
  - Load, Handle
  - Stow, Carry
  - Keep, care for
  - Discharge
- Due diligence to make the ship seaworthy



25

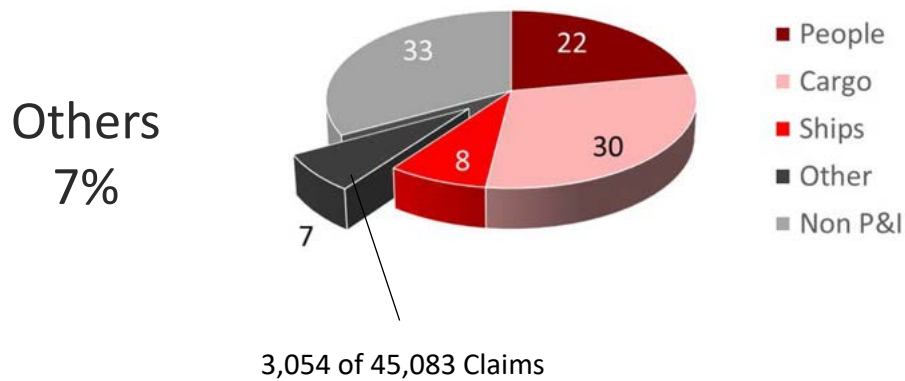
## CARGO 19 (17)

- Additional costs
- Discharging or disposing
  - Damaged cargo
  - Worthless cargo



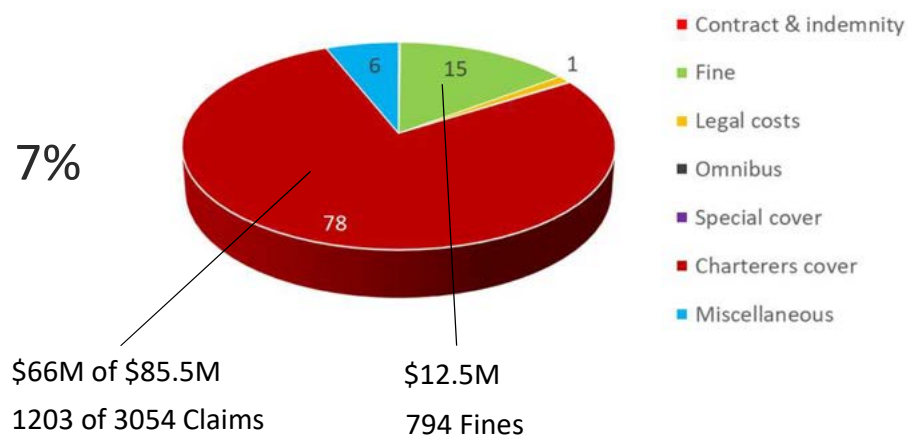
26

## OTHERS BY NUMBER (%)



27

## OTHERS BY VALUE (%)



28



## FINES 19 (19)

- Manager's approval:
  - Short or overlanded cargo
  - Smuggling
  - Immigration laws
  - Accidental pollution
- Director's discretion:
  - Others
  - May compensate for confiscation of ship



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## GENERAL AVERAGE 19 (18)

- General Average
- Salvage



- Who contributes?



Bunkers



Ship



Cargo

H&M  
Value of ship ✓

Cannot pay!  
Bad debt ✗

Will not pay!  
Unseaworthy ✓

30

## LEGAL COSTS, SUE AND LABOUR 19 (20)

“Costs and expenses which a Member may incur in respect of any liability or expenditure against which the Member is insured under these rules.”

- Sue and Labour



31

## RISKS INCIDENTAL TO SHIPOWNING 19 (21)

The Omnibus Rule



32

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## **SPECIAL COVER FOR TIME CHARTERERS 19 (25)**

- P&I - Cargo
- Hull Damage
- Bunkers
- Freight or Hire

33

---

## **DEDUCTIBLES**

- The first part of each claim paid by the Member
- Effect on premium
- Claims below deductible

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## DEDUCTIBLES

<p>Third party claim</p> <p>US \$100,000</p>	<p>Crew</p> <p>Claim paid by P&amp;I insurer</p> <p>US \$85,000</p> <p>Deductible paid by Member US \$ 15,000</p>	<p>Cargo</p> <p>Claim paid by P&amp;I insurer</p> <p>US \$75,000</p> <p>Deductible paid by Member US \$ 25,000</p>
--	---	--

35



36

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## **PRIMARY EXCLUSIONS**

- Risks covered under Hull Policy
- War Risks
- Radioactive Materials
- Imprudent or Hazardous Operations

37

---

## **RISKS SPECIFICALLY EXCLUDED**

- Damage to entered ship
- Equipment
- Repairs to entered ship
- Freight
- Salvage

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## **RISKS SPECIFICALLY EXCLUDED**

- Charterparties
- Bad Debts
- Demurrage
- Towage
- Members' other interests

39

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## **SPECIALIST OPERATIONS EXCLUSIONS**

- Blasting
- pile-driving
- well stimulation
- dredging
- cable or pipe-laying
- construction
- installation or maintenance work
- core sampling
- depositing of spoil
- professional oil spill response

40

# UNDERLYING PRINCIPLES OF MARINE INSURANCE

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## INTRODUCTION

- Marine Insurance Act
- Seaworthiness
- Payment first by Member
- Provision of security

42

---

## THE MARINE INSURANCE ACT 1906

All contracts of insurance made by the Association are subject to the Marine Insurance Act, 1906.

- Section 17 – Utmost good faith
- Fair representation of risk

43

---

## THE MARINE INSURANCE ACT 1906

- MSA Section 39(5) - Warranties of **Seaworthiness**
- In a time policy:
  - The vessel must be seaworthy at the commencement of the voyage.
  - If the ship is sent to sea in an unseaworthy state, with the knowledge of the assured, the insurer is not liable for any loss attributable to unseaworthiness.

44



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## **PAYMENT FIRST BY THE MEMBER**

- Condition precedent – ‘pay to be paid’
- No direct action

45

---

## **THIRD PARTIES RIGHTS AGAINST INSURERS**

- Intended to give a right of direct action against insurer where insured becomes bankrupt or insolvent
- Third party only takes same rights as insured
- No rights for persons not party to the contract (Contracts (Rights of Third Parties) Act 1999)
- Club's Rules specify “Pay to be Paid”
- Therefore no direct action

46



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## SECURITY

- Discretionary
- Club Letters of Undertaking (CLU)
- Bank Guarantees
- No cash deposits (unless Directors authorise)

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## SUMMARY

- Scope of P&I Cover
  - People
  - Cargo
  - Ships
  - Others
- Risks not covered
- Underlying principles of marine insurance
- Security

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## ANY QUESTIONS?

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1

## INTRODUCTION

- Standard clauses
- Insured perils
- Partial loss
- Total loss
- Owner's obligations



2

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## H&M

- COVERS:
  - (i) Ship
  - (ii) Equipment on-board – Propulsion, Cargo Handling, Navigation Equipment.
  - (iii) Ship's contributions in GA and salvage.
  - (iv) Part liability in case of a collision (RDC).

3

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## STANDARD CLAUSES

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## STANDARD CLAUSES

### Markets:

- London
- Scandinavia
- Europe
- USA
- Others

5

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## STANDARD CLAUSES – LONDON MARKET

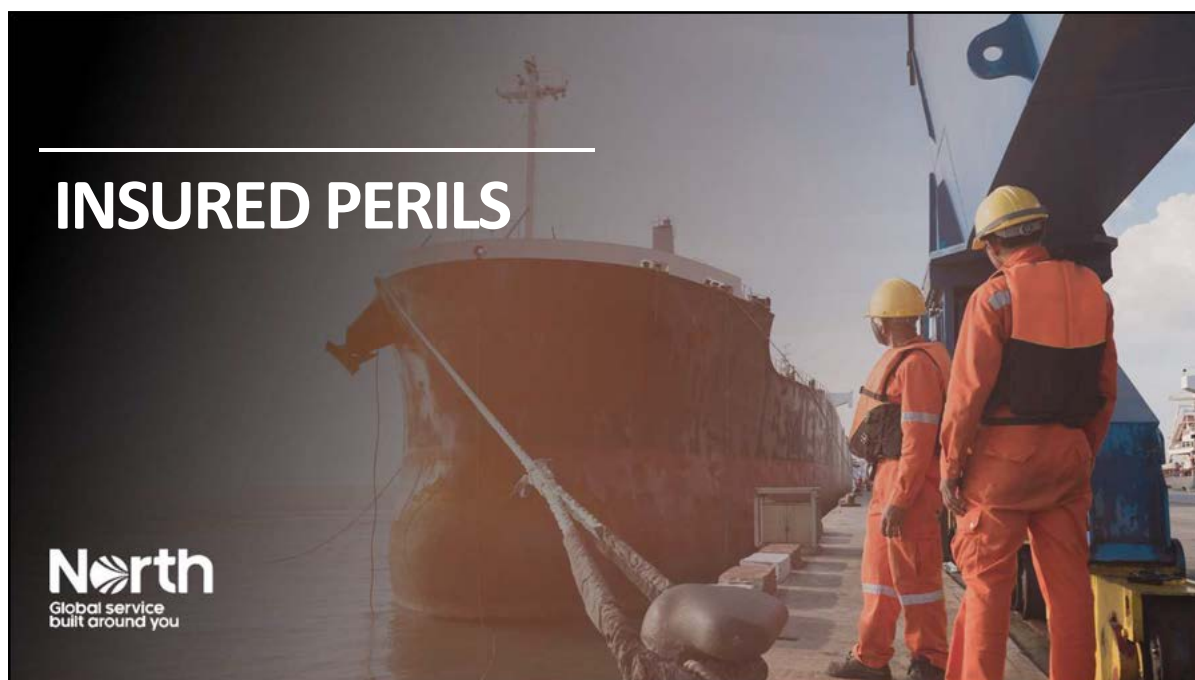
Institute of London Underwriters (ILU)  
Institute Time Clauses (ITC) - Hulls

- 1983
- 1995

International Underwriting Association of London (IUA)  
International Hull Clauses (IHC)

- 2002
- 2003

6



## INSURED PERILS

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## INSURED PERILS

- Traditional
- Inchmaree



8



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## TRADITIONAL PERILS

ITC – Hulls Clause 6.1 - 1 October 1983

Loss or damage caused by:

- Perils of the seas, rivers, lakes or other navigable waters
- Fire, explosion
- Violent theft by persons from outside the vessel
- Jettison
- Piracy

9

---

## TRADITIONAL PERILS (CONT'D)

- Breakdown of or accident to nuclear installation or reactors
- Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation
- Earthquake volcanic eruption or lightning

10

## INCHMAREE PERILS

ITC – Hulls Clause 6.2 - 1 October 1983

Loss or damage caused by:

- Accidents in loading discharging or shifting cargo or fuel
- Bursting of boilers, breakage of shafts or any latent defects in the machinery or hull
- Negligence of Master Officers Crew or Pilots

11

## INCHMAREE PERILS (CONT'D)

Loss or damage caused by:

- Negligence of repairers or charterers, provided such repairers or charterers are not an Assured hereunder.
- Barratry of Master, Officers, or Crew

Provided NOT from want of due diligence by assured, owners or Managers



12

## PARTIAL LOSS

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## PARTIAL LOSS (PARTICULAR AVERAGE)

- Loss other than a total loss
- Damage caused by a “peril”



14

---

## PARTICULAR AVERAGE

- Cover includes reasonable costs for:
  - Repair
  - Removing ship to place of repair
- Cover does not include:
  - Wear and tear
  - Ordinary use

15

---

## OTHER PARTIAL LOSSES

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## GENERAL AVERAGE

There is a general average act when, and only when, an **extraordinary sacrifice or expenditure** is **intentionally and reasonably** made or incurred for the **common safety** for the purpose of **preserving from peril** the property involved in a common maritime adventure.

York-Antwerp Rules 2004

17

## GENERAL AVERAGE

### Contributing parties:

- Ship  
(H&M underwriters)
- Cargo  
(Cargo underwriters)
- *Bunkers*  
(*Time charterers*)



18

## COLLISION LIABILITIES

[ITC – HULLS – CLAUSE 8]

Third party liabilities covered under standard collision clause (RDC):

- $\frac{3}{4}$  damage to other ship
- $\frac{3}{4}$  damage to cargo and property on other ship
- $\frac{3}{4}$  detention of other ship
- $\frac{3}{4}$  general average and salvage of other ship

[upto  $\frac{3}{4}$  insured value of the vessel]



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## COLLISION LIABILITIES

Third party liabilities **not** covered under standard collision (RDC) clause:

- Loss of life or personal injury
- Pollution
- Wreck removal

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## **TOTAL LOSS**

- Permanently deprived of use of ship
- Actual total loss or constructive total loss

22



## ACTUAL TOTAL LOSS

- Ship is lost and cannot be salvaged



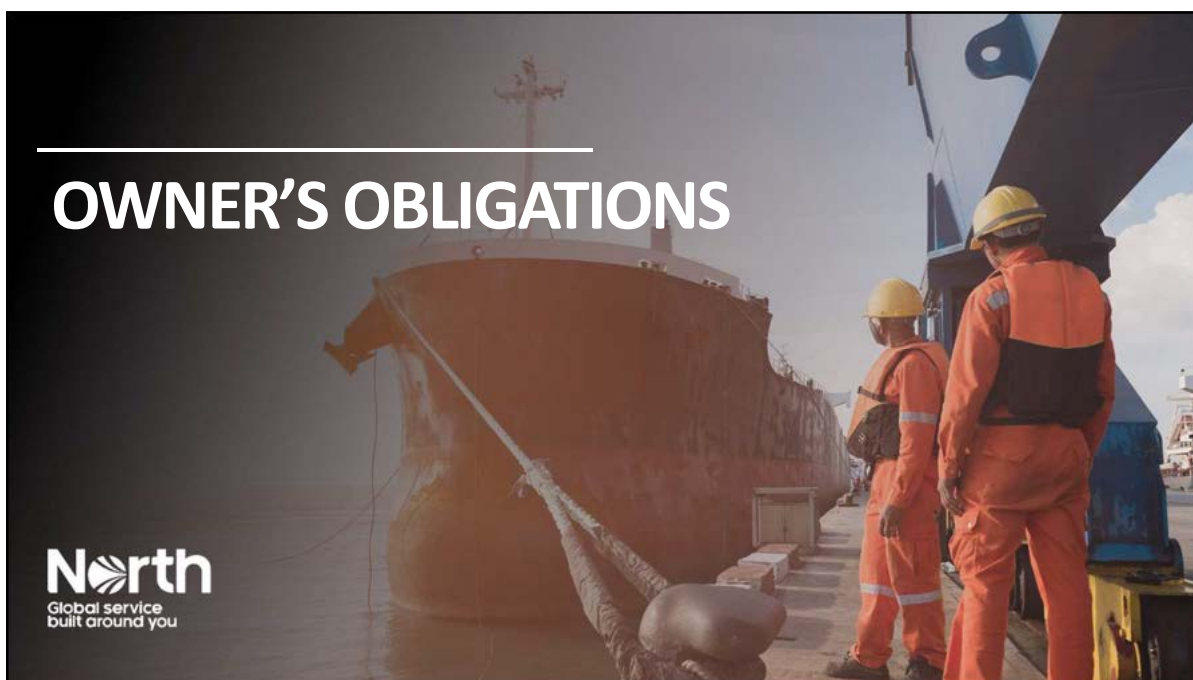
23

## CONSTRUCTIVE TOTAL LOSS

- Recovery and repair exceed the insured value
- Recovery is unlikely



24



25

## DUE DILIGENCE

Proviso to clauses describing perils:

- Loss or damage has not resulted from want of due diligence by the assured, owners or managers
  - ITC – Hulls dated 1 October 1983
  - IHC - dated 1 November 2003

26

---

## DUE DILIGENCE

Proviso to clauses describing perils:

- Loss or damage has not resulted from want of due diligence by the assured, owners or managers or superintendents or any of their onshore management

– ITC – Hulls dated 1 November 1995

27

---

## SUMMARY

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## SUMMARY

- Standard clauses
- Insured perils
- Partial loss
- Total loss
- Owner's obligations



29

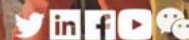
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## THANK YOU

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1

## INTRODUCTION

- World trade
- Underwriter's role
- Premiums
- Loss ratio
- Reinsurance

2



# World Trade

Without shipping the impact and export of goods on the scale necessary for the modern world would not be possible.

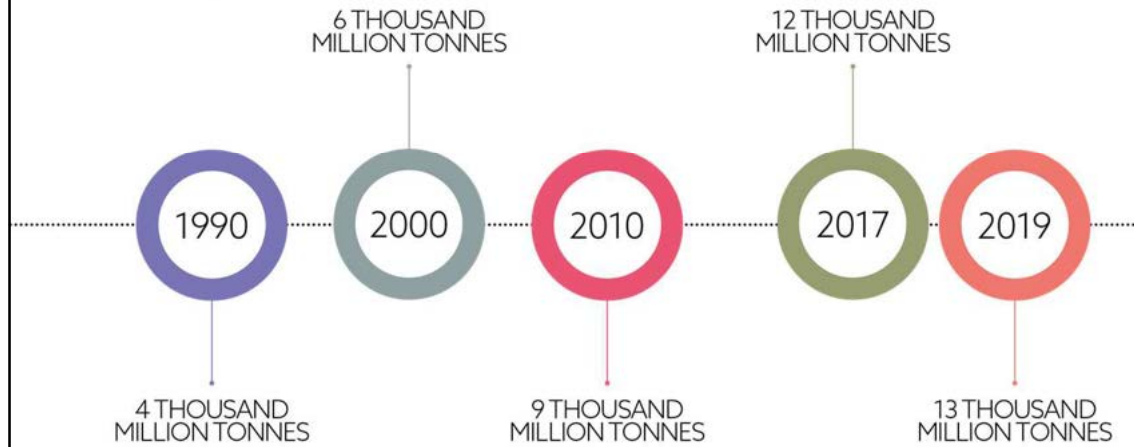
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## Today shipping accounts for...



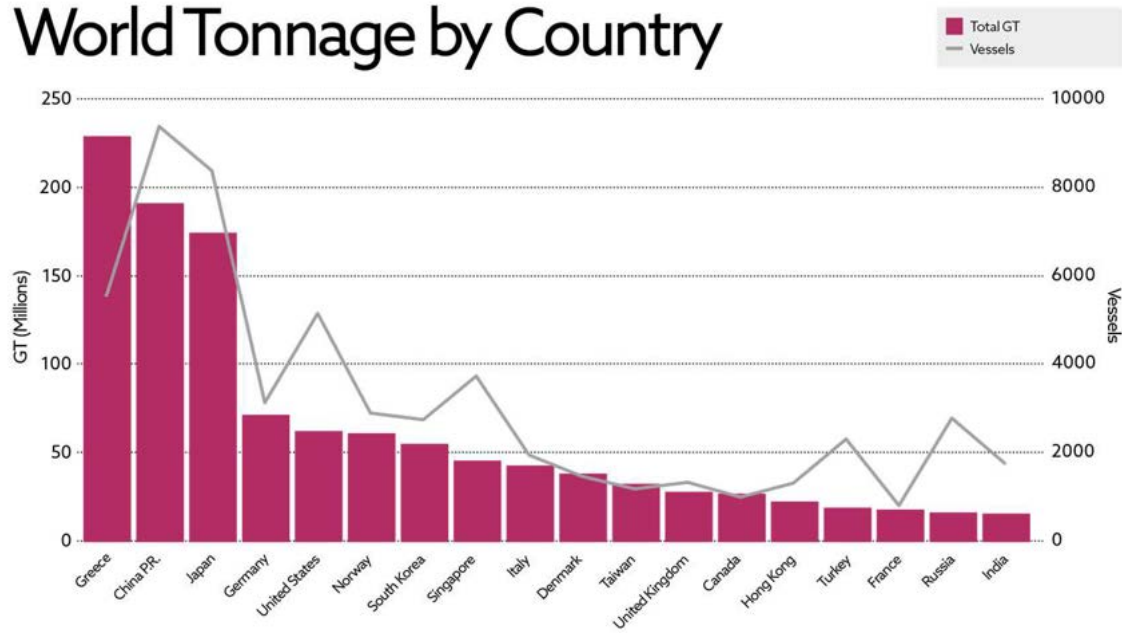
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## Total world seaborne trade estimates have grown from:



5

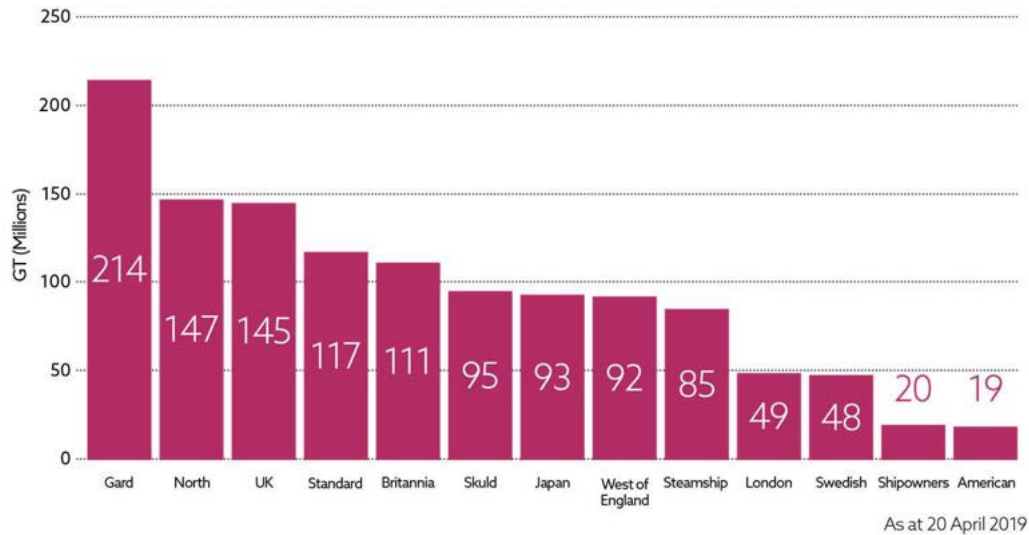
## World Tonnage by Country



6



## IG Club Tonnage Comparison



7

## WHAT WE DO?

- P&I
- FD&D
- Extended and ancillary covers
- War
- Newbuilding cover



8

---

## THE UNDERWRITER'S ROLE

- Premium Levels
  - Cost of Claims
  - Cost of Reinsurance
  - Cost of Running the Club
  - Reserves
- Terms of Cover
  - Rules
  - International Group Pooling Agreement
  - Reinsurance Terms



9

---

## THE UNDERWRITER'S ROLE – DAY TO DAY

- New Business
  - New Owners – KYC
  - New Members – IGA Business
- Existing Business
  - Addition to Fleet
  - Renewal 20 February



10

## THE UNDERWRITER'S ROLE – QUOTING

- Vessel details
  - Age, GT, Type, Flag, Class (IACS)
- Member details
- Owner, Operator, Manager, Charterer
- Trade and crew
- Compatibility
- Trade references
- Financial standing
- Condition of vessel
- Ship type / Member Information
- Claims experience
  - Club wide record
  - Member specific record
- Reinsurance costs
- Administration costs

11

## PREMIUM – DEFINITIONS RULE 2

### **Premium:**

Amount that can be quantified prior to entry

MUTUAL PREMIUM

FIXED PREMIUM

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## PREMIUM – DEFINITIONS RULE 2

### Call:

Amount that cannot be quantified, but which member may become liable to pay as mutual member

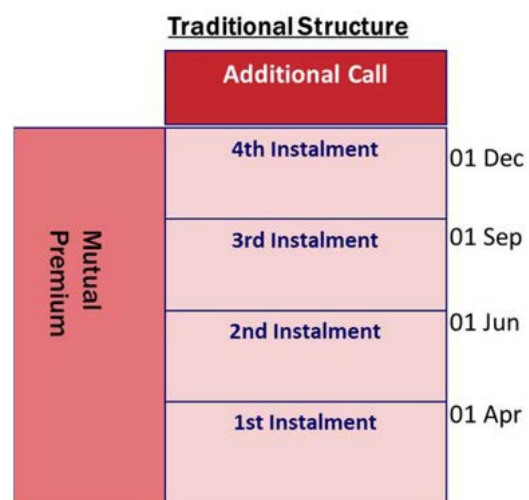
ADDITIONAL CALL

OVERSPILL CALL

RELEASE CALL

13

## PREMIUM – STRUCTURE



14

## LOSS RATIO

$$\text{Loss Ratio} = \frac{\text{Level of Claims}}{\text{Premium}} \times 100\%$$

Fleet Example:

Claims = US\$300,000  
 Premium = US\$500,000  
 Loss Ratio = 60%

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## LOSS RATIO

### P&I LOSS RATIO REPORT OWNED SHIPS ONLY

POLICY YEAR	NET PREMIUM	CLAIMS PAID	CLAIMS OUTSTANDING	CLAIMS TOTAL	LOSS RATIO %	PRO RATA GT
	USD	USD	USD	USD		
2013	183,437	4,988	0	4,988	2.7	165,946
2014	145,708	0	0	0	0.0	130,658
2015	110,444	0	0	0	0.0	99,673
2016	107,632	0	0	0	0.0	130,431
2017	67,119	3,385	43,275	46,660	69.5	107,061
2018	82,848	0	25,000	25,000	30.2	150,932
<b>Total</b>	<b>697,188</b>	<b>8,373</b>	<b>68,275</b>	<b>76,648</b>	<b>11.0</b>	
2019	66,434	0	0	0	0.0	141,260

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# LOSS RATIO

## P&I LOSS RATIO REPORT OWNED SHIPS ONLY

POLICY YEAR	NET PREMIUM	IG RI COSTS <sup>1</sup>	POOL COSTS <sup>2</sup>	ABATEMENT COSTS <sup>3</sup>	NET NET PREMIUM <sup>4</sup>	CLAIMS PAID	CLAIMS OUTSTANDING	CLAIMS TOTAL	CLAIMS NET OF ABATEMENT <sup>5</sup>	LOSS RATIO %	PRO RATA GT
	USD	USD	USD	USD	USD	USD	USD	USD	USD		
2013	671,230	360,859	75,676	92,366	142,329	157,540	0	157,540	157,540	110.7	509,072
2014	2,992,790	1,329,503	212,668	503,884	946,735	623,353	716,380	1,339,733	1,339,733	141.5	2,249,348
2015	2,840,534	1,176,953	222,883	170,942	1,269,756	312,039	0	312,039	312,039	24.6	2,165,647
2016	2,610,562	1,322,467	174,578	425,395	688,122	2,298,232	49,001	2,347,233	2,347,233	341.1	2,701,043
2017	2,414,018	1,250,692	233,883	478,363	451,080	390,468	98,345	488,813	488,813	108.4	2,826,718
2018	1,511,022	843,015	209,662	508,991	-50,646	3,016,922	7,288,058	10,304,980	3,472,806	-	2,102,414
<b>Total</b>	<b>13,040,156</b>	<b>6,283,489</b>	<b>1,129,350</b>	<b>2,179,941</b>	<b>3,447,376</b>	<b>6,798,594</b>	<b>8,151,784</b>	<b>14,950,338</b>	<b>8,118,164</b>	<b>235.5</b>	
2019	1,593,793	862,804	153,502	279,716	297,771	48,572	612,501	661,073	661,073	222.0	2,189,126

Notes:

<sup>1</sup> - The cost of the International Group Excess Loss Reinsurance Contract calculated using the rates agreed by the IG and allocated according to entered tonnage

<sup>2</sup> - The estimated cost of the Club's contribution to claims on the International Group Pool allocated amongst the membership according to entered tonnage and annualised premium.

<sup>3</sup> - The cost of abated claims, i.e. all claims above the claims cap and below the Pool retention after application of the member's co-insured proportion, as determined for the relevant Policy Year. This cost is apportioned between the membership according to entered tonnage and annualised premium.

<sup>4</sup> - Premium net to the Association after deduction of brokerage, IG RI Costs, Pool Costs and Abatement Costs.

<sup>5</sup> - Member's own claims net of amounts abated.

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# REINSURANCE

**North**  
Global service  
built around you



18

## REINSURANCE

- Re-insurance is passing risk to another insurer
  - Pooling with other Clubs
  - Market Reinsurance
- Purpose of Reinsurance
  - Avoids excessive fluctuation between years and provides stability
  - Provides higher limits of cover
  - Cost effective and efficient use of funds



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## IG REINSURANCE – CONTRACT

- 90 – 95% world's ship owners enter ships in an IG Club
- 13 International Group Clubs
- Levels of cover provided are vast but not defined
- Estimated to be approx. US\$8 billion
- All 13 IG Clubs pool claims
- All 13 buy re-insurance
- RI policy – largest marine policy in the world
- Pooling Agreement & International Group Agreement foundation of P&I
- Sharing of risk then some control of rating required
- TradeWinds "Cartel" – but most efficient system and proven

20

## IG REINSURANCE – HYDRA

- Independent reinsurance vehicle/segregated cell company
- Based in Bermuda
- Reinsures each IG Club's liability to the pool within the Lower and Upper Pools - US\$50 xs \$30 million BUT
  - Individual Claiming Club Retentions in the Upper Pools
- Reinsures 30% - 60% of each claim within the First General Excess Layer - US\$80 to US\$580 million

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## IG REINSURANCE – COST

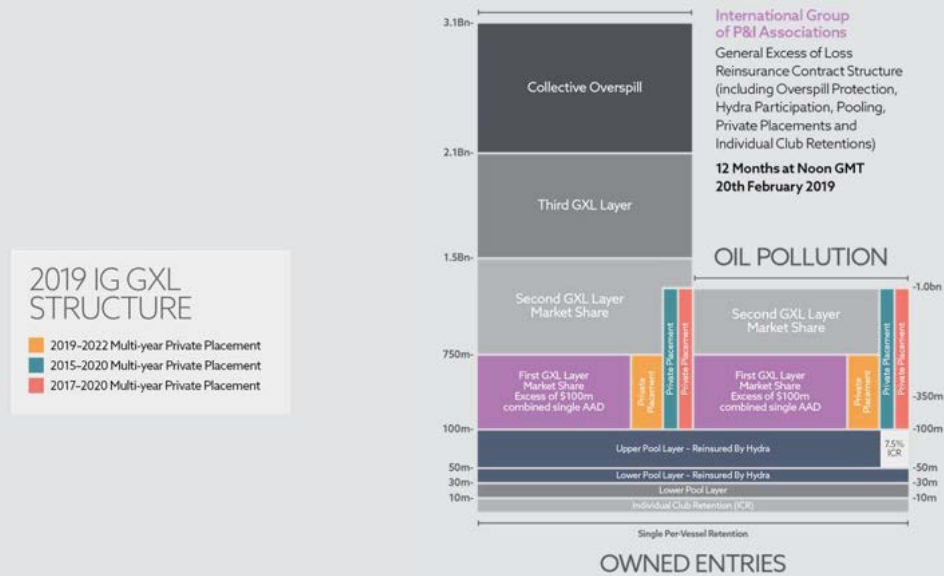
USD

Category	2018 /19	2019/20	Difference %
Dirty Tankers	0.585	0.575	-0.010
Clean Tankers	0.263	0.258	-0.005
Dries	0.404	0.397	-0.007
Passenger	3.271	3.216	-0.055

22



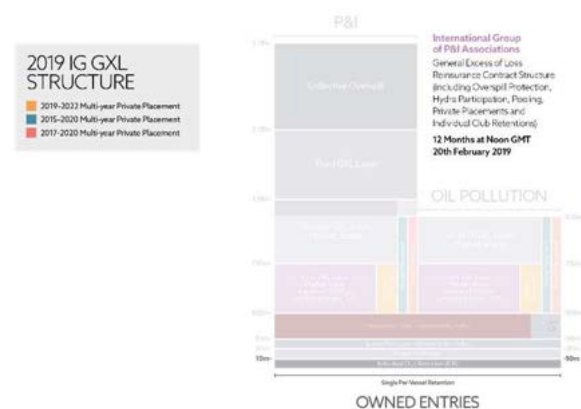
## IG REINSURANCE – STRUCTURE



23

## IG REINSURANCE – CLUB RETENTION

### 2019 IG GXL Structure



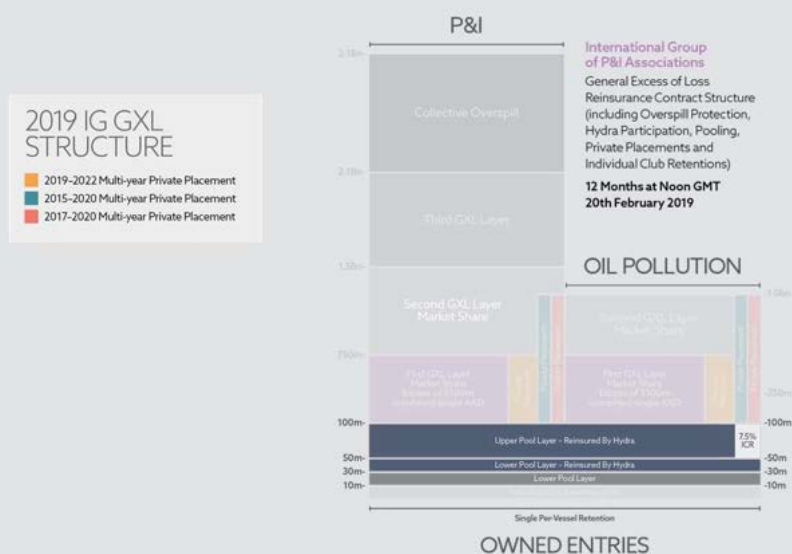
24

## IG REINSURANCE – CLUB RETENTION

- Claims up to US\$10 million (currently)
- Maintains underwriting discipline
- Cost Effective
- Retention Reinsurance
  - Excess of Loss
  - Stop Loss

25

## IG REINSURANCE – LOWER & UPPER POOL



26

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## IG REINSURANCE – LOWER POOL

- Claims from US\$10 million to US\$30 million
  - Each Club contributes in relation to:
    - Entered tonnage
    - Total mutual premiums
    - Pool claims record
- Claims from US\$30 – US\$50 million
  - Reinsured by Hydra

27

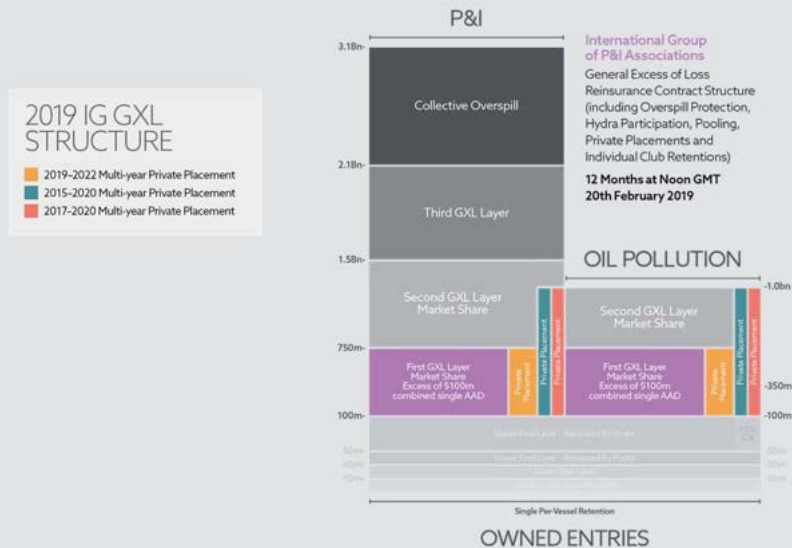
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## IG REINSURANCE – UPPER POOL

- Reinsured by Hydra
- “Upper” Pool Claims
  - from US\$50m to US\$100m
  - 7.5% Back to individual club responsible for claim

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## IG REINSURANCE – EXCESS OF LOSS REINSURANCE



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## IG REINSURANCE – EXCESS OF LOSS REINSURANCE

- The General Excess of Loss Contract
- Multi-Year Fixed Contract
- First GXL Layer (US\$100m to US\$600m) / Hydra Participation
- Second GXL Layer (US\$600m to US\$1.1b)
- Third GXL Layer (US\$1.1b to US\$2.1b)
- Lloyds and world markets
- Costs apportioned on record and exposure

30

---

## IG REINSURANCE – OVERSPILL PROTECTION

- Further US\$1b of protection (US\$2.1b to US\$3.1b) above Hydra pool/GXL participation
- Upper limit not fixed precisely
- Currently approximately US\$8 billion

31

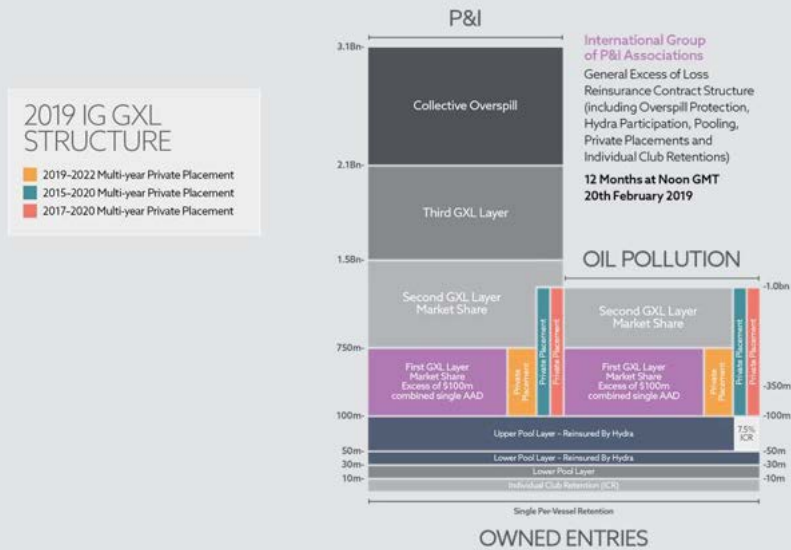
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## IG REINSURANCE – EXCESS OF OVERSPILL

- Back to individual Clubs
- Upper limit not fixed precisely
- Currently approximately US\$8 billion

32

## IG REINSURANCE – STRUCTURE



33

## SUMMARY

<https://vimeo.com/310965011>

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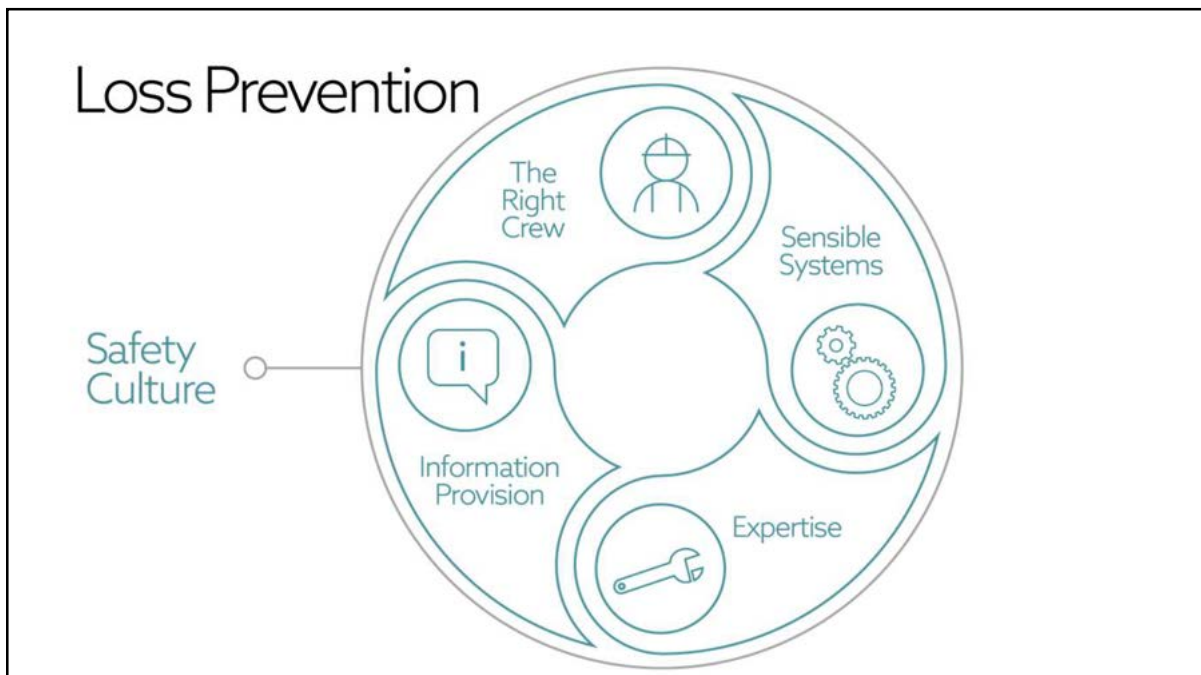
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## SUMMARY

- Introduction
- Underwriter's Role
- Premiums
- Loss Ratio
- Reinsurance



1



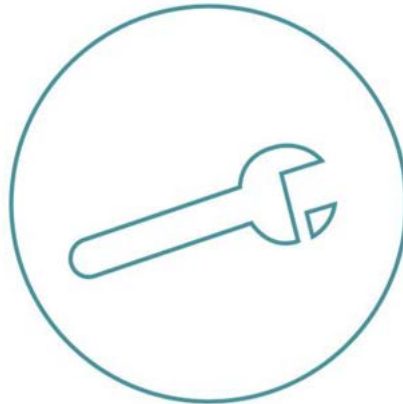
2



# Loss Prevention

## Expertise

- Team of highly qualified mariners and engineers
- Over 250 years of industry experience
- Seagoing experience in all major sectors



3



Andy

Combined experience  
35 years at sea + 30 years ashore

12 UK based staff  
Largest, most experienced & most  
effective Loss Prevention Department  
within all the 13 IG Clubs



Andy

<http://www.nepia.com/about-us/our-people/>

4

# Experience Counts

## OVERVIEW & KEY FACTS

Provides Members with information, publications, training and direct support upon which they can base their own loss prevention and safety programmes. Our dedicated and experienced team receive and answer over 2,500 enquiries every year on subjects ranging from cargo information, trading area risks and providing a mariner's expert perspective.

### Dedicated Team

**9** AN INDUSTRY LEADING TEAM INCLUDING 7 MASTER MARINERS AND 2 MARINE ENGINEERS

### Experience



**OVER 200** YEARS COMBINED MARITIME EXPERIENCE

### Publications & Guidance



### Enquiries

**2,500+** ENQUIRIES HANDLED EVERY YEAR

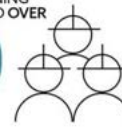
### Professional Institutes

MEMBERS OF THE NAUTICAL INSTITUTE (NI), INSTITUTE OF MARINE ENGINEERING, SCIENCE AND TECHNOLOGY (IMAREST), CHARTERED INSURANCE INSTITUTE (CII), ROYAL INSTITUTE OF NAVIGATION, INSTITUTE OF CHARTERED SHIPBROKERS, HONOURABLE COMPANY OF MASTER MARINERS.

### Education & Training

OUR RESIDENTIAL TRAINING COURSES HAVE TRAINED OVER

**1,000** DELEGATES OVER 26 YEAR HISTORY



### Regional Offices



**LOSS PREVENTION BASED IN THE UK AND SINGAPORE**

5

# Loss Prevention

## The Right Crew

- Attract, Recruit & Retain
- Safety
- Health & Wellbeing
- Crew Seminars



6

## Right Crew

- Right crew advice
- Health and wellbeing initiatives



7

## Right Crew

- Crew seminars and training
- Specialist seminars

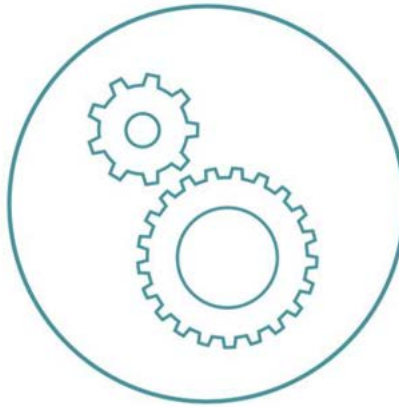


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# Loss Prevention

## Sensible Systems

- A wide range of information provision: potential problems and good practice
- Member Reviews – assessing risk and assisting members with systems



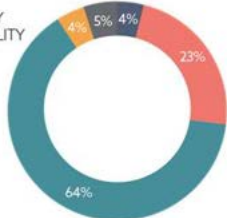
9

## Sensible Systems

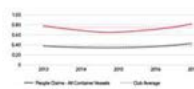
- Member reviews
- Large Claims Review

CREW INJURY  
BY NATIONALITY

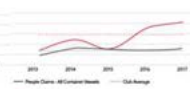
● Bulgaria  
 ● Greece  
 ● Philippines  
 ● Romania  
 ● Ukraine



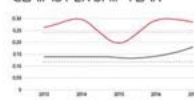
NUMBER OF PEOPLE CLAIMS  
PER SHIP YEAR



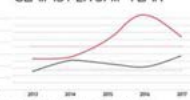
VALUE OF PEOPLE CLAIMS  
PER SHIP YEAR



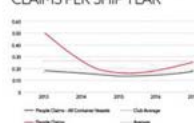
NUMBER OF CREW INJURY  
CLAIMS PER SHIP YEAR



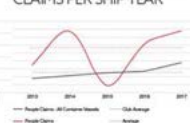
VALUE OF CREW INJURY  
CLAIMS PER SHIP YEAR



NUMBER OF CREW ILLNESS  
CLAIMS PER SHIP YEAR



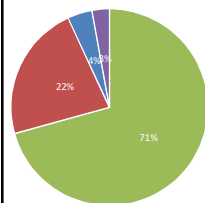
VALUE OF CREW ILLNESS  
CLAIMS PER SHIP YEAR



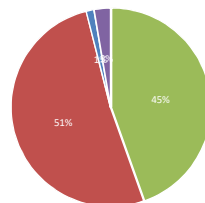
10

PEOPLE CLAIMS								
	Number	Number %	Benchmark	Value	Value %	Benchmark	Average	Benchmark
People - Crew - Injury	44	25.30%	26.70%	\$3,097,129	44.60%	24.70%	\$25,180	\$41,729
People - Crew - Illness	58	33.30%	13.80%	\$1,091,059	15.70%	8.50%	\$18,811	\$29,802
People - Third party	17	9.80%	2.10%	\$1,127,446	16.20%	2.90%	\$66,320	\$67,190
People - Stowaway	4	2.30%	1.30%	\$54,807	0.80%	0.60%	\$13,702	\$21,938
CARGO CLAIMS								
	Number	Number %	Benchmark	Value	Value %	Benchmark	Average	Benchmark
Cargo - Damage	39	22.40%	45.00%	\$3,576,999	51.50%	37.10%	\$91,718	\$39,923
Cargo - Loss	2	1.10%	2.70%	\$1,724,431	24.80%	20.20%	\$87,481	\$37,541
Cargo - Wet damage	5	2.90%	4.60%	\$1,268,986	18.30%	3.20%	\$634,493	\$55,656
Cargo - Contamination	1	0.60%	3.50%	\$578,065	8.30%	3.80%	\$115,733	\$40,597
Cargo - Bills of lading	1	0.60%	0.70%	\$2,907	0.00%	3.40%	\$2,907	\$47,848
Cargo - Miscellaneous	1	0.60%	0.70%	\$2,010	0.00%	0.30%	\$2,010	\$21,212
SHIP CLAIMS								
	Number	Number %	Benchmark	Value	Value %	Benchmark	Average	Benchmark
Ships - Collision	7	4.00%	10.40%	\$88,629	1.30%	29.80%	\$12,661	\$139,362
Ships - Non contact damage	1	0.60%	2.00%	-\$55	0.00%	8.10%	-\$55	\$200,898
Ships - Damage to property (FFO)	1	0.60%	0.40%	\$49,565	0.70%	1.20%	\$49,565	\$165,086
Ships - Pollution	2	1.10%	5.40%	\$19,277	0.30%	10.60%	\$9,638	\$94,984
Ships - Other	3	1.70%	1.80%	\$19,841	0.30%	5.10%	\$6,614	\$138,864
OTHER P&I CLAIMS								
	Number	Number %	Benchmark	Value	Value %	Benchmark	Average	Benchmark
Other - Fine	5	2.90%	4.50%	\$185,697	2.70%	7.30%	\$37,139	\$73,572
Other - Other	5	2.90%	2.10%	\$185,697	2.70%	1.30%	\$37,139	\$29,224

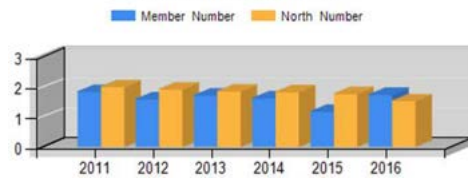
Claims Number Distribution (%)



Claims Cost Distribution (%)



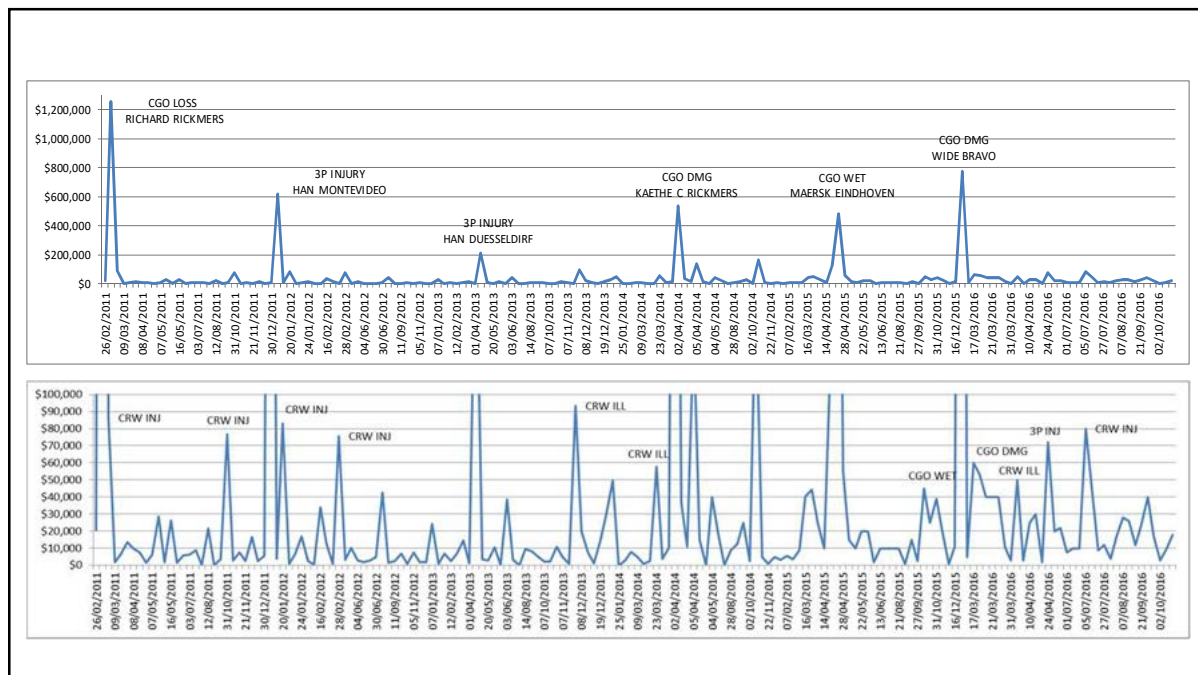
Claims Number Per Ship Year



Claims Cost Per Ship Year

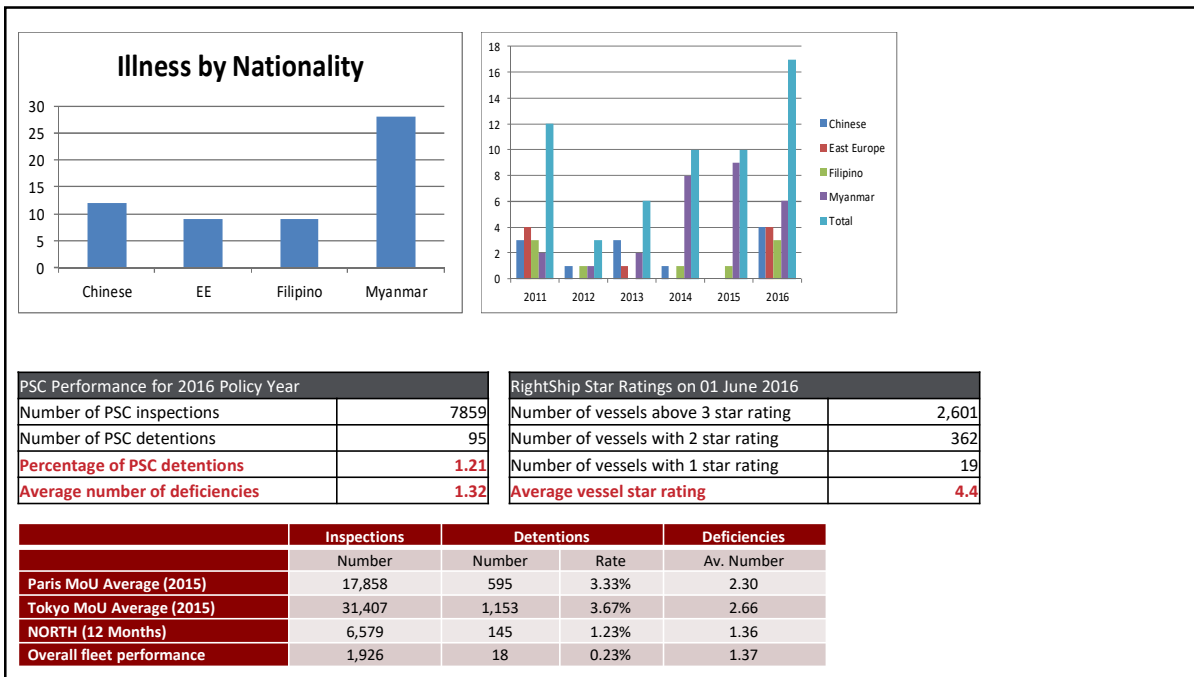


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12





13



14

# Sensible Systems

SCORA project

## Safety Culture Organisation Risk Assessment



15

# Safety Management 2.0

GREEN-JAKOBSEN

Lovoy



16

## Safety Management 2.0

DON'T JUST TAKE OUR WORD FOR IT

"A rare opportunity for all levels and all functions of a ship managing company! Unique in accepting that some facets of Safety Management are not so efficiently implemented, honest in examining the whys and practical in discussing improvements. Highly recommended!"

HSQE MANAGER / DPA - MAURAN DRY MANAGEMENT

"...Last but not least I really enjoyed the hospitality and the facilities of North of England. I would strongly suggest all those involved in the implementation of the ISM/TMSA/BMSA to attend this workshop."

HSQE MANAGER / DPA - SEA TRADERS S.A.

"The combination of Lovoy the first day with Green Jakobsen the second, was ideal. Would highly encourage attendance. Not another boring workshop."

HSQE MANAGER / DPA - SEAVEN TANKER MANAGEMENT INC.

17

## Loss Prevention

### Information Provision

- Over 2500 Loss Prevention Enquiries per annum
- News & Views
- Industry leading range of publications
- CSO Alliance



Marine / Technical input on a range of claims to P&I claims handlers and FD&D lawyers

18



# Information Provision



Live Enquiries



CSO Alliance



For more information, please visit [www.nepia.com](http://www.nepia.com)



Access to personalised and tailored content



Online resources and printed publications such as Industry News, Signals, Loss Prevention Guides, Briefings, Posters and Fact Sheets.

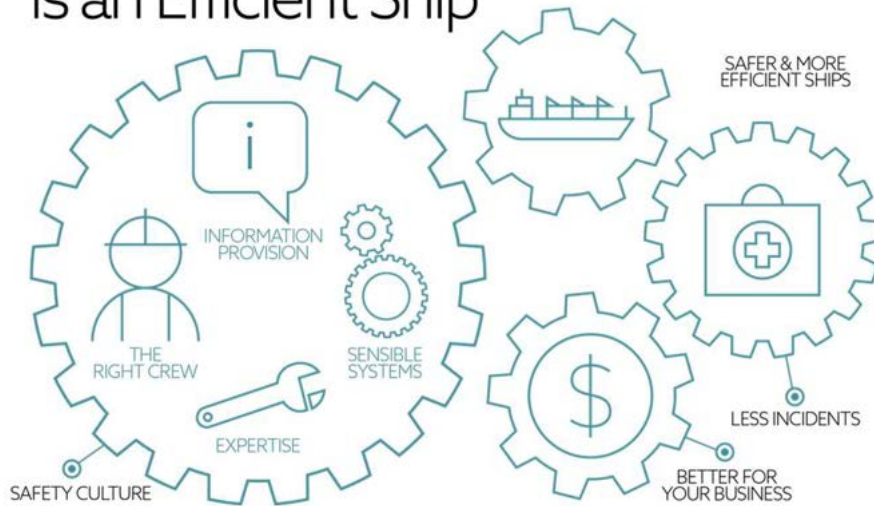


19



20

## We Believe that a Safer Ship is an Efficient Ship



21

## CONDITION SURVEYS

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Global service  
built around you

22

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## OBLIGATIONS OF THE MEMBER

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Members are obliged to exercise due diligence to make the ship seaworthy at the commencement of the voyage

---

### Article III of the Hague Visby Rules

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The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to: (a) Make the ship seaworthy; (b) Properly man, equip and supply the ship; (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

23

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## RESPONSIBILITY

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### Responsibility for the condition of a ship?

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- Owners and managers (DOC holder)

---

### Responsibility for monitoring condition?

---

- Flag State

---

- Recognised Organisation (usually Classification society)

---

- Port State Control (PSC)

---

24

24

# RESPONSIBILITY

## Role of the P&I Club?

- Third party liability insurer

- Assess the risk posed by the ships condition for insurance purposes

25

25

## WHY SURVEYS ARE CARRIED OUT

In April 2002 the OECD released a policy statement on action needed to combat sub-standard ships.

The OECD statement required the marine insurance industry to co-operate and to be in a position to identify deficiencies on insured ships that rendered those ships unsafe.

As a result the IG P&I clubs set up a ship condition survey programme.



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## CONDITION SURVEYS

Routine	Non Routine
Entry Surveys	Defect surveys
HFO tankers	PSC surveys
	Follow up surveys

27

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## CONDITION SURVEYS – ROUTINE

### Entry Survey

- On entry, all vessels aged 12 years and older will require a condition survey
- Within 30 days of entry / prior loading first cargo, whichever is first

28

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## CONDITION SURVEYS – ROUTINE

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### HFO Tankers

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- Tankers 10 years old or over that have carried heavy fuel oil as cargo in the previous policy year
- Subject to certain exceptions

29

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## CONDITION SURVEYS – NON ROUTINE

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### Defects

---

Claim may indicate problem with a ship's condition

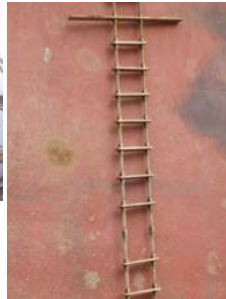


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## CONDITION SURVEYS – NON ROUTINE

### Port State Control

PSC detention  
indicates  
problem with a  
ship's condition



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## PORT STATE CONTROL

### International Maritime Organization (IMO) – Key conventions

SOLAS (safety of Life at Sea)

- ISM Code

- ISPS Code

Load Line

MARPOL

STCW (Standards of Training, Certification and Watchkeeping)

Maritime Labour Convention (MLC) 2006

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## PORT STATE CONTROL

If the certificates are valid and the PSCO's general impression and visual observations on board confirm a good standard of maintenance, the PSCO should generally confine the inspection to reported or observed deficiencies, if any.

33

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## PORT STATE CONTROL

**Clear grounds**

Evidence that the ship, its equipment, or its crew does not correspond substantially with the requirements of the relevant conventions or that the master or crew members are not familiar with essential shipboard procedures relating to the safety of ships or the prevention of pollution

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## PORT STATE CONTROL

Clear grounds

### "Clear grounds" to conduct a more detailed inspection include:

Absence of principal equipment or arrangements required by the conventions;

Evidence from a review of the ship's certificates that a certificate or certificates are clearly invalid;

Evidence that the ship's logs, manuals or other required documentation are not on board, are not maintained, or are falsely maintained;

Evidence from the PSCO's general impressions and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship;

Evidence from the PSCO's general impressions or observations that serious deficiencies exist in the safety, pollution prevention, or navigational equipment;

Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out;

Indications that key crew members may not be able to communicate with each other or with other persons on board;

Absence of an up-to-date muster list, fire control plan, and for passenger ships, a damage control plan;

The emission of false distress alerts not followed by proper cancellation procedures;

Receipt of a report or complaint containing information that a ship appears to be substandard.

35

## CONDITION SURVEYS

**Managers Discretion** – The Managers may at any time require a member to submit his ship to be surveyed, by a surveyor nominated by the Managers but at the expense of the Member, within such period as may be specified by the Managers.

Rule 30 – Obligations of the Member in respect of surveys

36

## SOME EXAMPLES



37

## SOME EXAMPLES



38

## SOME EXAMPLES



39

## SOME EXAMPLES



40

## SOME EXAMPLES



41

## SOME EXAMPLES



42

## **SOME EXAMPLES**



43

## **REPORT FORMAT**

**Part A – Condition Survey Report Form (All ship types)**

**Part B – Survey questionnaire (All ship types)**

**Part C – Survey questionnaire (Ship specific)**

**Part D – Defect list**

**Photo Album**

44



# REPORT FORMAT

## Part A – Condition Survey Report Form (All ship types)

Vessel particulars & Crew Matrix

Circumstances of survey

Executive summary – Survey score 1 😊 to 5 ☹️

Shipboard management, Safety, Fire Safety, LSA, Pollution & environmental awareness, Navigation, Apparent structural condition, Machinery, Cargo Worthiness, Maintenance and housekeeping

45

# REPORT FORMAT

## 3. Executive Summary

### 3.1 Survey summary

Following the completion of the survey, and based on the surveyor's overall impression of the vessel, the surveyor is requested to rate the following areas (1=excellent 2=good 3=fair 4=poor 5=very poor)

	Rating
Shipboard management*:	3
Safety*:	3
Fire safety*:	3
Life saving appliances*:	3
Pollution and environmental awareness*:	3
Navigation*:	3
Apparent structural condition (inc hatch covers if survey required):	3
Machinery*:	3
Cargo worthiness (inc hatch covers if survey required):	4
Maintenance and housekeeping (inc hatch covers if survey required):	3

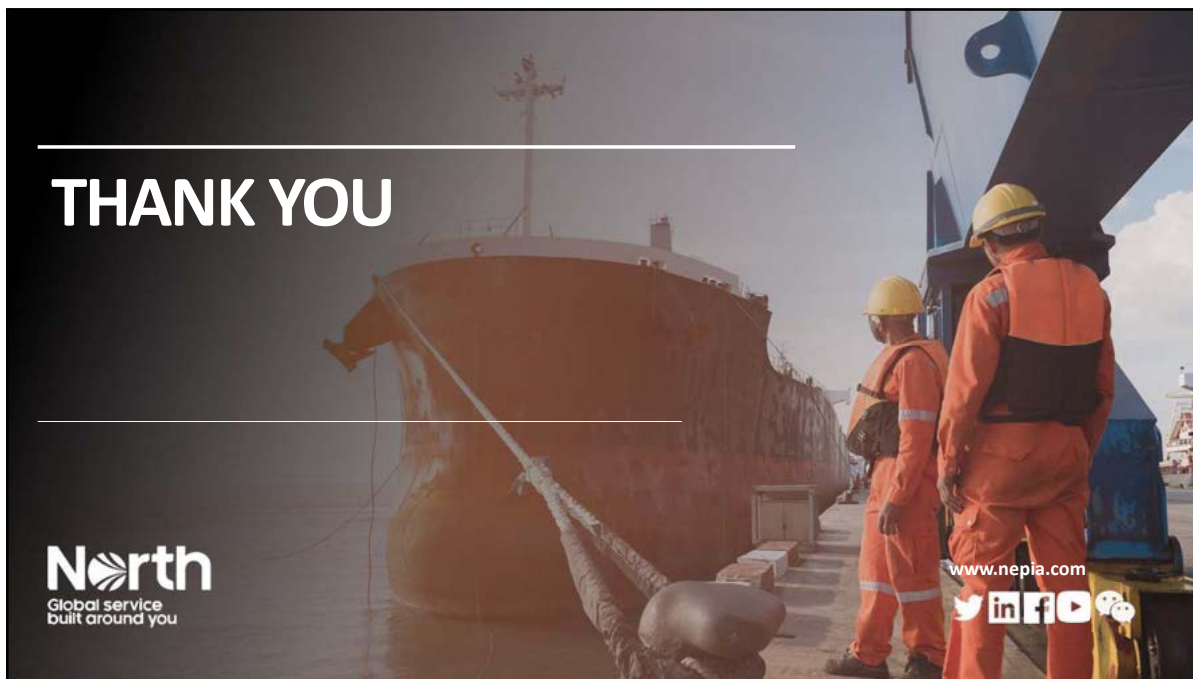
\* If performing a hatch cover only survey please do not complete



Number of  
deficiencies / defects

46





47



1

## WHAT IS FD&D COVER?

- Optional insurance to cover legal costs/expenses relating to:
  - the operation, ownership or management of/interest in...
  - ...an entered vessel...
  - ...which are not covered by other forms of insurances (rule 23(1)).
- Does not cover substantive liabilities/the underlying claim – compare with P&I/H&M.

2

## KEY FEATURE



*The business of this class is the enforcement of all proper claims and the defence of all claims improperly brought...*



### - Rule 19

3

## KEY FEATURES

- Discretionary cover:
  - Whose discretion?
  - *Prudent uninsured*
  - Reviewed throughout claim
  - Common to all FD&D classes of P&I Clubs and the independent Defence Clubs
  - Quantum only e.g. early redelivery
  - Proportionality



4

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## FEATURES

- Duty to notify the Club:
  - Rule 25(4) – claims to be notified within 3 months after Member becomes aware of the existence of claim
  - Rule 26(2) - No legal steps to be taken / lawyers appointed without approval

5

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## KEY FEATURES

- Security:
  - For claims
  - For costs



6

## KEY FEATURES

- Standard Deductible – 2017/2018
  - 25% of costs on all claims, subject to:
    - Minimum deductible \$10,000
    - Maximum deductible \$150,000
- No costs if no external parties appointed



7

## DEDUCTIBLE

### FD&D Deductible - Rule 20

25% (Minimum US\$10,000, Maximum US\$150,000)



8

## SCOPE

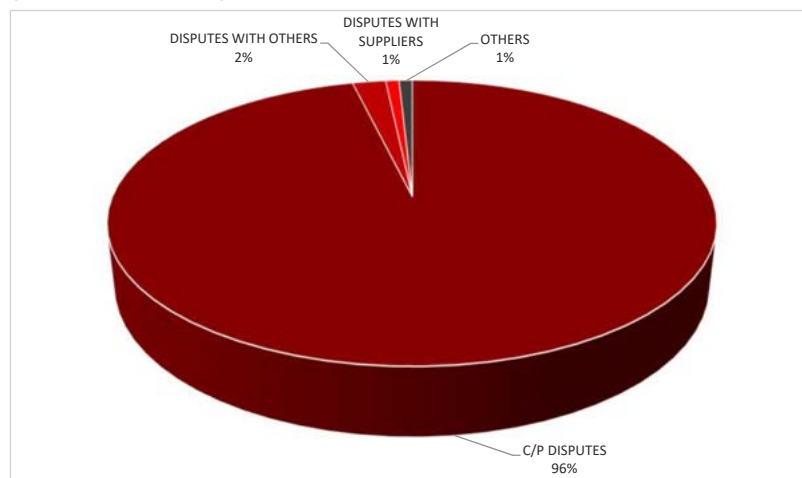
- Very wide in scope
- Majority of claims are Charterparty Disputes
- Also deal with sale and purchase, new building contracts, repair and other disputes.
- Liaison with P&I/H&M



9

## SCOPE

- Types of disputes - March 2018-March 2019



10

## SCOPE

### Example Charterparty Disputes:

- Hire, freight and deadfreight
- Withdrawal
- Short loading
- Delivery/redelivery
- Validity of orders
- Vessel description clauses e.g. speed and performance
- Laytime and demurrage
- Unsafe port/berth cases
- Stevedore damage
- Bunker disputes
- Operational costs responsibility etc.

11

## SCOPE

- Disputes with underwriters (H&M/war risk/loss of hire)
- Crew/ITF disputes – only where action by crew/ITF wrongful/improper - Rule 19(2)
- Disputes with suppliers (of bunkers/equipment/port agents) – Rule 19(1) (v)
- Disputes with mortgagees/managers/ operators – Rule 19(5)
- Bill of lading disputes (Not cargo loss or damage)
- Disputes with other ship owners e.g. following collision

12



## LIMITATIONS

- Rule 22 -
- Classification society and Statutory requirements
- With some notable exceptions, the cover is unlimited in amount but is subject to discretion of Members' Board.
- No cover for disputes between joint Members (Rule 9(3))



13

## WHAT WE DO IN PRACTICE

- Provide legal opinions/advice
- Appoint arbitrators/surveyors/correspondents/experts
- Advise on and assist with gathering evidence
- Draft arbitration submissions, witness statements etc.
- Instruct external lawyers (including counsel directly) where necessary/appropriate
- Manage legal costs, including negotiation of fees
- Draft messages for Members to send to opponents
- Correspond with opponents, their Clubs and/or their lawyers
- Investigate opponents' assets
- Pursue security for underlying claim
- Deal with requests of security for claim/costs
- Conduct negotiations, mediations and other alternative dispute resolution
- Draft settlement/escrow/novation etc. agreements



14

## ADDITIONAL SERVICES

- Check before fixing
  - International Maritime Bureau (IMB)
  - Baltic and International Maritime Council (BIMCO)
  - Internal enquiries
- Sanctions – dedicated team
  - Regular updates on North website
  - [sanctions.advice@nepia.com](mailto:sanctions.advice@nepia.com)
- Drafting charterparty/other contract clauses
- Reviewing contracts
- General enquiries
- Training
- Global Legal Navigator

15

## FD&D DEPARTMENT

- As of 20 February 2019
- Owned and Chartered:
  - About 4,500 vessels
  - About 263 Members
  - About 159 million GT



16

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## FD&D DEPARTMENT

- In-house team of 39 dedicated lawyers.
- Specialists in handling disputes falling within the scope of FD&D cover.
- Majority of North's "in-house" team are English solicitors.



17

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## FD&D DEPARTMENT AS AT MAY 2018

- **UK Office**
  - 27 lawyers including a US Attorney
- **Singapore Office**
  - 7 lawyers including 4 Singaporean solicitors
- **Greek Office**
  - 5 lawyers including a US Attorney

18

## FD&D DEPARTMENT

- FD&D Guide Online
- [www.nepia.com](http://www.nepia.com)
- FD&D Class



19

## NORTH'S FD&D TEAM: OVERVIEW & KEY FACTS

Freight, Demurrage and Defence Insurance ("FD&D") is a discretionary legal costs insurance that protects our Members' interests and assets. North's FD&D team supports Members in recovering their proper claims for uninsured losses and/or in defending and resisting any actions improperly brought against them, that fall within the remit of North's FD&D Rules.

### IN-HOUSE LEGAL SERVICE - SIZE MATTERS

**39** SPECIALIST IN-HOUSE LAWYERS AROUND THE WORLD

- DIRECT ACCESS TO QUALIFIED PROFESSIONALS
- COST EFFECTIVE SERVICE
- GLOBAL LEGAL AND COMPLIANCE NETWORK
- PROACTIVE ADVICE
- AVAILABLE 24/7
- MOST CLAIMS DEALT WITH IN-HOUSE

### FINANCIAL STRENGTH

OUR S&P AAA CAPITAL ADEQUACY IS EXTREMELY STRONG

SHIPS ENTERED: **4500** SHIPS ACROSS THE GLOBE

COMMITMENT: **18** YEARS AVERAGE LENGTH OF SERVICE IN THE SENIOR TEAM

COMMERCIAL AND PRAGMATIC: WE FOCUS ON PROTECTING YOUR BUSINESS

### QUALIFIED AND SPECIALIST LAWYERS

Our service differs from most other FD&D insurers, in that our FD&D team consists solely of qualified, specialist lawyers and as such, we can provide direct and immediate legal advice and support to Members. We currently employ 39 qualified lawyers, ranging from English solicitors to overseas-qualified attorneys who are based in each of our Newcastle, Piraeus and Singapore offices. We believe this makes us the largest global team of specialist FD&D lawyers.

ALL OUR LAWYERS PRACTISED WITH LEADING LAW FIRMS AND NOW FOCUS EXCLUSIVELY ON FD&D CLAIMS

### COMPREHENSIVE COVER

WITH FEW EXCEPTIONS THERE IS NO RULES LIMIT ON FD&D COVER

CLAIMS: **OVER 4,000** CLAIMS ENQUIRIES HANDLED IN 2018

DON'T LEAVE THINGS TO CHANCE

The scope of our FD&D cover is very wide in that it covers legal costs and expenses properly incurred in numerous types of ship operating disputes falling outside the scope of other insurances. By solely employing qualified lawyers, our team is able to deal with most legal work in-house and we regularly handle all aspects of London arbitrations, from beginning to end. Most of the disputes referred to the FD&D team are charterparty disputes, but we also handle a large number of claims and queries relating to chartering, operational, loss prevention, trading and other issues.

### GROWING MEMBERSHIP

THE NUMBER OF FD&D MEMBERS CONTINUES TO GROW YEAR BY YEAR

20



21





1

## WORKSHOP 1 – SCOPE OF COVER

### Introduction

The *MV Amber Nectar* is to load steel coils, bagged sugar and drums of chemicals at a Mediterranean port. The ship is operating under a time charter.

- What are the potential liabilities?
- Are they covered by P&I?
- Are they covered by another insurer?



2

## WORKSHOP 1 – SCOPE OF COVER

- 1 Whilst manoeuvring to pick up the pilot at the load port the *Amber Nectar* has a collision with the pilot boat. The pilot is thrown into the water and injured. Whilst there is only minor damage to the *Amber Nectar* the pilot boat is badly damaged.



3

## WORKSHOP 1 – SCOPE OF COVER

- 2 After berthing the ship's holds are inspected by the charterer's surveyor who claims that the holds are dirty, wet and in an unsatisfactory condition. As a result the charterers put the ship off-hire for three days for further hold cleaning.



4



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## WORKSHOP 1 – SCOPE OF COVER

- 3 On inspecting the steel coils prior to loading the master notices that many are already damaged and rusty.



5

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## WORKSHOP 1 – SCOPE OF COVER

- 4 The ship's officer on cargo watch reports to the master that loading of the bagged sugar has begun but some of the bags are torn and spilling sugar.



6

## WORKSHOP 1 – SCOPE OF COVER

- 5 Later that day whilst loading some of the drums of chemicals a ship's crane wire breaks and four drums fall onto the already loaded bagged sugar in the hold below. There is extensive spillage of the chemicals over the bagged sugar.



7

## WORKSHOP 1 – SCOPE OF COVER

- 6 At midday on the second day of loading it starts raining heavily. Loading is stopped and the hatch covers are closed. The rain lasts for 24 hours and when the stevedores return the hatch covers are opened so that loading can resume.

On entering one of the holds some of the stevedores are seen to collapse and the foreman on deck raises the alarm with the officer of cargo watch who immediately informs the master.



8

## WORKSHOP 1 – SCOPE OF COVER

- 7 That afternoon the local police arrive at the ship to investigate what happened to the stevedores. They park their police car alongside the ship and unfortunately it is hit by a steel coil being loaded on board with a ship's crane. The police car suffers extensive damage.



9

## WORKSHOP 1 – SCOPE OF COVER

- 8 Cargo work is completed and the Amber Nectar is leaving the berth. Whilst swinging in the harbour the bow of the ship swings towards a container gantry crane on another berth and the pilot orders the engines to be put full astern. The emergency full astern fails to prevent the bow of Amber Nectar from making contact with and damaging the gantry crane.

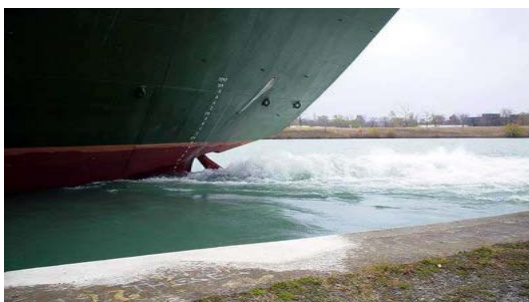


10



## WORKSHOP 1 – SCOPE OF COVER

- 9 The wash from the propeller causes damage to a number of yachts in a marina



11

## WORKSHOP 1 – SCOPE OF COVER

- 10 The pilot fails to recover control of the ship and the *Amber Nectar* goes aground on a mud bank. The ship is re-floated with the assistance of tugs on the next high tide.



12

## WORKSHOP 1 – SCOPE OF COVER

- 11 After re-floating the ship is taken to a lay-by berth. In order to establish whether there is any damage a diver's inspection of the underwater hull and propellers is arranged.



13

## WORKSHOP 1 – SCOPE OF COVER

- 12 At this stage it appears to be all too much for the master and he suffers a nervous breakdown. The P&I correspondent arranges for him to be admitted to a local hospital.



14



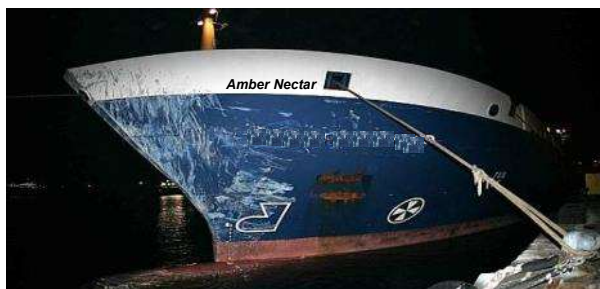
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16

## WORKSHOP 1 – SCOPE OF COVER

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17

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- 1 Whilst manoeuvring to pick up the pilot at the load port the *Amber Nectar* has a collision with the pilot boat. The pilot is thrown into the water and injured. Whilst there is only minor damage to the *Amber Nectar* the pilot boat is badly damaged.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
1	1	Damage to pilot vessel	¼	19(10)(a) 19(16)	¾		Damage to the pilot vessel ¼ P&I and ¾ H&M May be 4/4 P&I if contract or statute in place
	2	Pilot's injury		19(10)(b)(iv) 19(4)(c)			4/4 P&I collision cover. Personal injury to third party – duty of care
	3	Pollution		19(10)(b)(v) 19(13)			4/4 P&I collision cover. Fines (discretionary)
	4	Damage to own ship					4/4 H&M
Notes: Wreck removal? Loss of hire?							

18



## WORKSHOP 1 – SCOPE OF COVER

- 2 After berthing the ship's holds are inspected by the charterer's surveyor who claims that the holds are dirty, wet and in an unsatisfactory condition. As a result the charterers put the ship off-hire for three days for further hold cleaning.



19

## WORKSHOP 1 – SCOPE OF COVER

- 2 After berthing the ship's holds are inspected by the charterer's surveyor who claims that the holds are dirty, wet and in an unsatisfactory condition. As a result the charterers put the ship off-hire for three days for further hold cleaning.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
2	5	Dirty holds					Possible FD&D involvement in any dispute over terms of charterparty



20

## WORKSHOP 1 – SCOPE OF COVER

- 3 On inspecting the steel coils prior to loading the master notices that many are already damaged and rusty.



21

## WORKSHOP 1 – SCOPE OF COVER

- 3 On inspecting the steel coils prior to loading the master notices that many are already damaged and rusty.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
3	6	Pre-loading cargo damage		19(17)(D)(vi)			A P&I matter only if receiver makes claim against shipowner under bill of lading. Obligation under rule 19(17)(D)(vi) to clause the bill of lading.
Notes: Cargo insurance? Steel pre-load survey?							

22

## WORKSHOP 1 – SCOPE OF COVER

- 4 The ship's officer on cargo watch reports to the master that loading of the bagged sugar has begun but some of the bags are torn and spilling sugar.



23

## 4 - SUGAR CARGO

- 4 The ship's officer on cargo watch reports to the master that loading of the bagged sugar has begun but some of the bags are torn and spilling sugar.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
4	7	Handling damage by stevedores		19(17)(a)			A P&I matter only if receiver makes claim against shipowner under bill of lading. Charterer may be ultimately responsible under charterparty.

24

## WORKSHOP 1 – SCOPE OF COVER

- 5 Later that day whilst loading some of the drums of chemicals a ship's crane wire breaks and four drums fall onto the already loaded bagged sugar in the hold below. There is extensive spillage of the chemicals over the bagged sugar.



25

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
5	8	Damage loading with ship's gear		19(17)(a) 19(17)(b)			
	9	Broken crane wire					Possibly H&M if over deductible.

26

## WORKSHOP 1 – SCOPE OF COVER

- 6 At midday on the second day of loading it starts raining heavily. Loading is stopped and the hatch covers are closed. The rain lasts for 24 hours and when the stevedores return the hatch covers are opened so that loading can resume. On entering one of the holds some of the stevedores are seen to collapse and the foreman on deck raises the alarm with the officer of cargo watch who immediately informs the master.



27

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
6	10	Personal injury – stevedore		19(4) 19((4)(A)			Personal injury to third party
	11	Rain delay					Possible FD&D involvement in any dispute over terms of charterparty
	Notes: Accident investigation – delay? Rain not laytime?						

28



## WORKSHOP 1 – SCOPE OF COVER

- 7 That afternoon the local police arrive at the ship to investigate what happened to the stevedores. They park their police car alongside the ship and unfortunately it is hit by a steel coil being loaded on board with a ship's crane. The police car suffers extensive damage.



29

## WORKSHOP 1 – SCOPE OF COVER

- 7 That afternoon the local police arrive at the ship to investigate what happened to the stevedores. They park their police car alongside the ship and unfortunately it is hit by a steel coil being loaded on board with a ship's crane. The police car suffers extensive damage.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
7	12	Damage to police car		19(12)(a)			Car likely to be insured by police vehicle insurance.
	13	Damage to steel coil		19(17)(a) 19(17)(b)			Cargo insurance?

30

## WORKSHOP 1 – SCOPE OF COVER

- 8 Cargo work is completed and the Amber Nectar is leaving the berth. Whilst swinging in the harbour the bow of the ship swings towards a container gantry crane on another berth and the pilot orders the engines to be put full astern. The emergency full astern fails to prevent the bow of Amber Nectar from making contact with and damaging the gantry crane.



31

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
8	14	Damage to shore crane		19(12)(a) 19(12)(c)			Includes consequential losses

32



## WORKSHOP 1 – SCOPE OF COVER

- 9 The wash from the propeller causes damage to a number of yachts in a marina



33

## WORKSHOP 1 – SCOPE OF COVER

- 9 The wash from the propeller causes damage to a number of yachts in a marina

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
9	15	Damage to yachts		19(11)(a)			Non contact damage

34

## WORKSHOP 1 – SCOPE OF COVER

- 10 The pilot fails to recover control of the ship and the *Amber Nectar* goes aground on a mud bank. The ship is re-floated with the assistance of tugs on the next high tide.



35

## WORKSHOP 1 – SCOPE OF COVER

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
10	16	Towage					Unlikely to be salvage or general average.
		Notes: Safe port?					

36

## WORKSHOP 1 – SCOPE OF COVER

- 11 After re-floating the ship is taken to a lay-by berth. In order to establish whether there is any damage a diver's inspection of the underwater hull and propellers is arranged.



37

## WORKSHOP 1 – SCOPE OF COVER

- 11 After re-floating the ship is taken to a lay-by berth. In order to establish whether there is any damage a diver's inspection of the underwater hull and propellers is arranged.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
11	17	Hull damage					
	18	Diver's inspection					

38

## WORKSHOP 1 – SCOPE OF COVER

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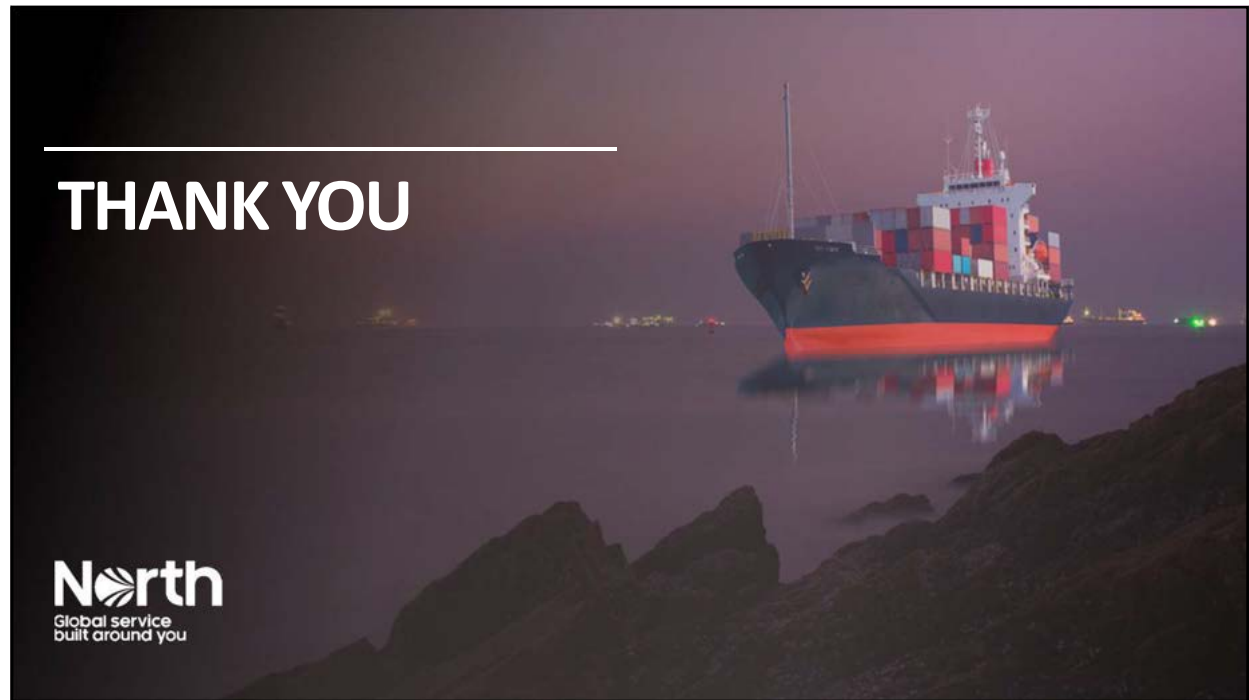
39

## WORKSHOP 1 – SCOPE OF COVER

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
12	19	Crew illness – master		19(1)(a)			
	20	Substitution costs		19(1)(d)			Substitution if manning levels require.
Notes: Master sues employer – FD&D?							

40





1

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	4	Damage to own ship					4/4 H&M
	Notes: Wreck removal? Loss of hire?						

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4



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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
2	5	Dirty holds					Possible FD&D involvement in any dispute over terms of charterparty



5

## WORKSHOP 1 – SCOPE OF COVER

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6

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
3	6	Pre-loading cargo damage		19(17)(D)(vi)			A P&I matter only if receiver makes claim against shipowner under bill of lading. Obligation under rule 19(17)(D)(vi) to clause the bill of lading.
Notes: Cargo insurance? Steel pre-load survey?							

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
4	7	Handling damage by stevedores		19(17)(a)			A P&I matter only if receiver makes claim against shipowner under bill of lading. Charterer may be ultimately responsible under charterparty.

9

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Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
5	8	Damage loading with ship's gear		19(17)(a) 19(17)(b)			
	9	Broken crane wire					Possibly H&M if over deductible.

11

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14



## WORKSHOP 1 – SCOPE OF COVER

- 7 That afternoon the local police arrive at the ship to investigate what happened to the stevedores. They park their police car alongside the ship and unfortunately it is hit by a steel coil being loaded on board with a ship's crane. The police car suffers extensive damage.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
7	12	Damage to police car		19(12)(a)			Car likely to be insured by police vehicle insurance.
	13	Damage to steel coil		19(17)(a) 19(17)(b)			Cargo insurance?

15

## WORKSHOP 1 – SCOPE OF COVER

- 8 Cargo work is completed and the Amber Nectar is leaving the berth. Whilst swinging in the harbour the bow of the ship swings towards a container gantry crane on another berth and the pilot orders the engines to be put full astern. The emergency full astern fails to prevent the bow of Amber Nectar from making contact with and damaging the gantry crane.



16



## WORKSHOP 1 – SCOPE OF COVER

- 8 Cargo work is completed and the Amber Nectar is leaving the berth. Whilst swinging in the harbour the bow of the ship swings towards a container gantry crane on another berth and the pilot orders the engines to be put full astern. The emergency full astern fails to prevent the bow of Amber Nectar from making contact with and damaging the gantry crane.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
8	14	Damage to shore crane		19(12)(a) 19(12)(c)			Includes consequential losses

17

## WORKSHOP 1 – SCOPE OF COVER

- 9 The wash from the propeller causes damage to a number of yachts in a marina



18

## WORKSHOP 1 – SCOPE OF COVER

- 9 The wash from the propeller causes damage to a number of yachts in a marina

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
9	15	Damage to yachts		19(11)(a)			Non contact damage

19

## WORKSHOP 1 – SCOPE OF COVER

- 10 The pilot fails to recover control of the ship and the *Amber Nectar* goes aground on a mud bank. The ship is re-floated with the assistance of tugs on the next high tide.



20

## WORKSHOP 1 – SCOPE OF COVER

- 10 The pilot fails to recover control of the ship and the *Amber Nectar* goes aground on a mud bank. The ship is re-floated with the assistance of tugs on the next high tide.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
10	16	Towage					Unlikely to be salvage or general average.
		Notes: Safe port?					

21

## WORKSHOP 1 – SCOPE OF COVER

- 11 After re-floating the ship is taken to a lay-by berth. In order to establish whether there is any damage a diver's inspection of the underwater hull and propellers is arranged.



22

# WORKSHOP 1 – SCOPE OF COVER

- 11 After re-floating the ship is taken to a lay-by berth. In order to establish whether there is any damage a diver's inspection of the underwater hull and propellers is arranged.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
11	17	Hull damage					
	18	Diver's inspection					

23

# WORKSHOP 1 – SCOPE OF COVER

- 12 At this stage it appears to be all too much for the master and he suffers a nervous breakdown. The P&I correspondent arranges for him to be admitted to a local hospital.



24

## WORKSHOP 1 – SCOPE OF COVER

- 12 At this stage it appears to be all too much for the master and he suffers a nervous breakdown. The P&I correspondent arranges for him to be admitted to a local hospital.

Event	Liability	Potential liability	P&I	P&I Rule Number	H&M	FD&D	Remarks
12	19	Crew illness – master		19(1)(a)			
	20	Substitution costs		19(1)(d)			Substitution if manning levels require.
	Notes: Master sues employer – FD&D?						

25

# THANK YOU

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1

## INTRODUCTION

- Collisions – what they are and how they happen
- Casualty management
- Liability – how fault is apportioned
- Insurance and claims



2





3

## COLLISIONS

- 'Collision' means the physical contact between two ships.
- 'Ship' has no special / legal definition
  - It includes tackle, cranes, anchors, but not items fixed 'temporarily' such as fishing nets.
- Collision does not include contact with fixed objects / property.

4

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# COLLISIONS

## Regulations for preventing collisions

- Laid down by the 1972 International Convention for Preventing Collisions at Sea (COLREGS)
- Recognised by every Flag State and by every Coastal State
- If two ships meet at sea, they are both obliged to follow the same rules

5

---

# COLLISIONS



## COLREGS specify

- General rules that apply to all ships at all times
- Specific rules that apply to ships in sight of one another
- Technical rules for lights, sound signals etc.

6

## COLLISIONS

**Most collisions are caused by human error**

- Poor understanding of the COLREGS



7

## COLLISIONS

**Most collisions are caused by human error**

- Poor lookout



8

# COLLISIONS

**Most collisions are caused by human error**

- Poor assessment of risk of collision

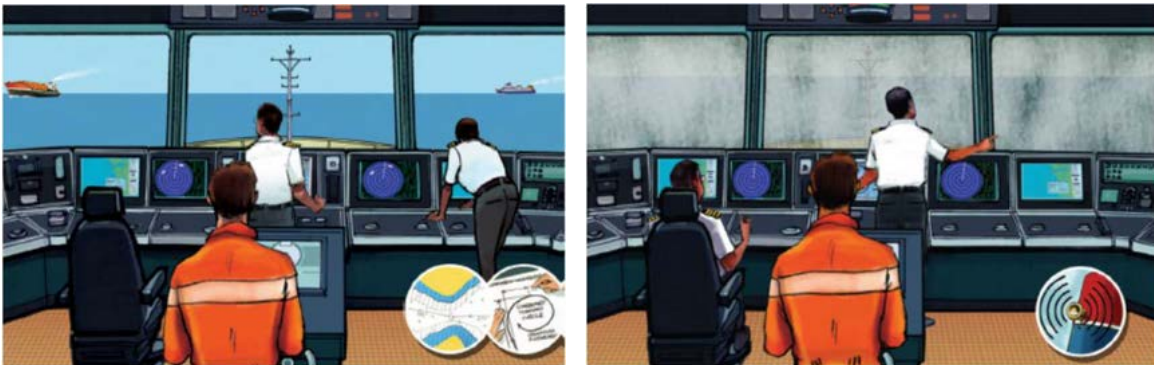


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# COLLISIONS

**Most collisions are caused by human error**

- Excessive speed, especially in fog



10

## COLLISIONS

**Most collisions are caused by human error**

- Avoiding action taken too little and too late



11

## CASUALTY MANAGEMENT

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## CASUALTY MANAGEMENT

### Onboard the ship

- Preserve life, property and the environment
- Confirm any injuries, damage and pollution
- Stand by the other ship until allowed to proceed
- In territorial waters – report to the coastal state
- Save all automatically recorded data (Example - VDR recording)
- Express no opinions



13

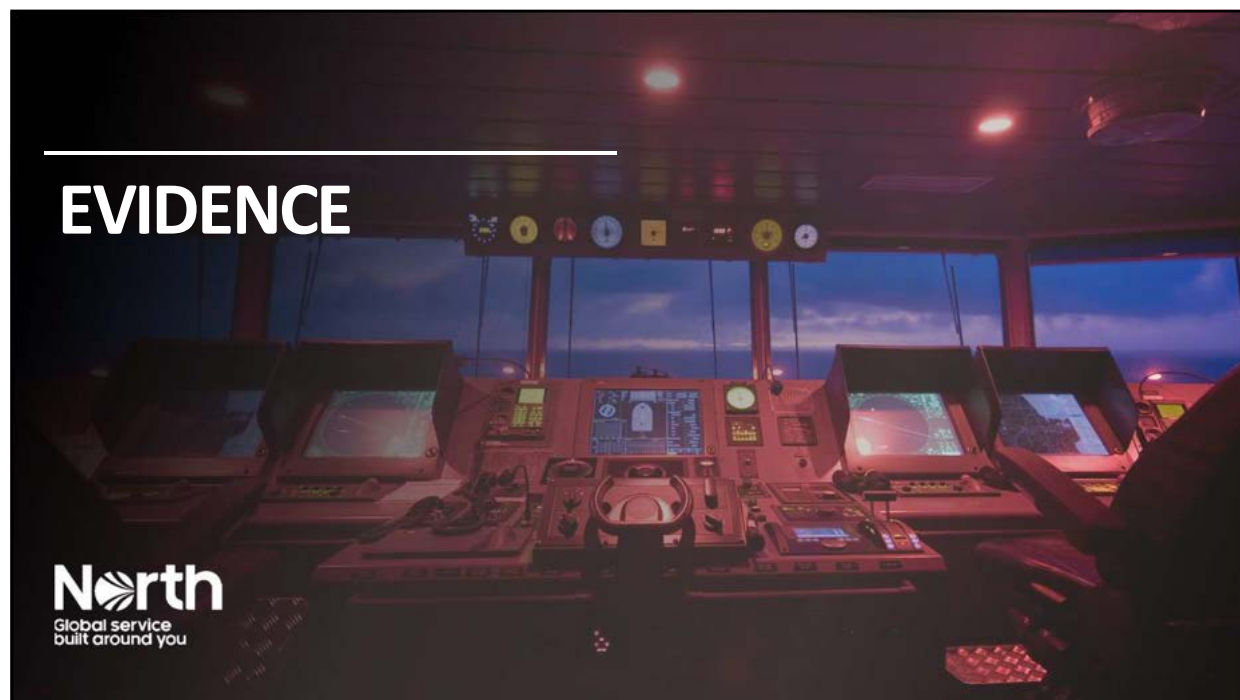
## CASUALTY MANAGEMENT

### Ashore - in the ship operators office

- Activate emergency response plan
- Assist the Master in preservation of life, property and the environment
- Notify the competent authorities and insurers
- Identify port of refuge/repair
- In consultation with insurers:
  - appoint surveyors for joint, w/p survey of each ship
  - appoint lawyers/collision investigators

14





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## EVIDENCE

- 'Save' all onboard recording devices, especially VDR and engine loggers
- Secure AIS data
- Arrange a joint, w/p damage survey
- Consider 'speed and angle of blow' survey
- Report facts only, never opinions
- Never alter charts or logs
- Only give witness statements to Owners' lawyer

16



17

## LIABILITY

### Legal Basis

- A collision is a tort - a breach of the 'duty of care' to exercise good seamanship
- Each ship's 'causative breach(s)' of the COLREGS is identified
  - Degree of fault - qualitative inquiry
  - Causative potency ( how causative is the fault? )
  - Culpability (blameworthiness)
- Each ship then bears the appropriate percentage of fault
  - Example - 60% on one ship, 40% on the other

18

## LIABILITY

- Collision limitation period is typically two years

### Jurisdiction

- Jurisdiction and proper law
  - High seas – the Flag State(s)
  - Territorial seas – the Coastal State
- All states apply the COLREGS, but differently. For consistency, owners and insurers of both ships will often agree a common jurisdiction
- England is the only jurisdiction with a dedicated court and a specialist judge to hear collision actions
- Most collisions are resolved by agreement

19

## LIABILITY

### Illustration - Apportionment of blame



20

## HOW IS LIABILITY APPORTIONED?

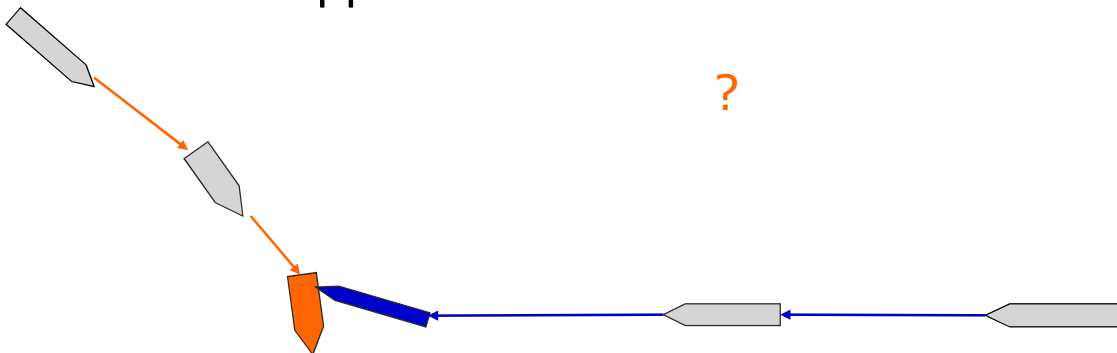
Illustration - Apportionment of blame



21

## HOW IS LIABILITY APPORTIONED?

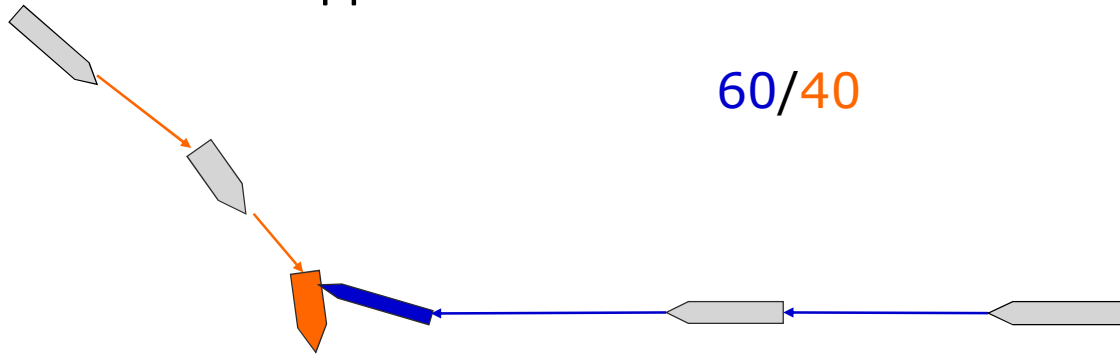
Illustration - Apportionment of blame



22

## HOW IS LIABILITY APPORTIONED?

Illustration - Apportionment of blame



23

## INSURANCE AND CLAIMS

CLAIM

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## INSURANCE AND CLAIMS

### Who pays?

- Hull and Machinery underwriters
- P&I Club
- Loss of Hire underwriters
  - Typically from day 14 onwards
- ‘Below-deductible’ detention insurance
  - Typically days 3 to 13
- FD&D insurers
- Owners’ uninsured

25

## INSURANCE AND CLAIMS

### Hull

- Own ship damage
- Other ship damage (3/4)
- Other cargo damage (3/4)
- Other ship detention (3/4)
- Own ship GA + salvage
- Other ship GA + salvage (3/4)

### P&I

- Other ship damage (1/4)
- Own ship cargo damage
- Other ship cargo damage (1/4)
- Other ship detention (1/4)
- Other ship GA + salvage (1/4)

26



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## INSURANCE AND CLAIMS

How are the cross claims settled in practice?

- Cross-liability
  - Each ship has a separate claim against the other
  - Each ship pays the appropriate % of the other ship's claim

27

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## INSURANCE AND CLAIMS

- All P&I clubs indemnify on the basis of cross-liability unless either ship can limit their liability, in which case single-liability will apply
- Limitation applies to the net balance payable
- In most jurisdictions, limitation is in accordance with the 1976 Convention (as amended by the 1996 protocol in force 8<sup>th</sup> June 2015)

28

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## INSURANCE & CLAIMS

### Security

- Each ship will secure the claims of the other
- Security should always be co-ordinated with agreement on jurisdiction
- Security is often by exchange of P&I Club LOUs:
  - always discretionary
  - counter security may be required for any non-P&I liabilities

29

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## SUMMARY

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## SUMMARY

### **Collision**

- Definitions
- Causation
- COLREGS

### **Insurance and claims**

- Who pays
- What they pay
- Cross & single liability
- Security

### **Casualty management**

- On-board and ashore

### **Liability**

- Legal basis
- Apportion of fault

31

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# THANK YOU

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1

## COLLISION WORKSHOP

Pacific Legend

Platform Supply Vessel (PSV)



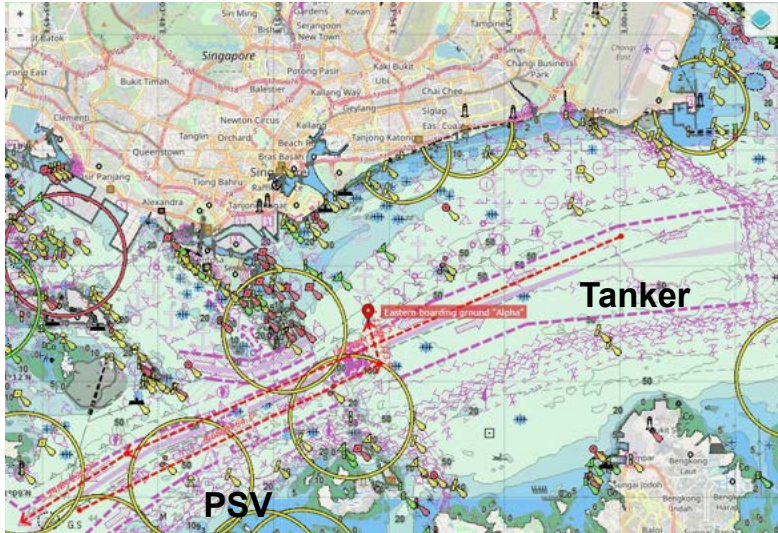
Merlion

Tanker



2

## COLLISION WORKSHOP



3

## COLLISION WORKSHOP

The collision will be demonstrated on the full mission bridge simulator at Swire Maritime Training Centre

Groups A and B will be on the Tanker "Merlion"

Groups C & D will be on the PSV "Pacific Legend"

4

## COLLISION WORKSHOP

The collision will be demonstrated on the full mission bridge simulator at Swire Maritime Training Centre

### Questions

1. List the potential **shipowners losses, damages, liabilities and expenses** that might arise as a result of a collision and under which insurance policy they might be covered.
2. Discuss the **types of evidence** that you would want to collect after a collision – especially 'new' sources of evidence that have become available recently.
3. Discuss the **factors** leading up to this incident that might have contributed to the collision.

5

## COLLISION WORKSHOP

### Final task – apportionment of blame – a settlement by friendly negotiation:

The workshop will conclude as follows:

Group A (*Merlion*) and Group C (*Pacific Legend*) will attend a settlement meeting to agree on the **apportionment of blame**.

Group B (*Merlion*) and Group D (*Pacific Legend*) will attend a settlement meeting to agree on the **apportionment of blame**.

Each group must nominate a chief negotiator who will act as the main speaker for the group during the meeting. Each meeting will be chaired by an admiralty claims expert from the North of England P&I club.

You will have about 30 minutes to prepare your cases for the settlement meeting.

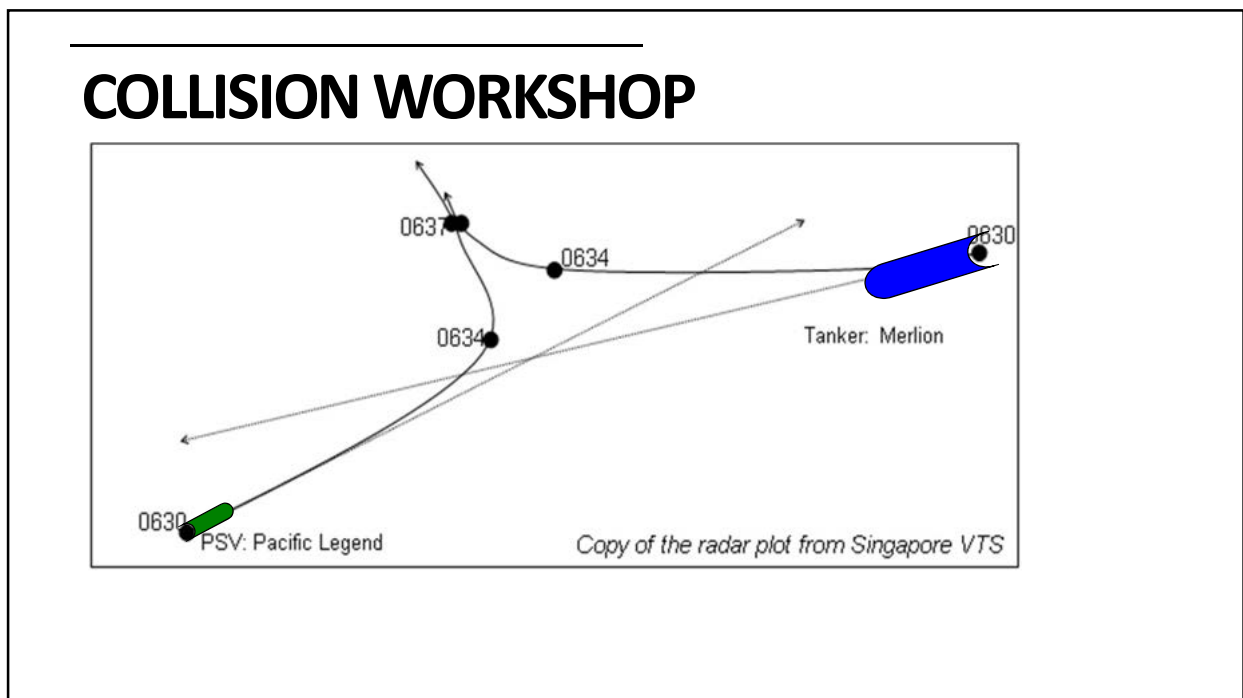
The settlement meetings should take about 20 minutes.

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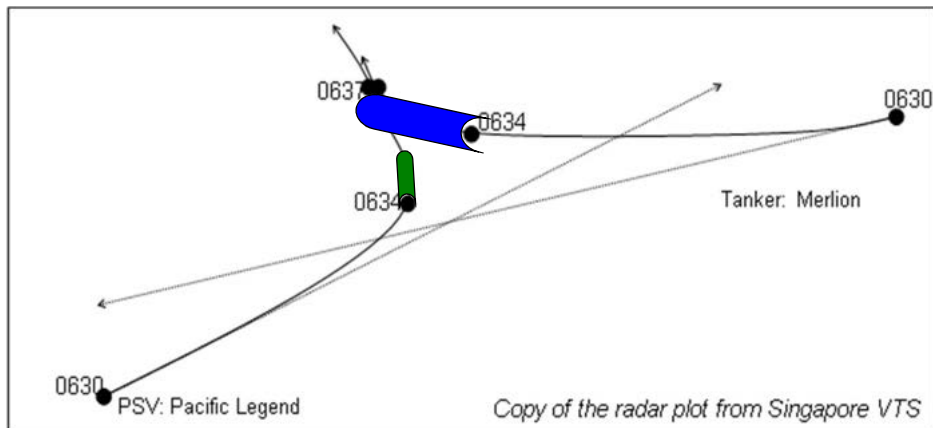


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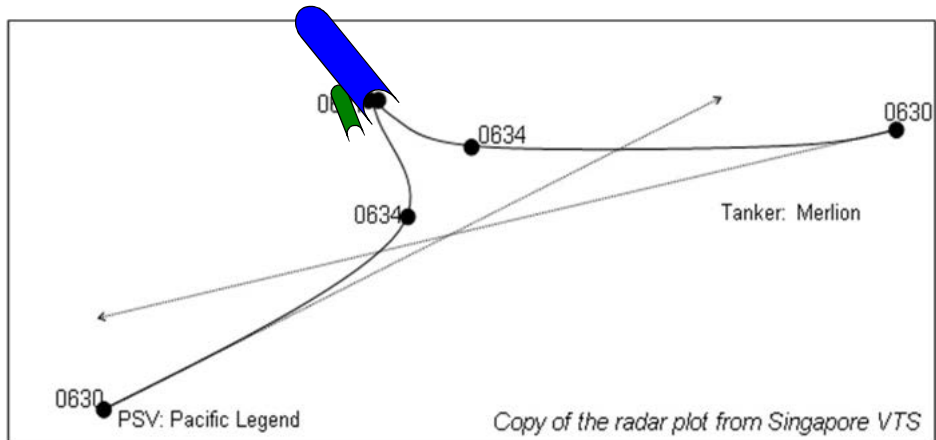
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## COLLISION WORKSHOP



9

## COLLISION WORKSHOP



10

# APPORTIONMENT

Pacific Legend				Merlion			
Total claim US \$600,000				Total claim US \$200,000			
Apportionment of blame		Pay to other ship	Set - off	Pay to other ship			
10%	90%	\$20,000	←	\$520,000	←	\$540,000	
20%	80%	\$40,000	←	\$440,000	←	\$480,000	
30%	70%	\$60,000	←	\$360,000	←	\$420,000	
40%	60%	\$80,000	←	\$280,000	←	\$360,000	
50%	50%	\$100,000	←	\$200,000	←	\$300,000	
60%	40%	\$120,000	←	\$120,000	←	\$240,000	
70%	30%	\$140,000	←	\$40,000	←	\$180,000	
75%	25%	\$150,000		\$0		\$150,000	
80%	20%	\$160,000	→	\$40,000	→	\$120,000	
90%	10%	\$180,000	→	\$120,000	→	\$60,000	
Pacific Legend	Merlion						

Pacific Legend	Merlion
Total payment	Total payment
\$80,000	\$720,000
\$160,000	\$640,000
\$240,000	\$560,000
\$320,000	\$480,000
\$400,000	\$400,000
\$480,000	\$320,000
\$560,000	\$240,000
\$600,000	\$200,000
\$640,000	\$160,000
\$720,000	\$80,000

11

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### Cross Liability Adjustment

Assume that both vessels in an example collision are insured for 3/4th collision liability with their hull underwriters and for 1/4th with their P&I Clubs. In the example vessel A is 75% to blame for the collision and vessel B is 25% to blame. Vessel A suffers damage costing \$100,000 and vessel B damage costing \$200,000. The payments by each underwriter are illustrated below.

In most maritime jurisdictions, the question of responsibility for collisions is determined with reference to the International Regulations for the Prevention of Collisions at Sea, which codify how vessels should conduct themselves in order to avoid collisions. The apportionment of liability between the vessels is normally based on the causative importance of any breaches of these regulations (COLREGS).

	Vessel A	Vessel B
Percent to blame	75%	25%
Own damage	\$100,000	\$200,000
Liability to other vessel	\$150,000(75%x\$200,000)	\$25,000(25%x\$100,000)
U/Ws pay	\$112,500(3/4x\$150,000)	\$18,750(3/4x \$25,000)
P&I pays	\$37,500(1/4x \$150,000)	6,250(1/4x \$25,000)

Thus each collision liability underwriter reimburses its share of each vessels gross liability to the other vessel.

### Single Liability Adjustment

If the damage exceeds the tonnage limitation amount then one or both of the ships will seek to limit liability.

When limitation of liability is granted it is applied to the tonnage of the vessel having the net balance to pay. In the example, Vessel A has the single liability (net settlement) and is entitled to limit liability in respect of Vessel Bs claim to \$100,000. Payment by the underwriters and the P&I clubs of each vessel will be adjusted on a single liability basis. This means that the net liability of one ship to the other is first calculated, in this example that of Vessel A to Vessel B, and then the limitation tonnage is applied to that net figure – arriving at a limitation single payment of US \$100,000. The other vessel having been unable to recover its full claim because of the effect of limitation is treated as having no liability to pay its share of collision damage.

	Vessel A	Vessel B
Percent to blame	75%	25%
Own damage	\$100,000	\$200,000
Liability to other vessel	\$150,000 (75%x\$200,000)	\$25,000 (25%x\$100,000)
H&M pay	\$112,500 (3/4x\$150,000)	\$18,750 (3/4x \$25,000)
P&I pays	\$37,500 (1/4x \$150,000)	\$6,250 (1/4x \$25,000)
Net settlement	\$125,000 paid to B	
Limitation amount	\$100,000 paid to B	
H&M pay	\$75,000(3/4x\$100,000)	
P&I pays	\$25,000(1/4x \$100,000)	

Vessel As hull underwriters will pay \$75,000 [ 3/4ths of the limitation amount] and the P&I club will pay \$25,000 [ 1/4ths of the limitation amount] Since Vessel B is treated as having no liability, Bs collision liability insurers [Hull and P&I] will pay nothing.



1

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**POLLUTION**

definition

*to make offensive or  
harmful to human,  
animal or plant life*

2

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## POLLUTION

we will discuss:

- Types of pollution
- Liability and Limitation
- Clean-up and Compensation
- ITOPF

3

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## TYPES OF POLLUTION

- Persistent oil cargo and bunkers
- Non-persistent oil cargo
- Hazardous and noxious substances
- All other cargo
- Sewage
- Garbage
- Ballast Water
- Exhaust gases
- ?

4



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## TYPES OF POLLUTION

- Persistent oil cargo and bunkers
- Non-persistent oil cargo
- Hazardous and noxious substances
- All other cargo
- Sewage
- Garbage
- Ballast Water
- Exhaust gases
- **Noise**

5

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## POLLUTION

Liability and Limitation

Every major development  
has followed a major  
casualty.

Let us take a look ...

6



Torrey Canyon – 1967  
120,000mt crude oil  
12,500mt heavy fuel oil

7

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## **1967 TORREY CANYON**

the problems

- The supertanker
- Title to sue
- Jurisdiction
- Liability
- Compensation
- Limitation of liability

8

## 1967 TORREY CANYON

the answers

**Prevention:** International Convention for the Prevention of Pollution from Ships 1973/1978 (“Marpol”)

**Response:** International Convention on Oil Pollution Preparedness and Response 1991 (“OPRC”)

**Liability and Limitation:** The Civil Liability and Fund Conventions of 1969 and 1992 (“CLC 92”)

9

## PREVENTION: MARPOL

*“A comprehensive regime resulting in the complete elimination of intentional pollution of the marine environment and the minimisation of accidental discharges”*



10

## PREVENTION: MARPOL

### Shipboard Oil Pollution Emergency Plan ("SOPEP")

- for oil tankers over 150gt
- for all ships over 400gt

### Shipboard Marine Pollution Emergency Plan ("SMPEP")

- for chemical tankers over 150gt



11

## RESPONSE: OPRC

*"To encourage States to develop and maintain an adequate capability to deal with oil pollution emergencies and to facilitate international cooperation and mutual assistance in preparing for and responding to major oil pollution incidents"*



12



Amoco Cadiz – 1978  
220,000mt crude oil

13

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## **1978 AMOCO CADIZ**

the problem

CLC 1969 compensation  
was wholly inadequate

14

## 1978 AMOCO CADIZ

the answers

### ***“THE POLLUTER PAYS”***

- CLC 92: paid by the P&I Clubs
- IOPC Fund: paid by oil importers
- Universal application – except Iran and The United States of America

15

## CLC 1992

### Method

- Ships over 2,000 GRT must carry a CLC Certificate
- P&I Club issues a 'Blue Card' to confirm entry
- Flag State then issues the CLC Certificate

### Strict (but limited) liability

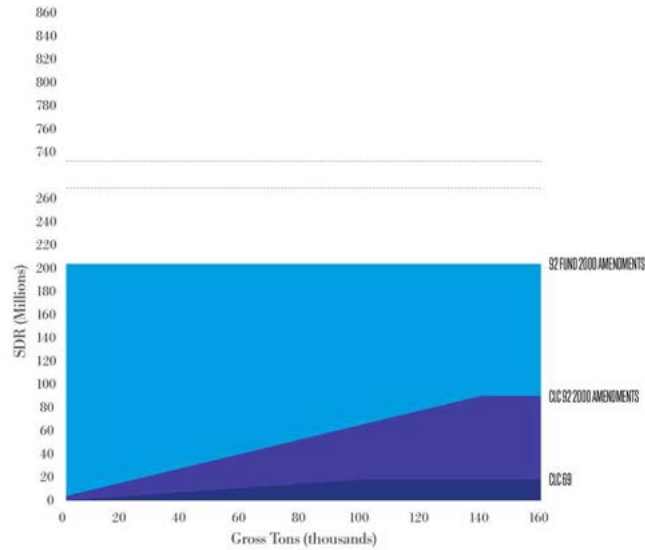
### Defences:

- Act of God
- Act of War
- Terrorism

16



## CLC 1992 & IOPC FUND 1992



17



Exxon Valdez – 1989  
37,854mt crude oil

18

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## 1989 EXXON VALDEZ

two significant  
outcomes:

- IMO: 'double hull tanker' rule 1992
- USA: Oil Pollution Act 1990

19

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## OIL POLLUTION ACT 1990

- The '**Responsible Party**' is liable for any ship-source oil pollution in US waters
- Strict but limited liability

20

## **OIL POLLUTION ACT 1990**

- Applies to all ships in the USA's EEZ (200nm)
  - Licensing, manning + equipment requirements
  - Strict liability on owner, operator or bareboat charterer
- Pollution Response
  - National Response Team ("NRT")
  - Environmental Protection Agency ("EPA")
- Liabilities include:
  - Removal costs under the National Contingency Plan, and
  - Compensation, including damage to natural resources

21

## **OPA 90 - PREPAREDNESS**

OPA 90 requires pre-approved:

- Vessel Response Plans ("VRPS")
- Contracts with approved Clean-up Contractors ("OSRO")
- Qualified Individual ("QI")

22

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## USA – INDIVIDUAL STATES

- Individual states may impose additional liabilities and response requirements
- California, Washington and Alaska have done so

23

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## OPA 90: NON-TANKER LIMITATION

### **'vessels other than tankers'**

\$1,100 per gross ton or \$939,800,  
whichever is greater

### **example**

50,000 GT cargo vessel

$50,000 \times \$1,100 = \$55,000,000$

24

## OPA 90: NON-TANKER LIMITATION - WEF 12 NOV 2019

### 'vessels other than tankers'

**\$1,200** per gross ton or **\$997,100**,  
whichever is greater

### example

50,000 GT cargo vessel

$$50,000 \times \$1,200 = \$60,000,000$$

25

## OPA 90: TANKER LIMITATION

### double hull tanker

3,000 GT or smaller:  
\$2,200 per gross ton or  
\$4,699,200, whichever is  
greater

Larger than 3,000 GT:  
\$2,200 per gross ton or  
\$18,796,800 whichever is  
greater

### example

50,000 GT tanker

$$50,000 \times \$2,200 = \$110,000,000$$

26

## OPA 90: TANKER LIMITATION – **WEF 12 NOVEMBER 2019**

### **double hull tanker**

3,000 GT or smaller:

**\$2,300** per gross ton or  
**\$4,985,900**, whichever is  
greater

Larger than 3,000 GT:

**\$2,300** per gross ton or  
**\$19,943,400** whichever is  
greater

### **example**

50,000 GT tanker

$50,000 \times \$2,300 = \$115,000,000$

27



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**1993:**  
**BRAER AND ERIKA**

the problem

Raised serious doubts on  
the levels of available  
compensation

30

## 1993: BRAER AND ERIKA

the answer (1)

- New, minimum CLC limit of SDR 4.51 million
- CLC maximum increased to SDR 89.77 million
- The Fund increased to SDR 203 million
- New “Supplementary Fund” up to SDR 750 million.
- Cover includes the voyage immediately following any loaded passage

31

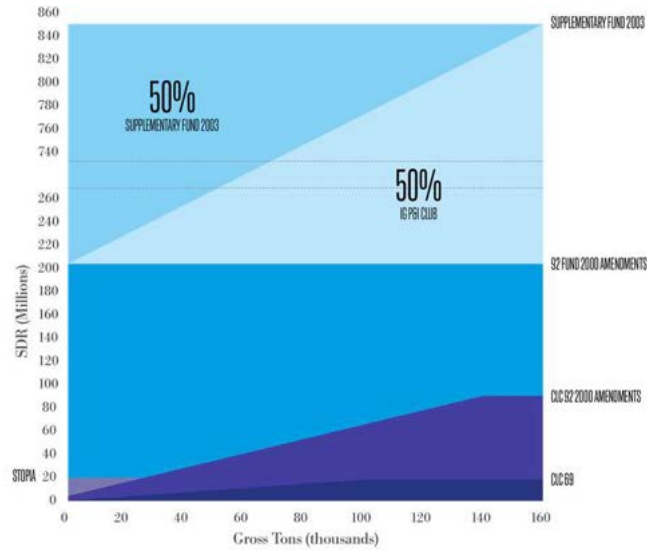
## 1993: BRAER AND ERIKA

the answer (2)

- **STOPIA 2006** (Small Tanker Oil Pollution Indemnification Agreement)
  - Minimum CLC limit increased to SDR 20 million
- **TOPIA 2006** (Tanker Oil Pollution Indemnification Agreement)
  - P&I Clubs contribute 50% to claims on the Supplementary Fund

32

## THE SUPPLEMENTARY FUND, STOPIA AND TOPIA



33



34

## THE BUNKER CONVENTION 2001

- Applies unless CLC applies
- Liability and defences the same as CLC 92
- Limitation under applicable national or international law eg. LLMC 1976 Convention



35

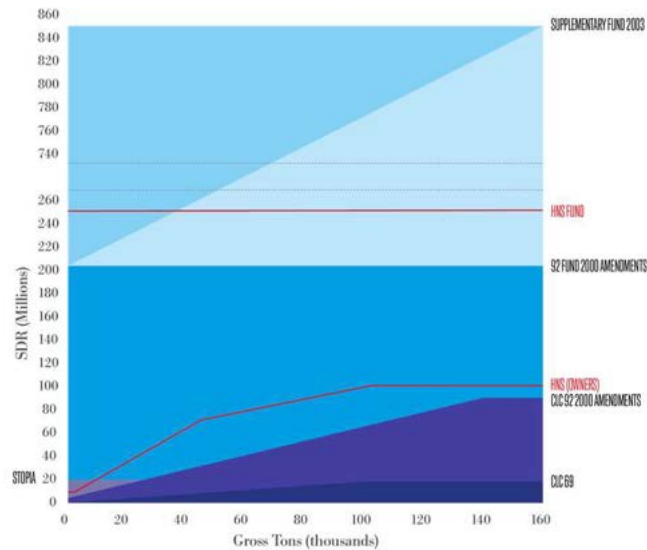
## HAZARDOUS AND NOXIOUS SUBSTANCES CONVENTION 1996

- Based on CLC and Fund Conventions
- Shipowner liable for first tier
- HNS Fund pays second tier to maximum of 250 million SDR
- Not yet in force



36

# HNS 1996



37

**2002: PRESTIGE**

**2003: TASMAN SPIRIT**

**2007: HEIBI SPIRIT**

the low point

Three major casualties:

- Poor casualty management
- National and international law ignored
- Criminalisation

38



39



40





41

# POLLUTION

claims and  
compensation



42



## CLEAN UP



43



44



45



46



## CLEAN UP

### SCOPIC

In order to encourage salvors to minimise pollution, P&I will indemnify:

- Special Compensation under Article 14 of the Salvage Convention
- SCOPIC awarded under LOF 2000 onwards

47

## COMPENSATION



48

## COMPENSATION

CLC and the IOPC  
Fund have common  
definitions of  
admissible claims

- Direct, physical damage to property
- Economic losses which are the direct result of pollution damage: e.g. closed fishing grounds
- Environmental reinstatement and restoration

49

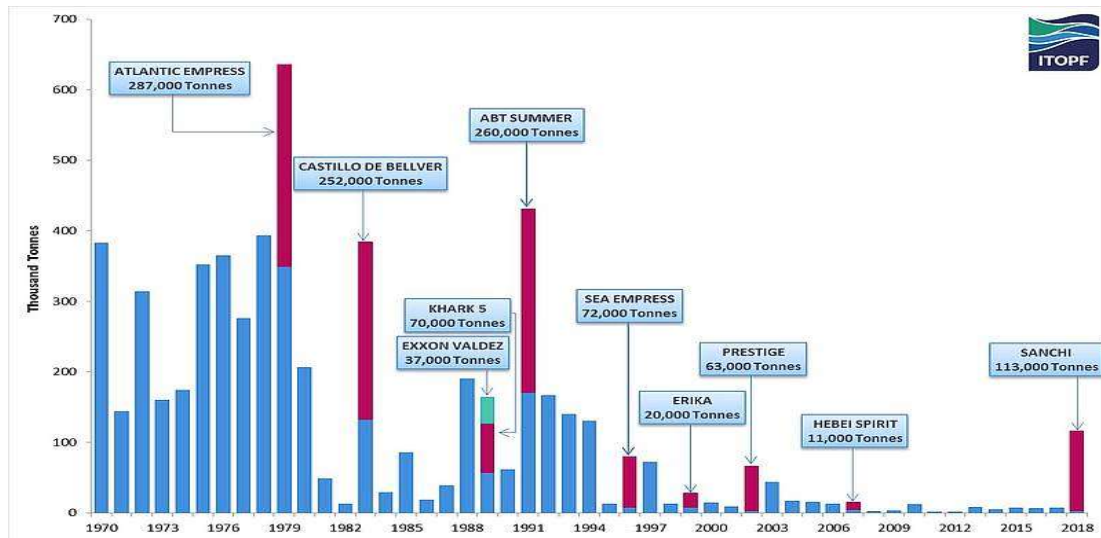
## POLLUTION

Indemnities and  
recoveries

- Charterers
  - Unsafe Port claim
  - Focus on the Master
- “Other Ship”
  - Collision claim
- Third parties
  - Port Authority
  - Pilot

50

## THE GOOD NEWS (1)



51

## THE GOOD NEWS (2)

OVER **100** YEARS P&I  
EXPERIENCE -  
EXPERT CLAIMS  
HANDLERS

COLLEAGUES FROM P&I, LOSS PREVENTION AND UNDERWRITING



5 MASTER  
MARINERS



13  
LAWYERS

RESOURCES & GUIDANCE



IN 2017:

97 POLLUTION CLAIMS

138 POLLUTION ENQUIRIES

POLLUTION ENQUIRY GROUP



EXPERTS ACROSS FOUR OFFICES  
GIVING ADVICE UPON: REGULATIONS, CONTRACT  
REVIEWS AND CHARTERPARTY CLAUSES

POLLUTION EXPERTISE GROUP



EXPERTS ACROSS FIVE OFFICES

52

## INTERNATIONAL TANKER OWNERS' POLLUTION FEDERATION (ITOPF)



53

## ITOPF

- Primary role: on-site spill response advice
- Available 24 / 7 / 365
- Independent technical advisors
- Not-for-profit
- 90% funded by the IG Clubs
- Established in 1968 – 50+ years
- Based in London – operate globally



54

## ITOPF - MEMBERSHIP

- ITOPF Members
  - 7,900 tanker owners and bareboat charterers
  - 13,500 tankers, barges, FSUs and FPSOs (426m GT)
- ITOPF Associates
  - Owners of other types of ships (since 1999)
  - All IG Club non-tanker members (792m GT)



55

## ITOPF - RESOURCES

- Office in London with 34 staff
- Technical team with 12 responders:
  - Scientific or technical background
  - Attendance at 15 – 25 incidents per year
  - More than 800 spills in 100 countries
- In-house databases and technical library



56



## ITOPF – CONTINGENCY PLANNING

- *“From our experience the key to efficient clean up is a combination of good contingency planning, organisation and control”*
- Training and education
- Contingency plan preparation
- Drills
- Research & development



57

## ITOPF – INFORMATION, PUBLICATIONS, FILMS (1)

- Technical Information Papers

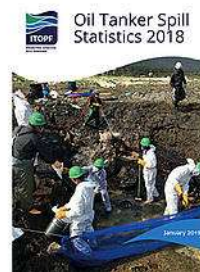


<http://www.itopf.org/knowledge-resources/documents-guides/technical-information-papers/>

58

## ITOPF – INFORMATION, PUBLICATIONS, FILMS (2)

- Documents & Guides



<http://www.itopf.org/knowledge-resources/documents-guides/>

<https://www.itopf.org/knowledge-resources/company-literature/>

59

## ITOPF – INFORMATION, PUBLICATIONS, FILMS (3)

- Films

- *Introduction to Oil Spills* (22 min)
- *Aerial Surveillance* (18 min)
- *At-Sea Response* (24 min)
- *Shoreline Clean-Up* (19 min)
- *Waste Management* (18 min)
- *Environmental Impacts* (18 min)
- *Oil Spill Compensation* (26 min)



DVD or online: <https://www.itopf.org/knowledge-resources/library/video-library/>

60

## ITOPF – SPILL RESPONSE ROLE

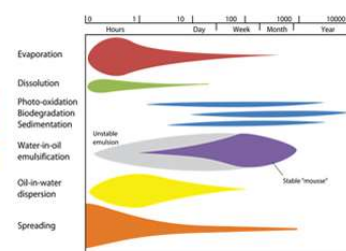
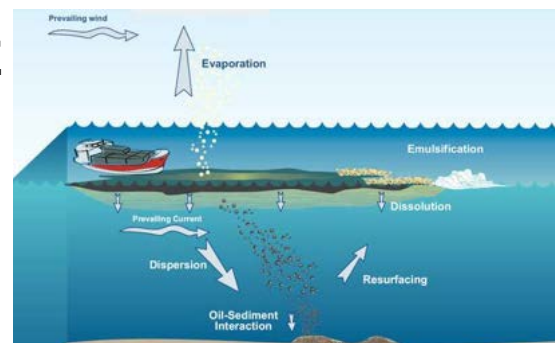
- Provide technical advice to government, responders & victims
- Promote effective response techniques, joint assessments & cooperation
- Monitor spill response & investigate damage to resources
- Help to design and implement post-spill studies / restoration
- Provide technical assessments of claims for compensation



61

## ITOPF – INITIAL RESPONSE

- Once details received ITOPF will utilise a variety of tools and resources to:
  - Predict oil behaviour, drift and fate.
  - Assess in-country response arrangements and preparedness.



62

## ITOPF – ROLE ON-SITE

### SHIPPING INTERESTS

- Correspondents
- Local P&I office
- Lawyers
- Salvors & SCR
- Local surveyors
- Clean up contractors

### OTHER GROUPS

- Media interests
- Environmental groups
- Volunteer groups



### TECHNICAL SPECIALISTS

- **ITOPF**
- Government advisors
- International experts

### GOVERNMENT INTERESTS

- Lead authority (CG / Navy)
- Environmental authorities
- Fisheries authority
- Local government
- Clean up contractor

63

## ITOPF – ROLE ON-SITE (1)

- Advising on:
  - Aerial surveillance
  - Shoreline surveys
  - Clean up techniques
  - Waste management



64



## ITOPF – ROLE ON-SITE (2)

- Advising on:
  - Identifying gaps in resources / expertise
  - Response claims
  - Post-spill monitoring



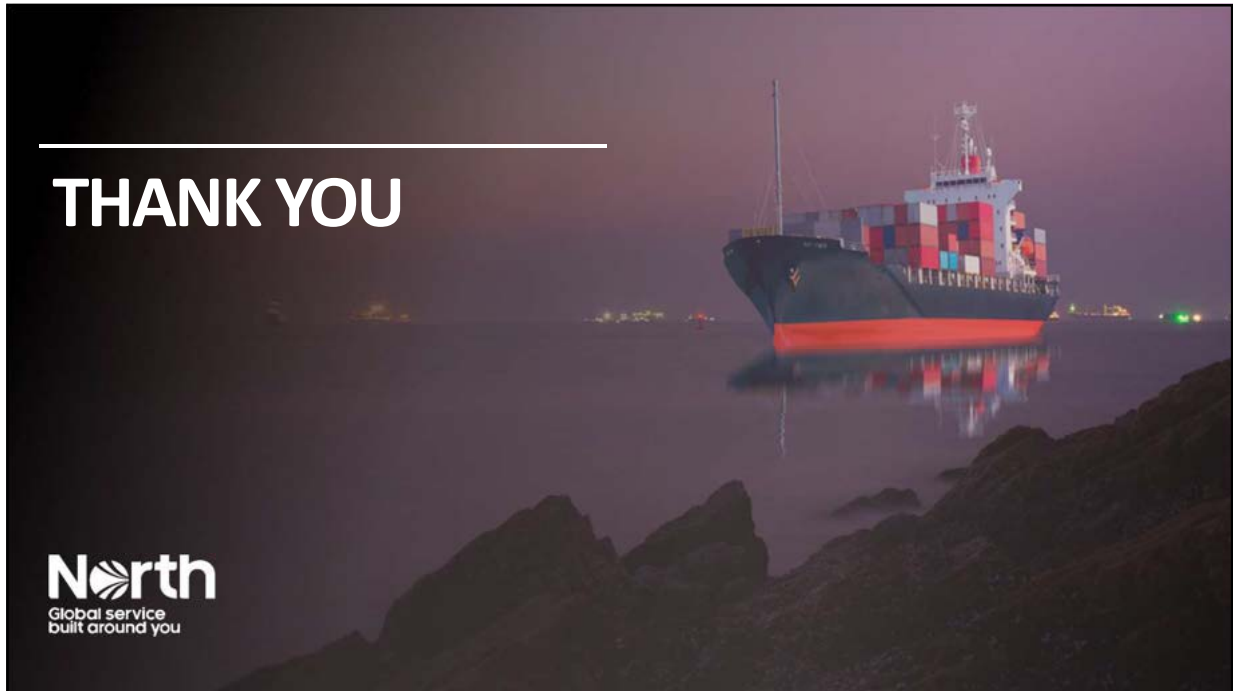
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## ITOPF – OTHER AREAS...

- Container ships and container losses
  - On average nearly 2,000 containers lost every year
- Marine debris – macro, micro and nano plastic
  - Significant environmental impacts



66



67



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# NORTH RESIDENTIAL TRAINING COURSE 2019

Workshop 3 Pollution Response Briefing



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## SCENARIO



***Erehwon is a pristine island republic in the Mediterranean Sea. It is a World Heritage Site.***

***Erehwon is totally dependent upon Heavy Fuel Oil to generate its electricity***

## SCENARIO



***MT “Merlion” is a loaded oil tanker approaching Erehwon to discharge 39,000 mt HFO***

***“Merlion” grounds on a wreck in the harbour approaches, producing the real risk of a major oil spill***

## YOUR TASKS

***You are the Erehwon Pollution Intervention Committee (“EPIC”)***

***On Day 1 you must plan Erehwon’s pollution-response, deploy your limited resources and brief the Prime Minister.***

***On Day 2 there is a press conference at which Erehwon must defend their custody of this World Heritage Site and win the sympathy of the world’s media***

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# **NORTH RESIDENTIAL TRAINING COURSE 2019**

Workshop 2 Pollution Response - Some hints




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## **INFORMATION**

- 1. Cargo specification
- 2. Meteorological,  
Hydrographical and  
Bethnic data
- 3. Projected pollution  
mapping
- 4. Salvage plan


---

## **RISKS**

- 
1. Environmental damage
  2. Power shortages
  3. Reputational damage
  4. Lost revenue, especially fishing and tourism
  5. Clean up costs

---

## **CLAIMS**

- 
1. Clean –up
  2. Tourism
  3. Fishing

## COMPENSATION

### CLC 1992:

5,000 tons	SDR4,510,000
83,885 tons	<u>SDR52,931,435</u>
Total	SDR57,441,435
X 1.5	<b>US\$86,162,152</b>

### 1992 IOPC Fund

Limit:	SDR 203,000,000
X 1.5	<b>US\$ 304,500,000</b>

## PRESS CONFERENCE

1. Tell the truth
2. Take responsibility
3. Be confident
4. Facts only – no speculation
5. Do not explain or apologise

---

# THANK YOU

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built around you





1

## **WE WILL COVER**

- Damage to Property (FFO Damage)
- Non-contact damage to ships
- Wreck removal
- Towage liabilities
- Indemnities and recoveries

2

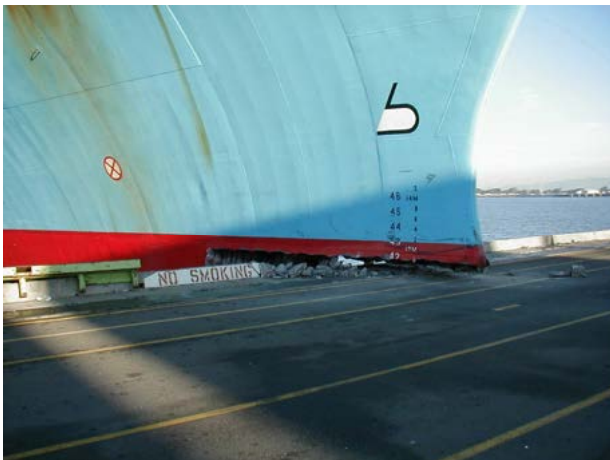
## DAMAGE TO PROPERTY

Rule 19(12)

*Liabilities costs and expenses  
incurred as a result of damage to or  
infringements of rights in  
connection with property ...*

3

## DAMAGE TO PROPERTY



4

## **DAMAGE TO PROPERTY**



5

## **DAMAGE TO PROPERTY**



6

## DAMAGE TO PROPERTY

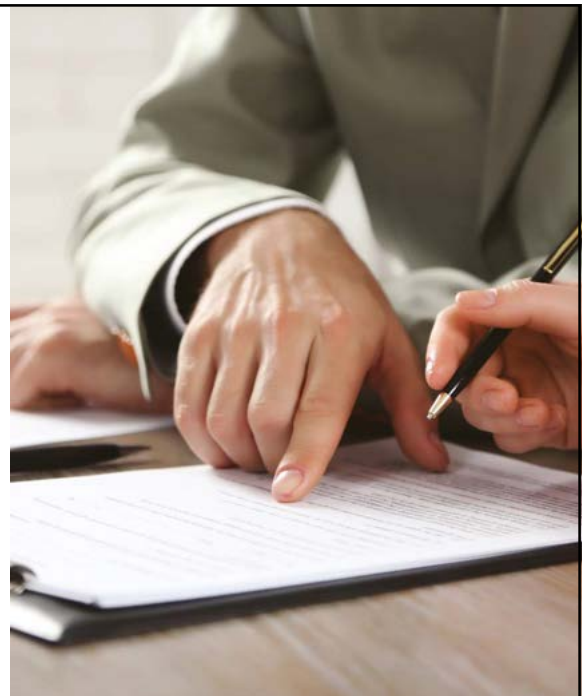


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## DAMAGE TO PROPERTY

Top Tip:

➤ Check H&M cover,  
different hull policies cover  
different FFO risks



8

## DAMAGE TO PROPERTY



9

## DAMAGE TO PROPERTY - CLAIM HANDLING

- Jurisdiction
- Liability
- Security
- Repairs
- Damages

10



## DAMAGE TO PROPERTY



11



12



## **DAMAGE TO PROPERTY**



13

## **DAMAGE TO PROPERTY**

Top tips:

- H&M cover
- Surveys
- Experts



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## NON CONTACT DAMAGE TO SHIPS

Rule 19(11)

Damage to another ship,  
cargo and property caused  
***'other than by collision'***

- Cover is comparable to collision liability
- P&I *'wraps around'* other insurances

15

## NON-CONTACT DAMAGE



16

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## WRECK REMOVAL

Rule 19(14)

- Raising
- Removal
- Destruction
- Lighting and Marking

17

---

## PROVIDED

- Removal is compulsory by law
- The contract is approved by North
- The value of the wreck is credited to North and
- There has been no transfer of interest in the wreck

18

## WRECK REMOVAL



19

## WRECK REMOVAL



20

## WRECK REMOVAL



21

## WRECK REMOVAL

### Top Tips

- Keep close to:
  - ✓ H&M and Salvors
  - ✓ Coastal state
- Check limitation
- Local contractors
- Bunker removal



22



---

## TOWAGE LIABILITIES

Third-Party liabilities that arise during:

Rule 19(15)

- Routine harbour towage
- Habitual towage, and
- Non-customary towage not covered by H&M

23

---

## TOWAGE LIABILITIES



24



## TOWAGE LIABILITIES

### Top Tips

- Traditional towage contracts allocate most risks to the towed ship
- Towcon and Towhire are more equitable
- Use:
  - Tug brokers
  - Specialist surveyors



25

## ADMIRALTY CLAIMS

Indemnities and recoveries

- Charterers
  - Unsafe Port claim
  - Focus on the Master
- “Other Ship”
  - Collision claim
  - Towage contracts
- Third parties

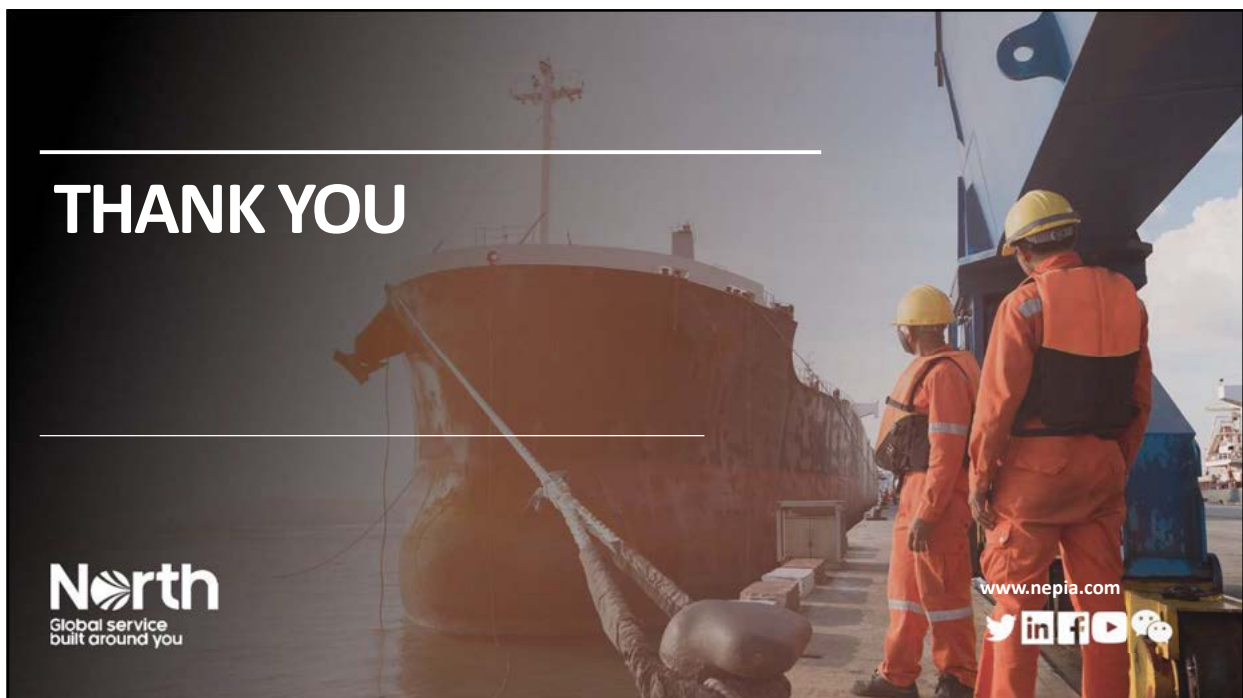
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## WE HAVE COVERED

- ❖ Damage to Property (FFO)
- ❖ Non-contact damage to ships
- ❖ Wreck removal
- ❖ Towage liabilities
- ❖ Indemnities and recoveries

27



# THANK YOU

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28



1



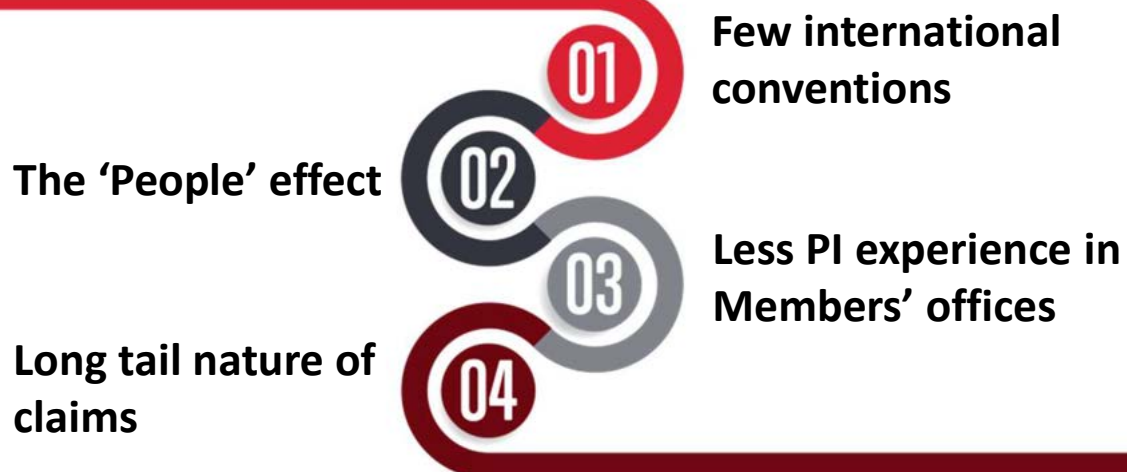
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**149 YEARS**  
**COMBINED**  
**EXPERIENCE**  
**FIRST CALL / PEME / PRM**  
PIRACY ENQUIRIES / MLC ENQUIRIES



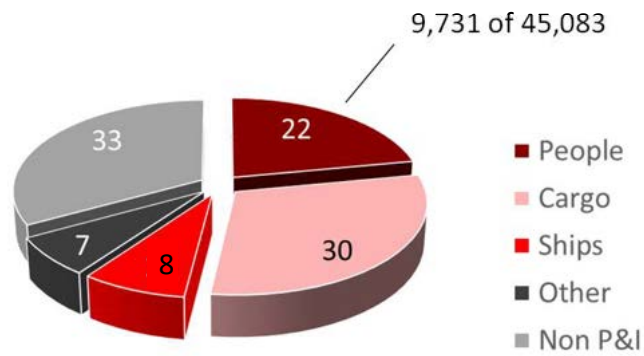
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## PERSONAL INJURY CLAIMS



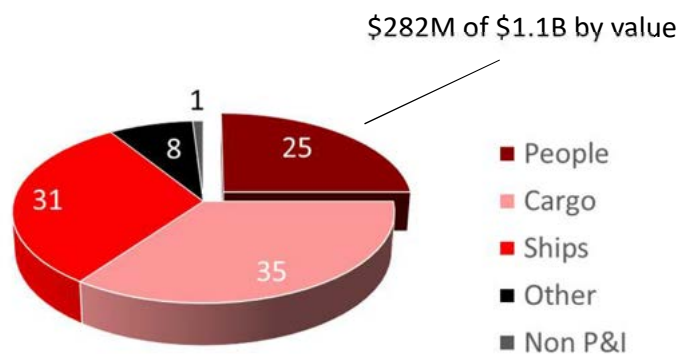
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## PEOPLE CLAIMS BY NUMBER (%)



5

## PEOPLE CLAIMS BY VALUE (%)



6

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## POTENTIAL CLAIMANTS

There are four main categories of potential claimant;

- Crew – Rule 19(1)
- Supernumeraries – Rule 19(2)
- Passengers – Rule 19(3)
- Third Parties – Rule 19(4)

However, cover is essentially the same for each.

7

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## P & I COVER

We cover Members liabilities for illness, injury, death and other associated claims.

The main difference between the claimants is not what is covered but the extent to which the Member is actually liable.

If there is liability, there is most likely P&I cover.

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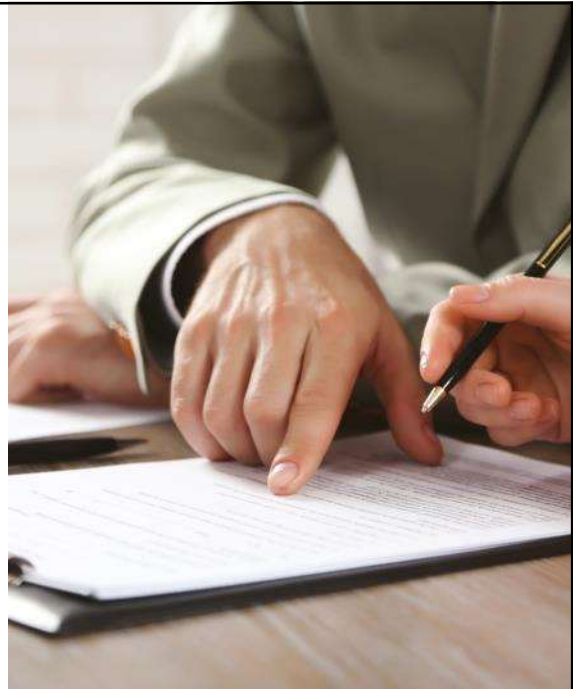


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## LIABILITY

There are three main ways in which liability can arise;

- **Statutory law**
- **Common law**
- **Contractual law**



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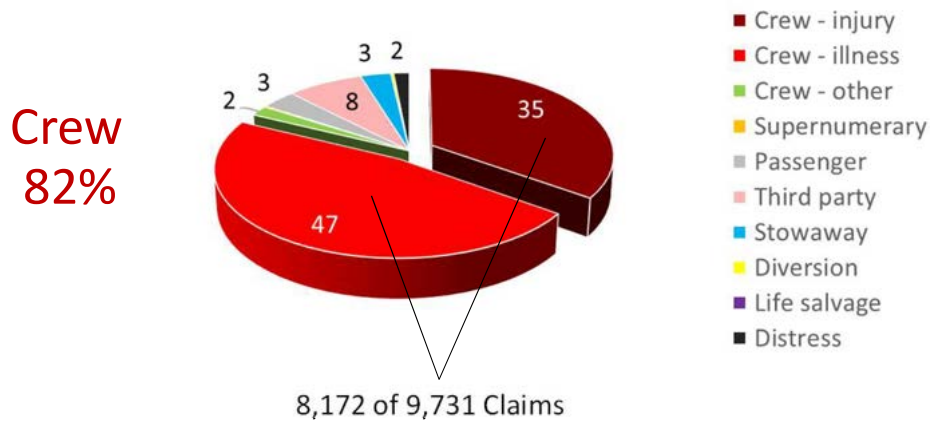
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## CREW



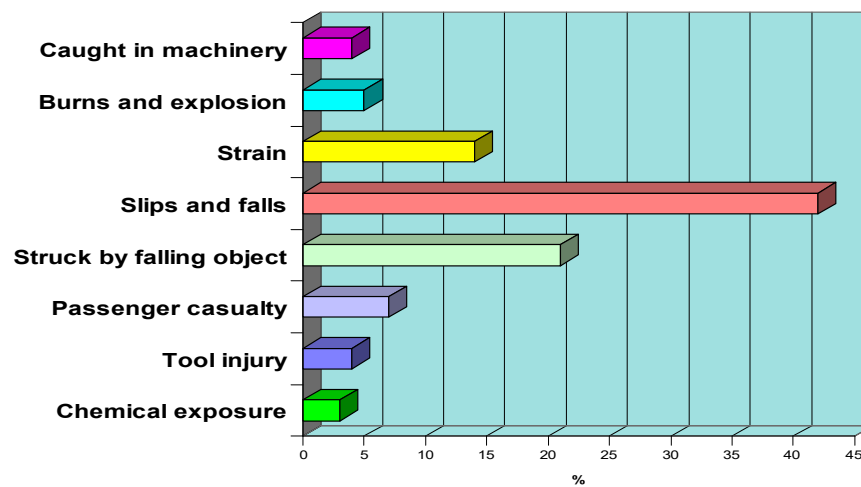
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## PEOPLE CLAIMS BY NUMBER (%)



11

## SEAMEN



12



## CREW CLAIMS

- Claims arise mainly under the terms of the crew contract.
- However, these terms might be overruled, supplemented or even provided in full, by statutory law.
- Additional liabilities.

13

## MARITIME LABOUR CONVENTION (MLC) 2006

Implementation  
through national law.

01

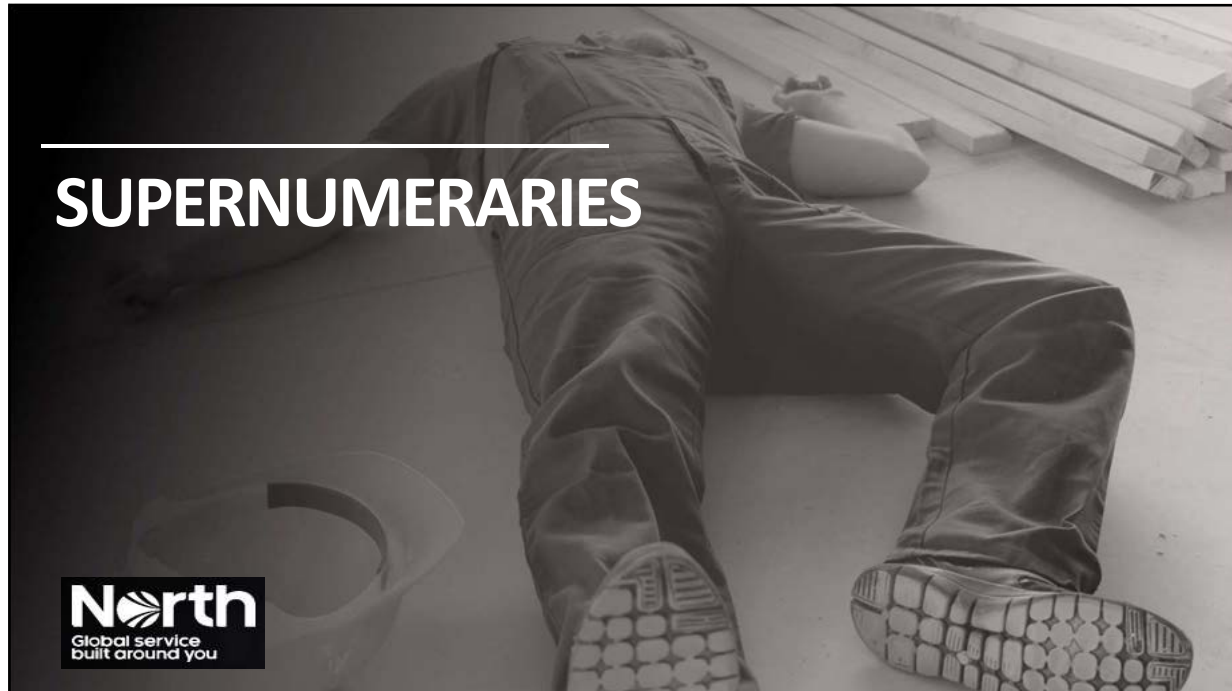
Came into effect August 2013, amended Jan. 2017.

02

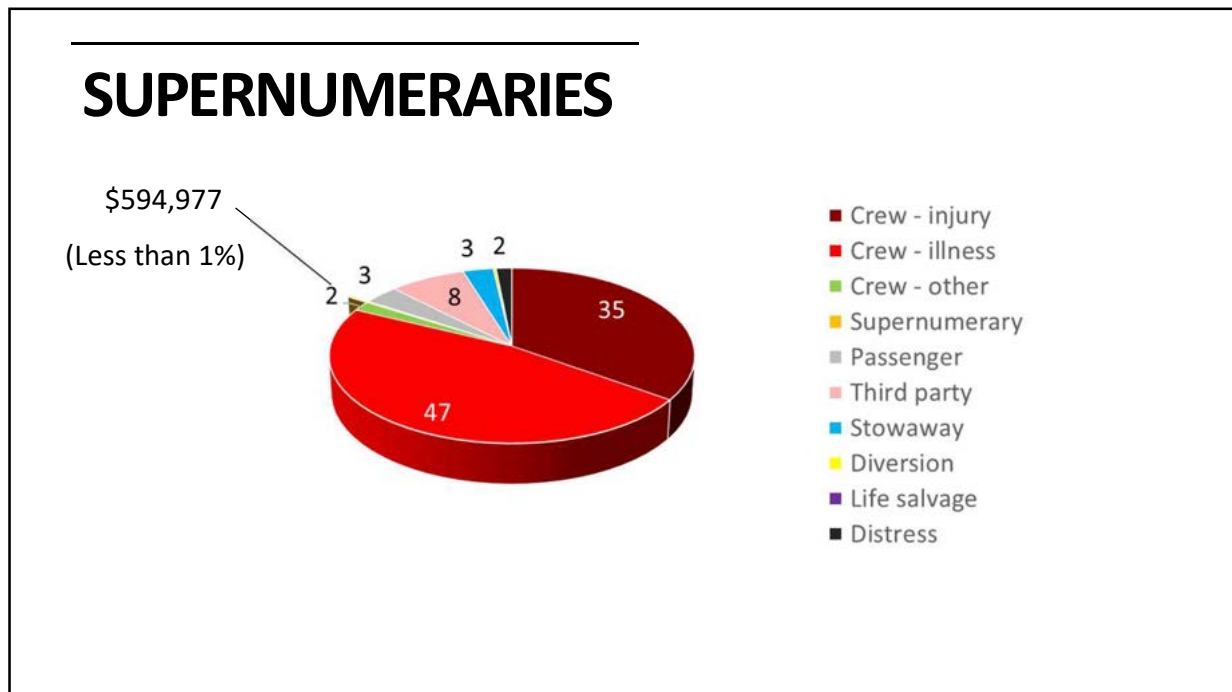
03

Requirement of financial security.

14



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16

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## SUPERNUMERARIES

- One who sails with the vessel but is not a crewmember, nor has a passenger ticket.
- Two main categories; professional and familial.
- Liabilities likely to be statutory and/or common law only.



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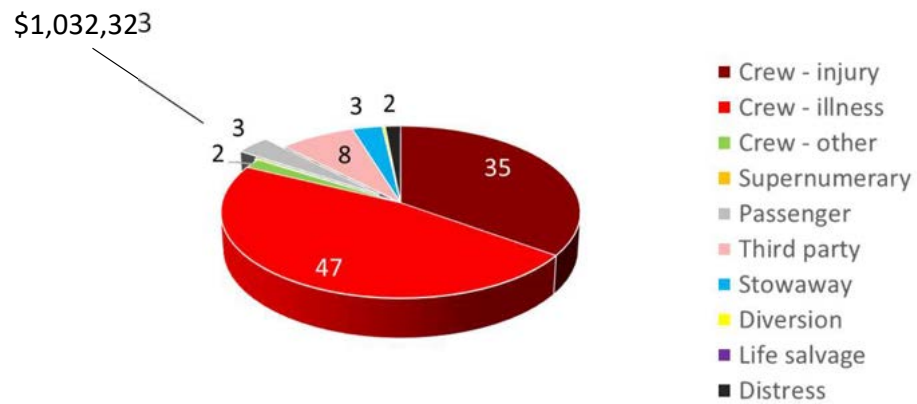
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## PASSENGERS

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## PASSENGERS



19



## PASSENGERS

- Unlikely to be any contractual liabilities.
- Most commonly claims will arise at common law in negligence.
- There are specified exceptions to cover.

20

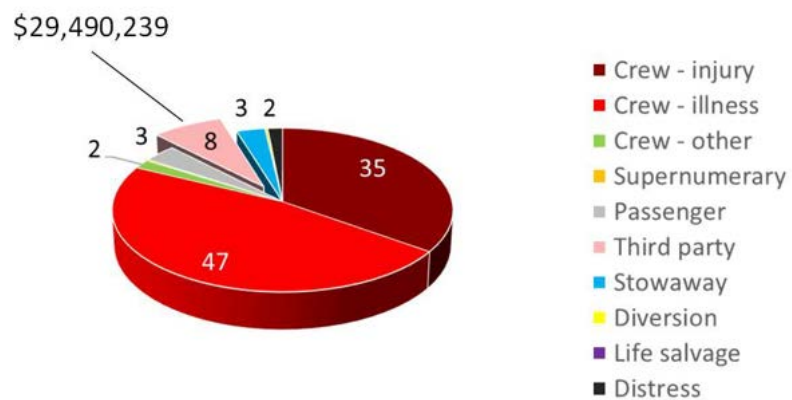


## THIRD PARTIES

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## THIRD PARTIES



22

## THIRD PARTIES

- Everybody else!
- Occasionally there will be commercial contracts.
- Most commonly claims will arise at common law in negligence.

23

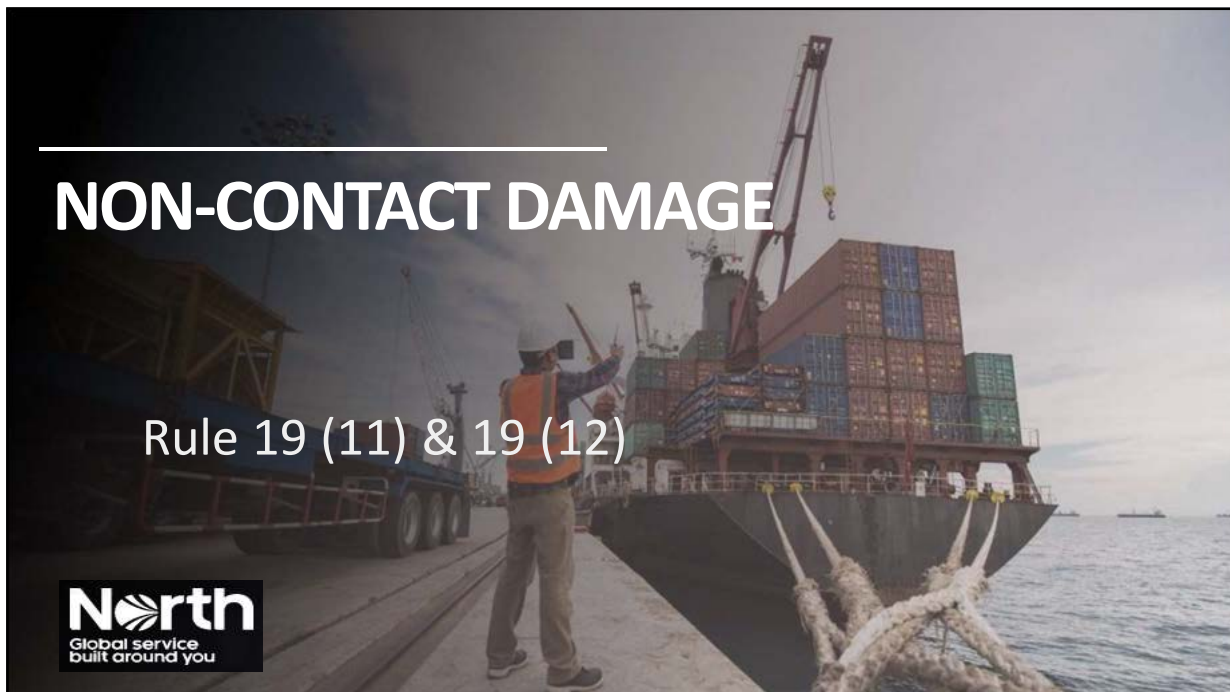
## OTHER PEOPLE LIABILITIES

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26



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## CONTRACTS & INDEMNITIES

Rule 19(16)

27



28



## PRE EMPLOYMENT MEDICALS (PEMES)

Philippines

Ukraine

Rest of the World



PEME



29

## PEMES

- Manila - 4 clinics
- Cebu - 2 clinics
- Iloilo - 1 clinic
- Odessa - 3 clinics

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31



## POST REPATRIATION MEDICALS (PRM)

2 clinics, both Manila

- More focussed treatment.
- More timely treatment.



32



## FIRST CALL

### FIRST CLASS SERVICE FROM FIRST CALL

Master's first point of contact for crew medical assistance in the USA.



**FIRST CALL**  
24/7 SERVICE



#### FIRST CALL

Hudson Tactix

T: +1 856 342 7500

E: firstcall@hudsoncontactix.com

#### FIRST CALL

Shuman Consulting

Services

T: +1 281 486 5011

E: firstcall@scslp.com

**NORTH**   
SERVICE. STRENGTH. QUALITY

33

## FIRST CALL



34



35

## MIND MATTERS

- A new Member Benefit focussing on the improvement of the mental health and wellbeing of seafarers
- Includes:
  - My Mind Matters
  - Mind Call



36

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## MY MIND MATTERS

Aimed specifically at seafarers and shipowners,  
with a dedicated website:

[www.mymindmatters.club](http://www.mymindmatters.club)



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## MIND CALL

A 24/7 helpline for crew on North entered  
vessels accessible via telephone, email and live  
chat and with a dedicated website:

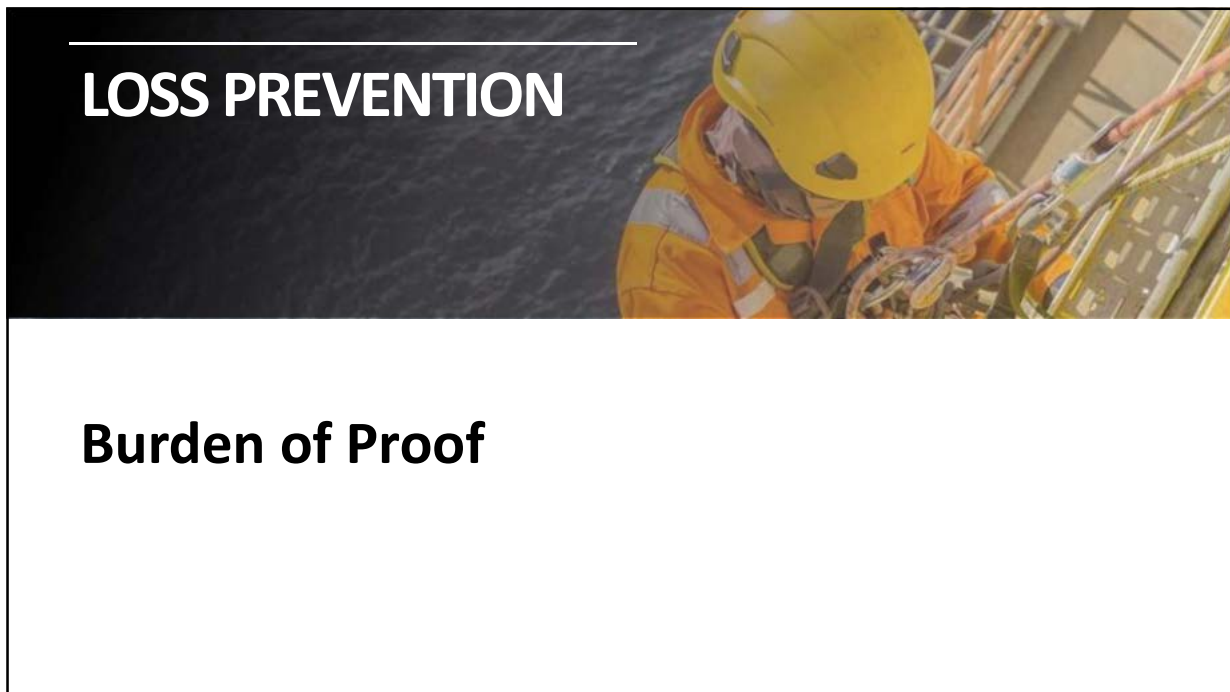
[www.mindcall.org](http://www.mindcall.org)



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39



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## LOSS PREVENTION



41

## THANK YOU

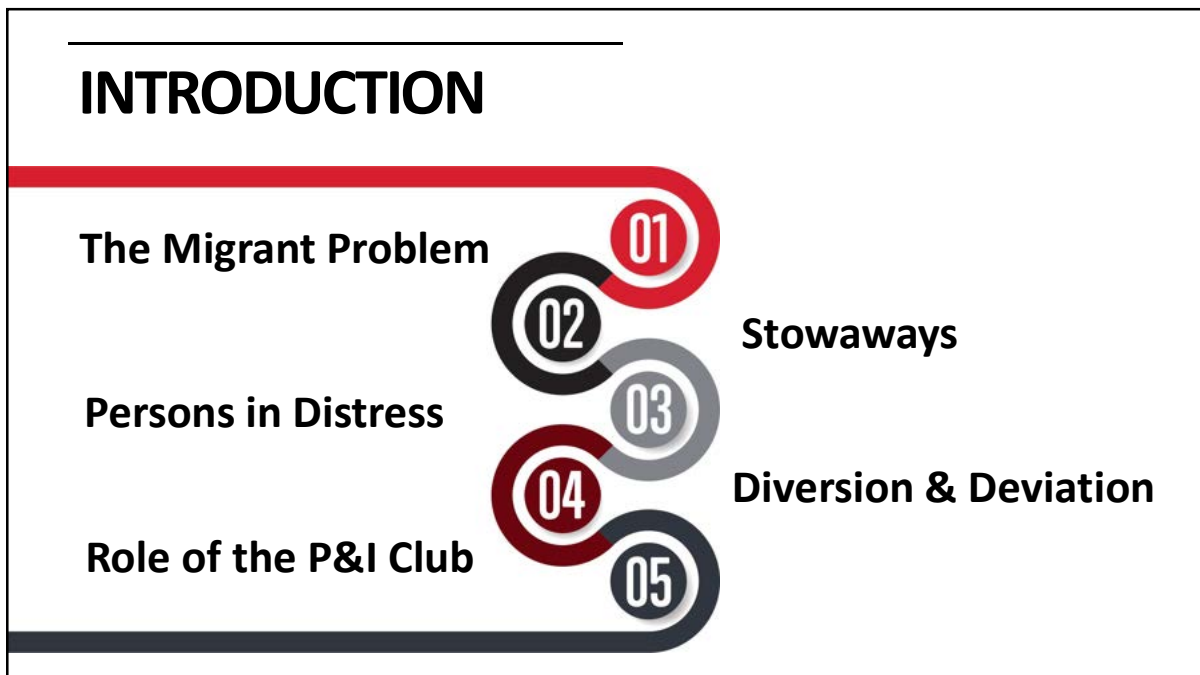
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1



2



## MIGRANTS



Illegal  
Immigrant



Economic  
Migrant



Refugee/Asylum  
Seeker



Criminal

3

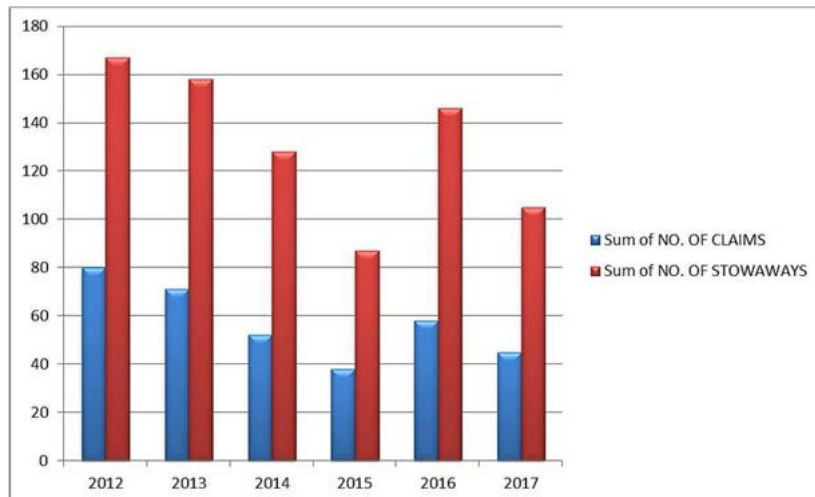
## STOWAWAYS



Who is a stowaway?

4

## STOWAWAYS – NUMBER OF CLAIMS



5

## STOWAWAYS

Cost of individual claims is dependent on a number of factors



Port of disembarkation



Repatriation costs



Time on board

6

## STOWAWAYS – COST OF CLAIMS



7

## STOWAWAYS

Cost

Ships' Security

Risks



Time & Manpower

Worrying Trends

8

## PREVENTION BY PORTS

- Unauthorised persons
- Checks on cargo
- Port Security Plan



9

## PREVENTION BY SHIPS



- Gangway watch
- Pass system
- Lighting
- Restricted areas
- Ship Security Plan

10

## STOWAWAY SEARCHES

Systematic

North Checklist

Record all searches and security measures



Simultaneous

Fumigation

11

## STOWAWAYS

- When stowaways are found?
- Who to contact?

12



## STOWAWAYS

- Treat humanely
- IMO guidelines
- Do not put them to work

13

## STOWAWAYS



14



## P&I CLUB RULES

- Expenses - Rule 19(5)
- Fines and incidental costs and expenses - Rule 19(19)(c)
- Potential damages &/or compensation - Rule 19(4)
- Infectious diseases - Rule 19(9)

15

## THE CHARTERERS' ROLE

- Stowaways in the cargo
- Charterparty clauses
- Clause 41, NYPE 1993



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## PERSONS IN DISTRESS

Ship's master has an obligation to save life:



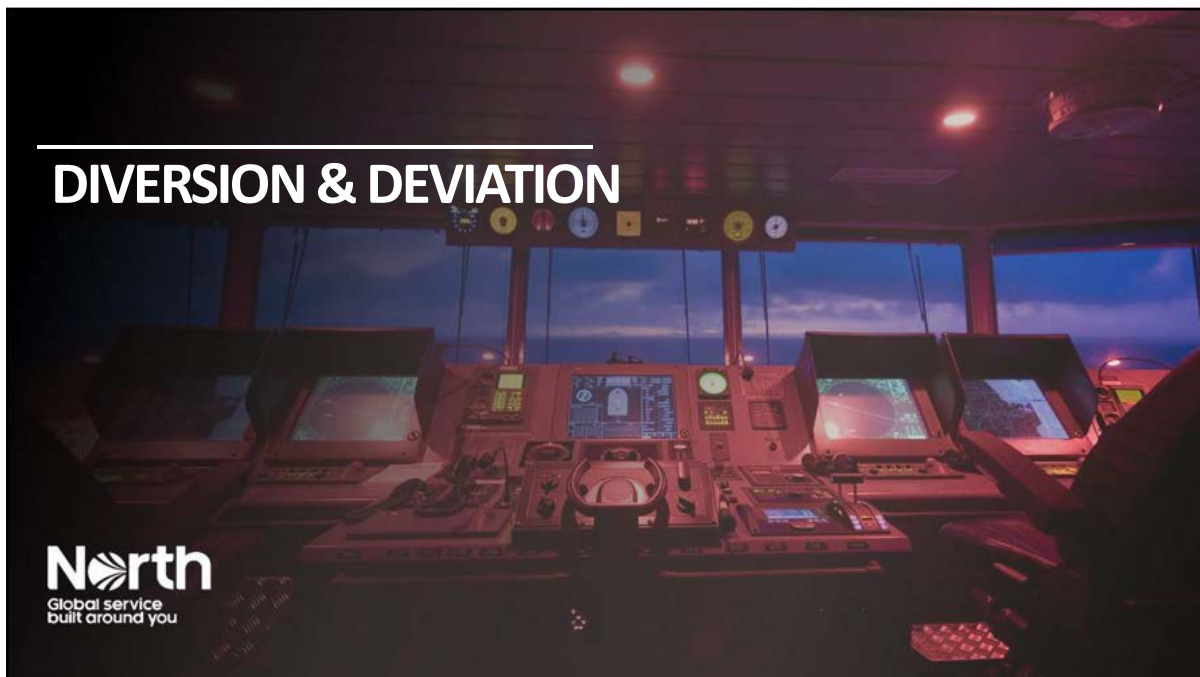
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## LIFE SALVAGE

**Sums legally due to 3<sup>rd</sup> parties who have saved or attempted to save the life of any person from an entered ship**

19



20

## DIVERSION

Cover for the net costs of a diversion to:

- Landing injured or sick persons
- Assisting persons in distress
- Landing stowaways or refugees



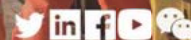
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## THANK YOU

Any Questions?

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# NORTH RESIDENTIAL TRAINING COURSE 2019

## WORKSHOP 4 – PEOPLE - DEBRIEFING

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1

## WORKSHOP 4 - PEOPLE

### 1 How might the stowaways have boarded the ship?

- There is probably no significance in the ISPS issues.  
The ISPS applies to individual port facilities within a port area – so the fact that access to the port seemed not to be obviously restricted probably could not be cited as a factor encouraging stowaways. The ship should be more concerned about their interface with the port facility – the delay in the port facility security officer negotiating a declaration of security might indicate a facility that lacks commitment to the ISPS code. But whether this could be cited as having contributed to the boarding of the stowaways is debatable.
- Probably in the cargo containers.  
Seals should be checked before opening. If the container is a 'loaded' container – unlikely with 11 people inside – the seals should be checked to see if the numbers match the commercial manifest. This may indicate whether the stowaways gained access during the container stuffing process or after the container had been stuffed and was in transit to or at the port facility – whether under control of the charterer or not.
- With stevedores  
If this is the suspected route – and in any case - the matter should be reported to the port facility security officer, the port state control administration and the flag state. The port facility should be responsible for ensuring the security vetting of the stevedores and ensuring their procedures do not present a security threat.
- Via accommodation ladder or moorings  
The ship's ISPS access control procedures need to be questioned – but in this case with the duty officer, the rating on watch and additional local security guards the ship appears to have taken all reasonable steps.

2

---

## WORKSHOP 4 - PEOPLE

**2 What liabilities could arise from having the stowaways on board?**

- Care, security, fines, repatriation and administration costs.
- Cargo damage.
- Personal injury and illness

3

---

## WORKSHOP 4 - PEOPLE

**3 Who would be responsible for these liabilities the shipowner, the port authorities, or the charterer?**

- The shipowner is responsible unless stowaways boarded secreted in the cargo and a suitable stowaway clause is inserted in charterparty
- For example Clause 41 in NYPE 93.

4



---

## WORKSHOP 4 - PEOPLE

### 4 What liabilities might be covered by P&I?

- Cost of care, security, fines, repatriation and administration costs.
- Damage to cargo
- Personal injury and illness

P&I cover is at the Club Director's discretion if adequate steps have not been taken to prevent stowaways boarding the ship.

5

---

## WORKSHOP 4 - PEOPLE

### 5 What action should the Master and ship operators have taken when the stowaways were discovered?

- Search area for other stowaways, belongings, papers & weapons.
- Secure the stowaways in cabin or suitable space.
- Contact shipowners, P&I Club, flag State and immigration authorities at next scheduled port(s) of call.
- Ensure health and welfare of stowaways is taken care of.
- Complete stowaway questionnaires and send to P&I Club.
- Do not put stowaways to work.

6

## WORKSHOP 4 - PEOPLE

**6 What problems may arise from diverting to a nearby port to land the stowaways?**

- The net costs of the diversion should be covered by P&I.
- However, the diversion would almost certainly be considered as unjustifiable and therefore be a deviation from the contracted voyage. P&I cargo cover would more than likely be prejudiced.  
The P&I club should always be contacted for advice before the ship diverts. P&I cover for liabilities other than cargo would not be affected.
- The P&I club could arrange commercial shipowners' liability insurance to replace P&I cargo cover. Otherwise the shipowner may decide to take a commercial decision to bear the cargo risks from the time of deviation to their own account.
- The diversion might be considered a justifiable deviation if any of the stowaways were seriously ill or injured. However, the deviation might not be considered justified if there were large numbers, aggressive or violent stowaways, causing a risk to the safety of the ship or crew or if the number of stowaways and crew exceeded the statutory safety levels for people on the ship.

7

## WORKSHOP 4 - PEOPLE

**7 What potential losses, damages, liabilities and expenses might arise from the Second Officer's and his wife's illness and would they be covered by the P&I Club cover?**

Second mate – seaman – statute, contractual and duty of care

- Medical, repatriation costs, expenses and liabilities arising from crew contract.
- Cost of a replacement if required by ship manning regulations.

Second mate's wife – supernumerary – statute and duty of care

- Cover normally only provided if shipowner is negligent.
- No contractual liability.

8

---

## WORKSHOP 4 - PEOPLE

**8 What issues may arise from diverting to a nearby port to land the sick Second Officer and his wife?**

- Net costs of diversion should be covered by P&I
- The diversion would almost certainly be considered as justifiable (SOLAS)
- P&I cargo cover would not be prejudiced

9

---

## WORKSHOP 4 - PEOPLE

**9 Loss prevention issues for a ship operator to consider before allowing a supernumerary to travel on a ship?**

- Require supernumeraries to have their own personal travel insurance
- Require supernumerary to provide a doctor's certificate or have a medical examination prior to voyage
- Sign an indemnity? – in many jurisdictions the indemnity may not stand the test of law if it seeks to reduce in any way the statutory, contractual or duty of care obligations of the shipowner. Also if it contains complicated and extensive 'small print' it might be considered unreasonable to expect the ordinary person to read and understand.

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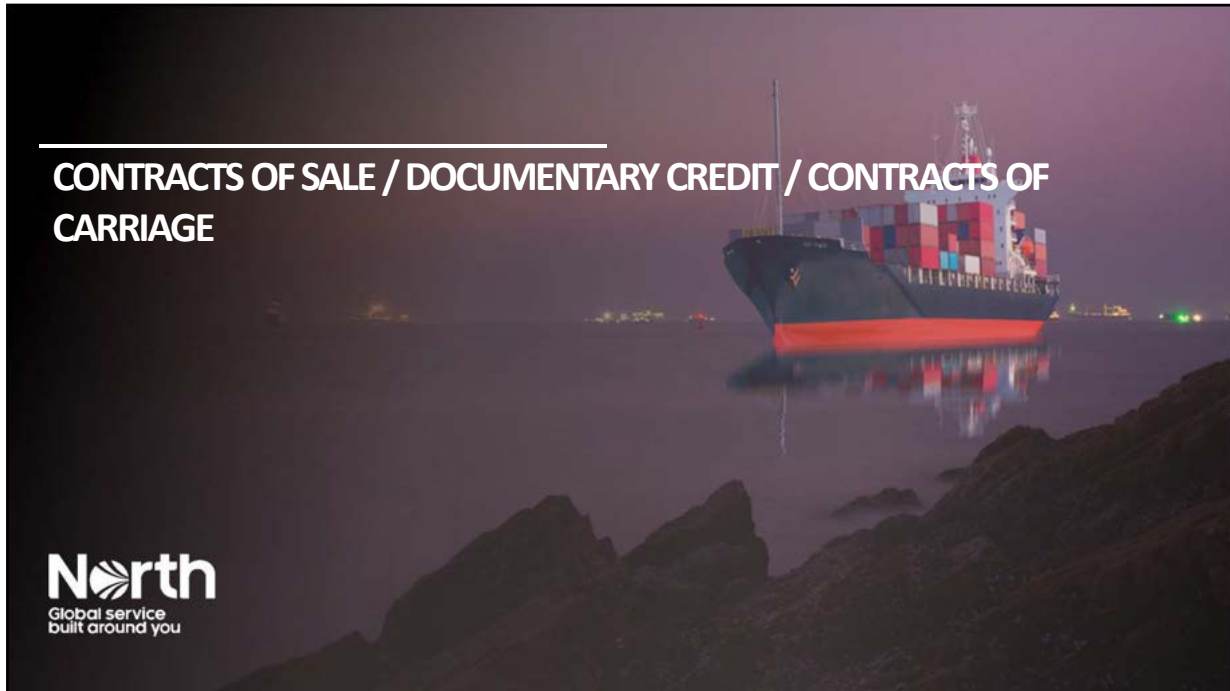


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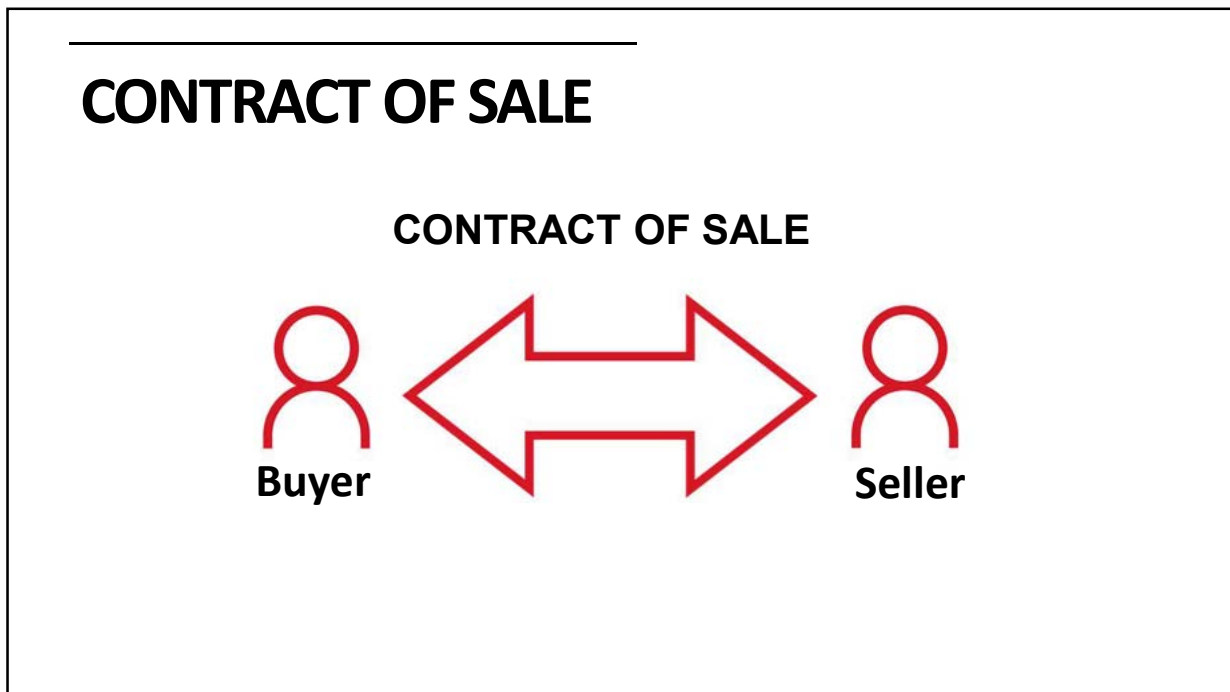
## **WE WILL LOOK AT**

- Contracts of sale, documentary credit and contracts of carriage
- Bills of lading
- Letters of indemnity

2



3

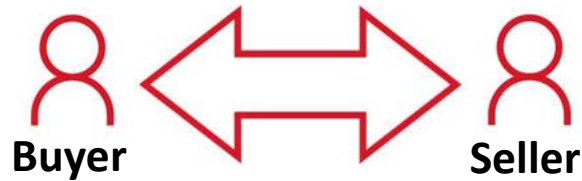


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# CONTRACT OF SALE

## CONTRACT OF SALE



FOB  
Buyer

Incoterm

CIF Seller

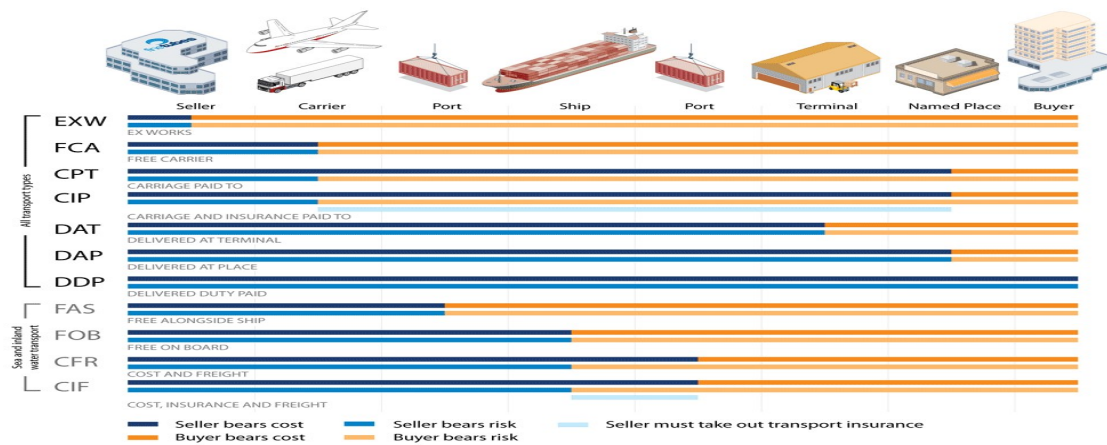
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# INCOTERMS

- Originated 1936 – INCOTERMS 2019

11 terms in use

Buyer



6

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## CIF

- Seller
  - Nominates ship and load port
  - Places cargo on board and obtains b/l
  - Insures cargo
  - Pays freight
  - Informs buyer of discharge port and ship
- Buyer
  - Collects the cargo from the discharge port nominated by the seller

7

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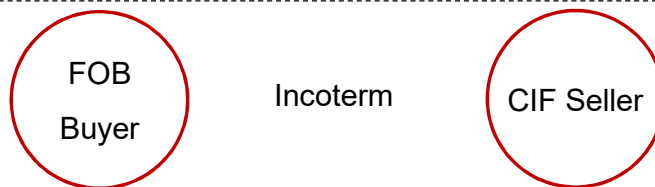
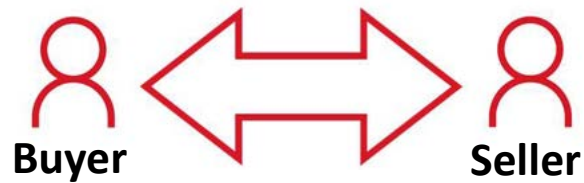
## FOB

- Buyer
  - Nominates ship and load port
  - Informs seller of load port and ship
  - Insures cargo
  - Pays freight
- Seller
  - Delivers the cargo on board ship at the load port nominated by the seller
  - Obtains bill of lading?

8

# CONTRACT OF SALE

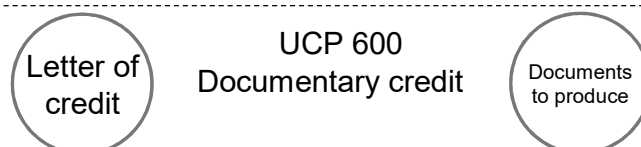
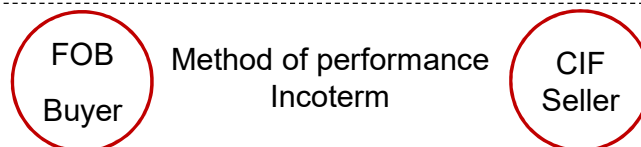
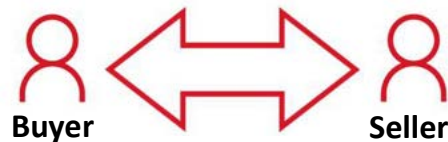
## CONTRACT OF SALE



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# DOCUMENTARY CREDIT

## CONTRACT OF SALE



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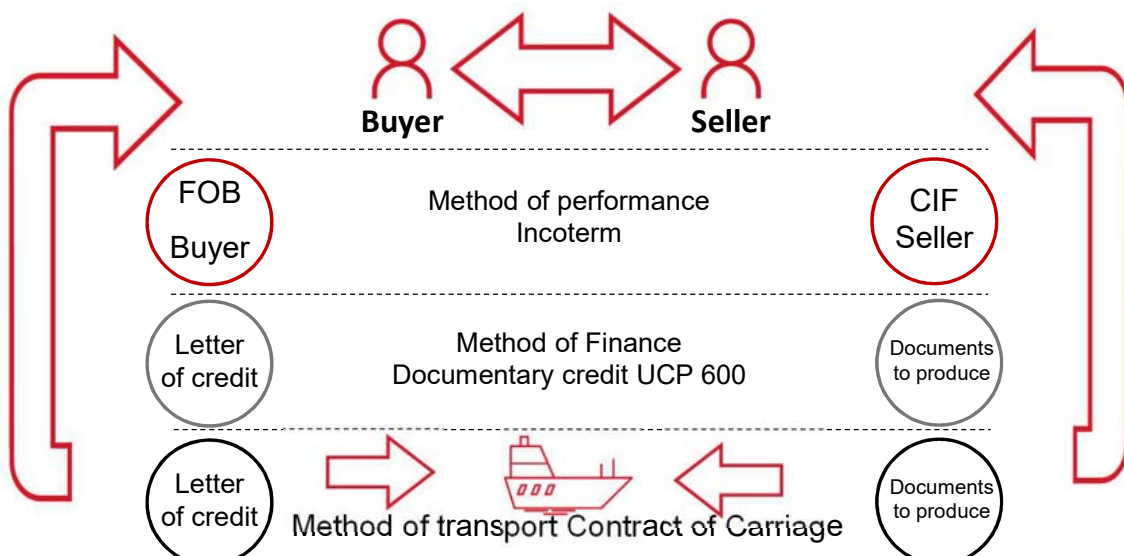
# CONTRACTS OF CARRIAGE

## Contracts of Carriage

- Bill of lading & cargo conventions
  - Hague or **Hague-Visby Rules**
  - Hamburg Rules
  - Rotterdam Rules
- Charterparty

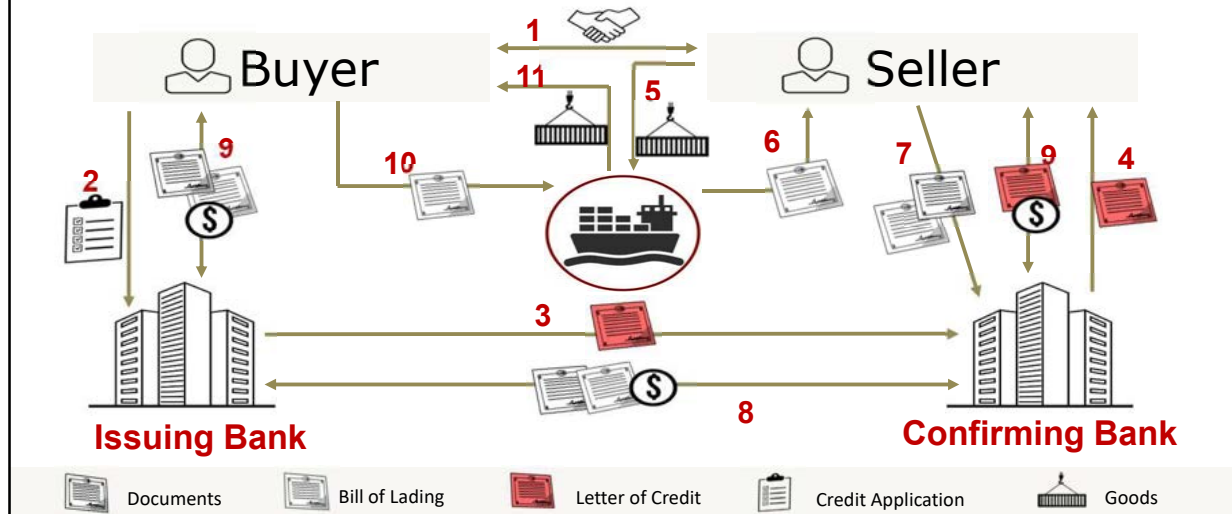
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# CONTRACTS OF CARRIAGE



12

## INTERNATIONAL TRADE TRANSACTION



13

## BILLS OF LADING COMMERCIAL FUNCTION



14

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## **BILLS OF LADING – COMMERCIAL FUNCTION**

Why are they commercially important?

Ship Owner

- Getting paid

Seller

- Statement that goods in apparent good order and condition on board
- Clean bill allows seller to get paid

Buyer

- Clean bill tells buyer (and his bank) that he is going to get what he contracted to buy and that goods are on their way
- Bill allows buyer to collect goods from the ship

15

---

## **BILLS OF LADING – COMMERCIAL FUNCTION**

...and to achieve all of this the bill of lading is performing three distinct legal functions

16



## BILLS OF LADING – LEGAL FUNCTIONS

### 3 functions of a bill of lading

- Document of title to cargo
- Evidence of contract of carriage
- Evidence of receipt of cargo

17

## BILLS OF LADING – LEGAL FUNCTIONS

- Document of title to cargo
- Goods should only be released against production of one of the original bills of lading

**Golden Rule 1**

- Remember that someone somewhere has the bill

18

## BILLS OF LADING – LEGAL FUNCTIONS

- Evidence of contract of carriage
- In the hands of the shipper the bill of lading is evidence of the contract of carriage
- In the hands of a third party the bill of lading is exclusive evidence of contract of carriage

### Golden Rule 2

- Keep your promise

19

## BILLS OF LADING – LEGAL FUNCTIONS

- Evidence of receipt of cargo
- Evidence as to the nature, quantity and apparent order and condition of the cargo on shipment
  - Prima facie evidence as between the shipowner and the shipper or charterer
  - Conclusive evidence as between the shipowner and a third party

### Golden Rule 3

- The bill of lading must tell the truth

20

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## **BILLS OF LADING – LEGAL FUNCTIONS**

- Each of these Golden Rules is important
- Each underpins P&I cover

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## **BILLS OF LADING – LEGAL FUNCTIONS**

- Provisos to P&I cargo risks covered
- Contract of carriage should be subject to Hague /Hague-Visby Rules
- Cargo should only be delivered at the port named in the bills of lading
- Cargo should only be delivered upon production of the original bills of lading
- Bills of lading should not be antedated or post-dated
- Bills of lading should contain a correct description of the cargo, quantity and condition

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## BILLS OF LADING – LEGAL FUNCTIONS

- The first two Golden Rules can be dealt with commercially if you wish by taking LOIs. Examples:
  - Delivery of cargo without production of bills of lading
  - Delivery at a different destination
- (Your decision – but it has P&I implications)...

### Golden Rule 1

- Remember that someone somewhere has the bill

### Golden Rule 2

- Keep your promise

23

## BILLS OF LADING – LEGAL FUNCTIONS

- ...but the hardest of these Golden Rules is the

### Golden Rule 3

- The bill of lading must tell the truth

- because that is where the stakes are at their highest...

24

## **BILLS OF LADING – RECEIPT**

Not telling the truth can give rise to liability of the shipowner.

- Misrepresentation

Carrier may be bound by statements as to condition of cargo on BL even if untrue

- Deceit

Tort of deceit gives rise to civil liability and damages

- Fraud

Criminal counterpart of deceit – gives rise to criminal liability

25

## **BILLS OF LADING – RECEIPT**

Fraud is proved when it is shown that a false representation has been made

- knowingly, or
- without belief in its truth, or
- recklessly whether it is true or false.

- Derry v Peek (1889)

26

## **BILLS OF LADING – RECEIPT**

Apparent order and condition of the goods

- If the master reasonably concludes the cargo is not in good order and condition then he should clause the bills of lading

27

## **BILLS OF LADING – RECEIPT**

Clausing bills – objective standard

- “[Master’s] view must be consistent with that which could properly be held by a reasonably observant master”
- Not an expert surveyor
- Can seek expert advice but unlikely to be criticised for not doing so
- Entitled to form his own opinion from his own observations
- The Master’s view is capable of objective evaluation

*The David Agmashenebeli* (QBD May 2002)

28



## BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- Clausing bills – words to use  
 “The words used should have a range of meaning which reflect reasonably closely the actual apparent order and condition of the cargo and the extent of any defective condition which he, as a reasonable observant master, considered it to have”

*The David Agmashenebeli*

29

## BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- Clausing bills – words to use  
 – For example - “Damaged” is not sufficient



- Buyer should know what he is getting

30

## BILLS OF LADING – RECEIPT

### *The Saga Explorer*

- Cargo claim for rust damage to steel pipes
- BL included RETLA clause: disclaimer that “apparent good order and condition” does not mean steel is free of rust.
- Carrier defends cargo claim saying no unqualified statement steel was shipped in good order and condition

31

## BILLS OF LADING – RECEIPT

### *The Saga Explorer*

- English Court applied *David Agmashenebeli* principles: Master must state honest and reasonable view of cargo in BL
- Despite the RETLA qualification, Master responsible for fraudulent misrepresentation
- RETLA clause could only protect carrier for superficial rusty appearance

32

## **BILLS OF LADING – RECEIPT**

- Similar issues arise in relation to quantity
- Master's obligations
  - Issue to the shipper a bill of lading showing:
    - the marks, quantity or weight of the goods as furnished in writing by the shipper
    - the apparent order and condition of the goods
- Hague Visby Rules – Article III, Rule 3

33

## **BILLS OF LADING – RECEIPT**

- Disputed weight / quantity
- The Master cannot be made to sign for a figure he does not believe in
- Hague Visby Rules – Article III, Rule 3

34

## BILLS OF LADING – RECEIPT

Disputed weight / quantity

- What should master do?
  - If he believes the figures  
Sign it
  - If he does not believe the figures  
Do NOT sign it
  - If in doubt  
Consult the P&I Club

35

## BILL OF LADING PROBLEMS

- Look at the golden rules – which one applies?

**Golden Rule 1**

- Remember that someone somewhere has the bill

**Golden Rule 2**

- Keep your promise

**Golden Rule 3**

- The bill of lading must tell the truth

36

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## LETTERS OF INDEMNITY



37

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### LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

- The law and International conventions (Hague Visby Rules) and P&I Club Rules set standards and law that applies to carriage of goods
- Applies to bills of lading
- Commercial practice may put the carrier and traders in conflict with each other and with these rules

38

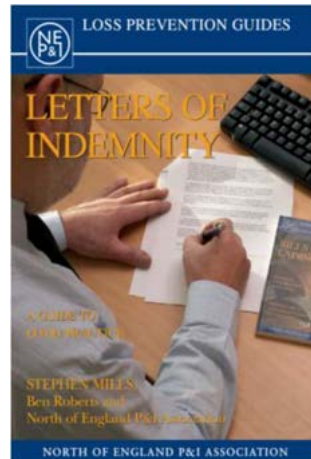
## LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

Carrier

- Issue a bill of lading
  - Accurate
  - Compliant

Seller

- Satisfies sale contract
- Avoids delays



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## LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

What is a Letter of Indemnity?

- A Letter of Indemnity is essentially a promise that:
  - “if you do what I ask, I will make sure that you do not suffer any loss”
 i.e. a conditional promise

40



## **LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?**

In exchange for agreeing to e.g.

- Deliver without production of the bills of lading
- Change of destination
- Split bills of lading
- Switch bills of lading
- Replace lost bills of lading
- Co-mingle, blend or mix cargo
- Add dye to liquid cargoes
- Mis-describing information on bills of lading

41

## **LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?**

Who benefits from a Letter of Indemnity?

42

## LETTERS OF INDEMNITY

- Accepting a letter of indemnity
  - Do you trust the issuer?
  - Is the risk acceptable?

43

## LETTERS OF INDEMNITY – POINTS TO NOTE

- Owners are often asked to do things that may breach the provisos of their P&I cover in return for an LOI
- Variety of circumstances – not all are legitimate
- P&I Clubs can NOT approve or recommend the acceptance of a LOI - commercial decision for owners
- LOI only as good as authority/creditworthiness of its issuer
- LOIs normally replace P&I cover
  - Claims arising as a direct result of accepting a LOI are likely to be subject to Club director's discretion
- LOI may not be enforceable if it facilitates dishonest conduct
- Careful consideration / drafting required

44

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## SUMMARY

- Commercial function
- Legal function – the Golden Rules
- Particular problems with description
- P&I cover
- Where letters of indemnity may or may not help
- Checklist when using them – see LP publication

45

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## THANK YOU

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1

## INTRODUCTION

Shipowner has obligations to:

- Ensure ship is seaworthy
- Care for the cargo in his custody

2

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## INTRODUCTION

If the cargo is lost or damaged while in the shipowner's care:

- The shipowner may have to compensate the cargo owner
- The shipowner has insurance cover for such liabilities with his P&I Club
- P&I is **NOT** a cargo insurer

3

---

## INTRODUCTION

If the cargo is lost or damaged while in the shipowner's care:

- The cargo owner may present his claim to the cargo underwriters
- The cargo underwriters may seek to recover the claim from the shipowner
- The cargo owner may present his claim to the ship owner

4

---

## INTRODUCTION

P&I covers:

- Damage or loss to cargo arising from shipowner's liabilities
- Additional costs and expenses for minimising claim
- Additional costs and expenses for dealing with claim

5

---

## INTRODUCTION

- Cargo risks covered  
Rule 19(17)
- Provisos to cargo risks covered  
Rule 19(17)

6



7

## **CARGO RISKS COVERED**

Preamble to Rule 19(17)

Liabilities, costs and expenses for cargo:

- Intended to be, or being, or having been carried on entered ship

8



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## **CARGO RISKS COVERED**

### **Rule 19(17)(a)**

- Loss, shortage or damage to cargo
- Resulting from a breach of obligation to care for the cargo

9

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## **CARGO RISKS COVERED**

### **Obligation to care for the cargo**

- Failure to care for cargo whilst in custody
- Also includes breach of unseaworthiness obligations unless ship sent to sea in unseaworthy state with knowledge of owner/ managers (Rule 26(4))

10

## CARGO RISKS COVERED



11

## CARGO RISKS COVERED



12

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## CARGO RISKS COVERED



13

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## CARGO RISKS COVERED



14

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## CARGO RISKS COVERED

Rule 19(17)(b)

Additional costs:

- Discharging or disposing of damaged or worthless cargo

15

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## CARGO RISKS COVERED



16

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## CARGO RISKS COVERED



17

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## CARGO RISKS COVERED

Rule 19(17)(c)

Additional costs:

- Discharging, disposing of, or restowing cargo
- For the safe prosecution of the voyage

18



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## CARGO RISKS COVERED



19

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## CARGO RISKS COVERED

Rule 19(17)(d)

Multimodal transport:

- Cover when using through or transshipment bills of lading
- Additional premium and contract approved by Managers

20

## CARGO RISKS COVERED



21

## CARGO RISKS COVERED

Rule 19(17)(e)

- Loss, shortage or damage to cargo
- Resulting from cargo carried on another ship
- When there is a consortium or cargo space sharing agreement

22



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## CARGO RISKS COVERED



23

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## PROVISOS TO CARGO RISKS COVERED



24

## PROVISOS

- (A) Hague Rules Exceptions
- (B) Deviation
- (C) Deck Cargo
- (D) Discharge at Wrong Port etc
- (E) Ad Valorem Bills of Lading
- (F) Refrigerated Cargo
- (G) Rare and Valuable Cargo
- (H) Property of the Member
- (I) Paperless Trading

Cover is generally subject to the discretion of the Members Board.

25

## PROVISOS

### Rule 19(17)(A)

(A) Hague Rules Exception:

- Member is expected to make his contracts of carriage subject to Hague or Hague Visby Rules.
- Cover restricted to Hague/Hague Visby position if he does not.
- Hamburg rules which apply by force of law do not affect cover.

Managers & Directors discretion.

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# PROVISOS

## Rule 19(17)(B)

(B) Deviation:

- Deviation can be geographical or by delay
- Serious consequences – loss of defences
- Managers & Directors discretion
- Board discretion
- Shipowners Liability Insurance (SOL)

27

# PROVISOS

## Deviation Examples



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## PROVISOS

### Rule 19 (17) (C) Deck Cargo:

- Article 1 of Hague / Hague Visby Rules



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## PROVISOS

- Covered if:
  - (i) The cargo is **suitable for carriage on deck** of the Entered Ship,  
and

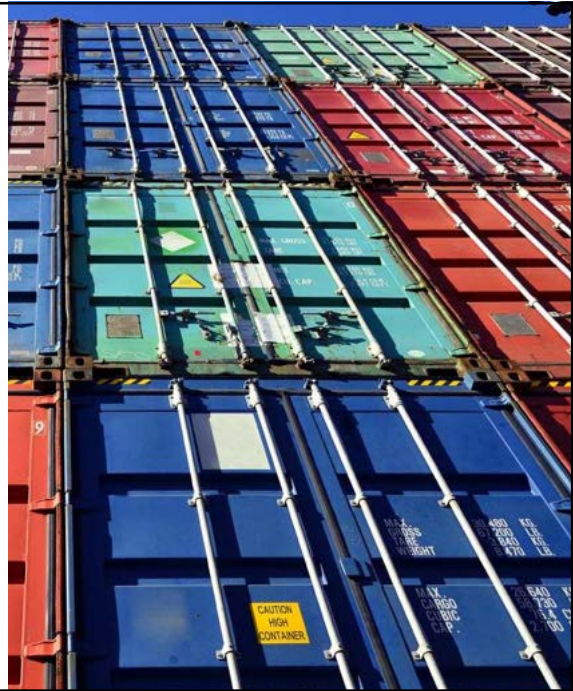


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## PROVISOS

### Rule 19 (17) (C) Deck Cargo:

- (ii) the contract of carriage contains an appropriate **liberty** to carry cargo on deck; **and**



31



## PROVISOS

### Rule 19 (17) (C) Deck Cargo:

- (iii) the **contract of carriage** is specially **claused** to the effect that the cargo is carried on deck and that either the **carrier is exempted from all liability for loss or damage** to such cargo howsoever caused, **or** that the **Hague Rules or the Hague-Visby Rules apply** to carriage on deck notwithstanding Article 1(c) of the said Rules

32

## PROVISOS

- General Deck Cargo Clause  
Bill of lading to be claused

“**Carried on deck at shipper's risk without responsibility for loss or damage howsoever caused**”

- Custom Of The Trade
- Managers/Members Board Discretion

33

## PROVISOS

### Rule 19(17)(D)(i)

Change of Destination:  
Discharge of cargo at a port or place other than the bill of lading.

- Potential Consequences.
- Letter of Indemnity.
- Members Board discretion.



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## PROVISOS

### Rule 19(17)(D)(ii)

Late Arrival / Failure to Load:

- Failure to arrive at load port.
- Late arrival at load port.
- Failure to load any particular cargo or cargoes.

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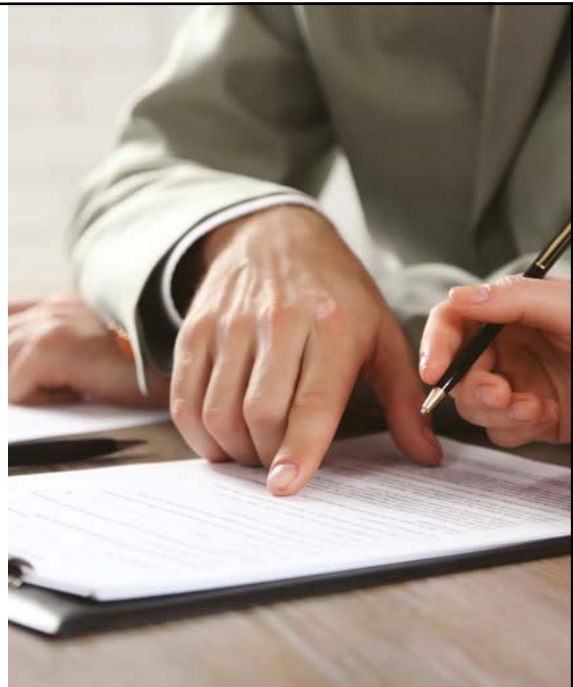
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## PROVISOS

### Rule 19(17)(D)(iii)

Delivery of Cargo Without  
Bill of Lading:

- Potential Consequences
- Managers & Directors discretion
- Letter of Indemnity



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## PROVISOS

### Rule 19(17)(D)(iv)

Delivery of Cargo under a waybill/ straight bill of lading to a person other than that named:

- Potential consequences.
- Members Board discretion.

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## PROVISOS

### Rule 19(17)(D)(v)

Ante-dated / post-dated Bill of Lading:

- Potential Consequences
  - Fraudulent? Bill of lading should tell the truth.
- Members Board discretion.

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## PROVISOS

### Rule 19(17)(D)(vi)

Incorrect Description of Cargo:

- Incorrect description of the cargo or its quantity or its condition...
- ... with the knowledge of the Member or Master.
- Potential consequences: loss of Club cover and potentially fraudulent.
- Members Board discretion.

39

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## PROVISOS



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## PROVISOS

### Rule 19(17)(E)

Ad Valorem Bill of Lading, recovery from club restricted to

- US \$2,500 per unit, piece or package **OR**
- Hague Visby Limits (whichever is higher).

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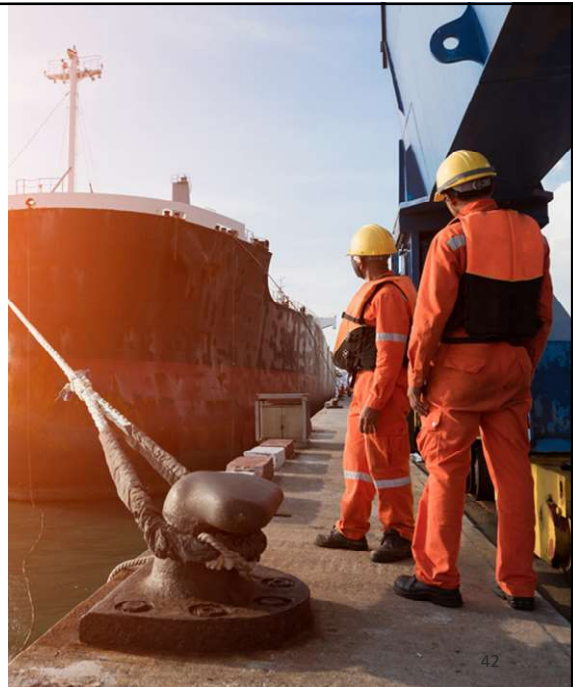
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## PROVISOS

### Rule 19(17)(G)

Rare and Valuable Cargo

- No recovery for loss or damage to rare or valuable cargo
- Unless approved by managers



42

# PROVISOS

## Rule 19 (17) (I)

Paperless trading:

- Management approved systems.
- E-Title, Electronic International Ltd. (ESS) and Bolero International Ltd. (Bolero).
- Members Board discretion.



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# THE END

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1

## WORKSHOP 5 - CARGO

### 1.1 Which party is likely to be responsible for the costs of the additional lashing applied to the steel coils in Middlesbrough?

Where the stowage of cargo is the responsibility of the charterer (for example by agreement to that effect in the charterparty), if the charterer's actions in stowing the cargo affect the safety and seaworthiness of the vessel the master should call on the charterers to improve the lashings. The costs for the additional lashings would have been for charterer's account.

2

## WORKSHOP 5 - CARGO

### 1.2 Can the charterer demand clean bills of lading for cargo that is not presented in apparent good order and condition? Why might they do so?

The Hague-Visby Rules, article 3, places an obligation on the carrier to issue a bill of lading stating the apparent order and condition of the goods, but also goes on to say that 'no carrier shall be bound to sign bills of lading where there are reasonable grounds for suspecting that the description does not accurately reflect the condition of the goods or there are no reasonable means of checking the description'.

A master must never issue a bill of lading which does not accurately describe the condition of the cargo. Issuing a bill of lading which is 'clean' (casts no doubt over the condition of the cargo) when the cargo is **not** in apparent good order and condition will almost certainly give rise to claims against vessel by the receiver (buyer) of the cargo, who will be entitled to say that if the cargo was shipped on board in good condition (as stated in the 'clean' bill) but has arrived in poor condition then the deterioration or damage must have happened on board the ship.

The charterer's may demand clean bills following pressure from the shipper who requires a bill of lading to reflect exactly the requirements of a letter of credit (clean bill).

3

## WORKSHOP 5 - CARGO

### 1.3 Was the master obliged to accept a letter of indemnity from the charterers for a clean bill of lading? What action would the P&I club take if the shipowner decides to accept the letter of indemnity?

In most jurisdictions such a letter of indemnity will be viewed as an attempt to deceive the receiver. To issue such a bill of lading and to accept a letter of indemnity for doing so is therefore a very serious commercial risk and in many countries would be considered fraudulent. For these reasons a P&I club would always advise against issuing such bills of lading or accepting such a letter of indemnity but that if the shipowner did so the club would advise that:

- it would prejudice cargo cover for the cargo concerned (rule 19(17) proviso (D)) unless the directors in the exercise of their discretion should determine otherwise
- that the letter of indemnity is unlikely to be enforceable
- that the shipowner is unlikely to be able to defend any allegation by the cargo receiver that the cargo had been wetted while on board the ship (see answer to 1.2 above). It is for this reason that all P&I club rules exclude cover for claims arising in this way.

4

## WORKSHOP 5 - CARGO

### 1.4 What action would you advise the master to take at Middlesbrough so that the shipowner might have a reasonable defence against this claim?

Arrange a **steel pre-load survey**, preferably including a test of the hatch covers. The bill of lading should contain a detailed pre-loading description of the cargo, based on that survey, indicating that some of the cargo was wet before shipment. Under these circumstances the shipowner should have a reasonable defence to the claim on the basis of the pre-shipment condition of the cargo. Additionally silver nitrate tests taken after discharge in Karachi might be considered. They may have shown no signs of chlorides, which would be evidence to suggest there was no seawater ingress into the holds.

Other evidence of the exercise of **due diligence** to make the vessel seaworthy could include

- additional testing of hatch covers before the cargo was loaded
- shipboard records of bilge testing
- records of hatch coaming drains and non-return valves being tested
- records of testing bilges
- photographic evidence of the condition of the hatch covers prior to loading
- berth-to-berth voyage plan showing consideration of weather expected.

5

## WORKSHOP 5 - CARGO

### 2.1 Since the charterer issued the bill of lading can the charterer be held responsible for the cargo damage?

The charterer cannot be held responsible for the cargo damage. The charterer is not a party to the contract evidenced by the bill of lading. It issued the bill 'for and on behalf of the master'.

Charterers and agents act on behalf of masters in signing bills of lading therefore the ship remains bound by the description of the cargo stated on the bill of lading and must deliver the cargo as described in the bill of lading, that is in 'apparent good order and condition'.

6



## WORKSHOP 5 - CARGO

### 2.2 What advice can we give the shipowner on how to resolve this claim under the bill of lading?

Any standard charter party bill of lading (such as CONGENBILL) would normally have a phrase such as 'Signed/Issued for and on behalf of the master in accordance with mate's receipt'.

The bill of lading thus binds the shipowner to the description of the cargo and in this case it is most likely that the shipowner will have to accept liability for the claim, even though the cargo was already wet when loaded.

In a separate action under the charter party contract the shipowner should consider action against the charterer for breach of the charterparty terms in issuing a clean bill of lading contrary to master's instructions.

7

## WORKSHOP 5 - CARGO

### 2.3 Is the P&I club obliged to provide a letter of undertaking at Karachi in respect of claims by the receiver for failure to care for the cargo? What factors would the managers of the P&I club consider before providing a letter of undertaking?

The provision of security by the clubs is discretionary.

Factors to consider:

- ☐ security is for a P&I liability
- ☐ no club rules have been broken
- ☐ the Member has paid all his premiums
- ☐ amount of security is reasonable
- ☐ there are no relevant warranties against the vessel
- ☐ the wording of the contract is acceptable
- ☐ the jurisdiction and choice of law is acceptable
- ☐ the amount of the deductible (counter security may be required).

8

## WORKSHOP 5 - CARGO

- 2.4 As a claims handler can you advise the shipowner of any**
- ☐ other options to consider or
  - ☐ problems that might be encountered in resolving this claim?

If the bill of lading had been claused to show that the cargo was wet when loaded, there should be no claim for that wetting damage. If further damage had been suffered during the voyage the question would be whether this was caused by inherent vice (because wet timber will inevitably become stained and mouldy in transit); or by poor care by the ship (because the master could have ventilated but did not do so). Which is the correct cause of the damage will depend on expert evidence and therefore a good surveyor should attend the ship on discharge.

Many jurisdictions have an element of strict liability in which case the shipowner may have no defence.

Negotiate a settlement before the claim goes to court?

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***Residential training course in P&I insurance and loss prevention***

***Singapore  
November 2013***

***Handout***

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# Nathan and Coles Limited

Nathan and Coles Limited  
Nathan Road  
London SE11 8JB  
United Kingdom

Murray Corporation Limited  
1052 Causeway Boulevard  
Toronto

London 25<sup>th</sup> June 1994

## SALES CONTRACT NO. MRDC708447

Murray Corporation Limited Canada as Buyers confirm having purchased and Nathan and Coles Limited London as sellers confirm having sold the goods as described below in accordance with the following terms of conditions:

Quantity	16 (sixteen)
Goods	Printing Machines Nathan and Coles model Caxton Excelsior 1470
Origin	UK/Europe seller's option
Delivery	CIF Toronto
Price	Unit price (GBP) £10,000 CIF Toronto. Total (GBP) £160,000. (In words: Sterling pounds one hundred and sixty thousand only)
Payment	By Irrevocable documentary Letter of Credit, issued for 100% of invoice value. Payment against presentation of the following documents: <ol style="list-style-type: none"><li>1. Commercial invoice in quadruplicate</li><li>2. Insurance policy/certificate in duplicate covering marine and war risks for 110 per cent of invoice value</li><li>3. Full set of clean on board blank endorsed port to port bills of lading marked notify Murray Corporation Limited, 1052 Causeway Boulevard, Toronto, Ontario</li></ol>
Shipment	From UK port seller's option. No later than 15 <sup>th</sup> August 1994
Vessel	Seller's have the right to effect shipment on geared or gearless basis up to maximum age of 25 years, in case of vessel exceeding 15 years but up to 25 years of age, OAP for Seller's account. Vessel is to be nominated by the Sellers to the Buyers for confirmation.
Advice of shipment	The Sellers shall upon completion of loading advise buyers within 2 working days by fax/email of the contract number, name of commodity, number of packages, gross and net Weights, Invoice value, name of vessel, and loading date, name of loading port and discharge Port.
Force Majeure	In the case of Force Majeure the Sellers shall not be held responsible for delay in delivery or non-delivery of the goods but shall notify immediately the Buyers by fax/email and deliver to the Buyers by registered mail a certificate issued by Government Authorities or Chamber of Commerce as evidence thereof. If the shipment is delayed over one month as the consequence of this said Force Majeure the Buyers shall have the right to cancel this Contract. Seller's inability in obtaining export licences shall not be considered as Force Majeure. (An event that is unforeseen or, if foreseen, unavoidable)
Delayed delivery and penalty	Should the Sellers fail to effect delivery on time as stipulated in this contract owing to causes other than Force Majeure the Buyers shall have the right to cancel the contract or alternatively the Sellers may with Buyer's consent postpone delivery on payment of penalty to the buyers. The Buyers may agree to grant the Sellers a grace period of 16 days. Penalty shall be charged at the rate of 1% of the total value for every 10 days, odd days less than 10 days should be counted as 10 days. The total penalty shall be calculated from the 10th day and shall not exceed 5% of the total value of the goods involved.
Arbitration	All disputes in connection with this contract or the execution thereof shall be settled by friendly negotiation. If no settlement can be reached the case in dispute shall then be submitted for arbitration to the Canadian International Economic and Trade Arbitration Commission in accordance with its rules of arbitration. The decision made by the commission shall be accepted as final and binding upon both parties. The fees for arbitration shall be borne by the losing party unless otherwise awarded by the commission

BARCLAYS BANK PLC  
MANCHESTER INTERNATIONAL SERVICES BRANCH  
THIRD FLOOR, 51 MOSLEY STREET, MANCHESTER M602BU, UK.  
PHONE: 061 228 3322 TELEX: 667565 ANSWERBK: BARMAN G

BENEFICIARY:  
NATHAN AND COLES LIMITED  
NATHAN ROAD  
LONDON SE11 8JB  
UNITED KINGDOM

ADVICE OF  
IRREVOCABLE DOCUMENTARY CREDIT  
NUMBER: TODC 603921  
DATED 20<sup>TH</sup> JUNE 1994  
DATE OF EXPIRY: 31<sup>ST</sup> AUGUST 1994  
PLACE OF EXPIRY: UNITED KINGDOM  
AMOUNT: UP TO GBP 160,000.00  
UP TO ONE HUNDRED SIXTY THOUSAND  
AND 00/100'S POUNDS STERLING  
OUR ADVICE NUMBER: MRDC708447

OPENING BANK:  
BARCLAYS BANK OF CANADA  
PO BOX 377  
COMMERCE COURT POSTAL STATION  
TORONTO, ONTARIO  
CANADA

APPLICANT:  
MURRAY CORPORATION LIMITED  
1052 CAUSEWAY BOULEVARD  
TORONTO

30<sup>TH</sup> JUNE 1994

DEAR SIR(S)

THIS LETTER OF CREDIT IS AVAILABLE WITH BARCLAYS BANK PLC: BY PAYMENT AGAINST PRESENTATION OF THE DOCUMENTS DETAILED HEREIN AND OF YOUR DRAFTS AT SIGHT DRAWN ON BARCLAYS BANK PLC, MANCHESTER FOR 100 PER CENT OF INVOICE VALUE.

DOCUMENTS REQUIRED:-

- 1 – COMMERCIAL INVOICE IN QUADRUPLICATE
- 2 – INSURANCE POLICY/ CERTIFICATE IN DUPLICATE COVERING MARINE AND WAR RISKS FOR 110 PER CENT OF THE INVOICE VALUE
- 3 – FULL SET OF CLEAN ON BOARD BLANK ENDORSED PORT TO PORT BILLS OF LADING MARKED NOTIFY MURRAY CORPORATION LIMITED, 1052 CAUSEWAY BOULEVARD, TORONTO, ONTARIO.

COVERING THE FOLLOWING GOODS:-

- 16 – PRINTING MACHINES NATHAN AND COLES MODEL CAXTON EXCELSIOR 1470  
COST, INSURANCE & FREIGHT TORONTO  
PARTIAL SHIPMENTS: NOT ALLOWED  
TRANSHIPMENTS: ALLOWED  
SHIPMENT FROM: UK PORT  
NO LATER THAN: 15<sup>TH</sup> AUGUST 1994  
FOR TRANSPORTATION TO: TORONTO

DOCUMENTS MUST BE PRESENTED AT PLACE OF EXPIRATION WITHIN 15 DAYS OF ISSUE DATE OF TRANSPORT DOCUMENT AND WITHIN THE L/C VALIDITY.

IMPORTANT: PLEASE CAREFULLY CHECK THE DETAILS OF THIS CREDIT AS IT IS ESSENTIAL THAT DOCUMENTS TENDERED CONFORM IN EVERY ASPECT WITH THE CREDIT TERMS. IF YOU ARE UNABLE TO COMPLY, PLEASE COMMUNICATE WITH YOUR BUYERS PROMPTLY IN ORDER THAT THEY MAY ARRANGE A SUITABLE AMENDMENT WITHOUT DELAY. IF DOCUMENTS ARE PRESENTED WHICH DIFFER FROM CREDIT TERMS, WE RESERVE THE RIGHT TO MAKE AN ADDITIONAL CHARGE.

WE ADD OUR CONFIRMATION TO THIS CREDIT AND UNDERTAKE THAT DRAFT(S) AND DOCUMENTS DRAWN UNDER AND IN STRICT CONFORMITY WITH THE TERMS THEREOF WILL BE HONORED ON PRESENTATION.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), ICC PUBLICATION NUMBER 500.

YOURS FAITHFULLY

SPECIMAN

SPECIMAN

.....  
AUTHORISED SIGNATURE

.....  
AUTHORISED SIGNATURE

Member of IMRO  
Registered in London, England, Reg.1026167. Reg. Office: 54 Lombard Street, London EC3P 3AH





**ORIGINAL**  
**No.**  
Exporters Reference

**SUN ALLIANCE**  
*International*

**Certificate of Marine Insurance**

This is to certify that Sun Alliance and London Insurance plc (hereinafter called the Company) has insured under Policy No. the undermentioned goods for the voyage and value stated on behalf of

**NATHAN AND COLES LTD**

**Conditions Of Insurance** Institute Cargo Clauses (A) but sendings by Air (other than by post) subject to the Cargo Institute Cargo Clauses (Air) (excluding sendings by post)  
Institute War Clauses } Appropriate to the mode  
Institute Strike Clauses } of transit to which this certificate applies.  
Institute Replacement Clause }  
Replacement Clause (Second-hand Machinery) } if applicable  
Institute Classification Clause }

Institute Radioactive Contamination Exclusion Clause.

**(The Institute Clauses referred to are those current at time of commencement of risk)**

Shipped (per vessel, Aircraft etc)

From (Commencement of transit)

**WATERSTOKER**

Via

**MONTREAL**

**LONDON / FELIXSTOWE**

To (final destination)

**TORONTO**

Insured Value and Currency

**GBP 176000**

Marks and Numbers

Interest

**JLSU 2105933**

**JLSU 2104599**

**JLSU 2104650**

**JLSU 2104665**

**JLSU 2103041**

**JLSU 2104900**

**JLSU 2105790**

**JLSU 2103102**

**8 x 20 FT.**

**CONTAINERS**

**PRINTING MACHINES**

**NATHAN & COLES**

**MODEL CAXTON**

**EXCELSIOR 1470**

**SHIPPED UNDER DECK BUT CONTAINER SHIPMENTS ON OR UNDER DECK**

**SURVEYS**

In the event of loss or damage for which the Company may be liable, immediate notice must be given to

**SUN ALLIANCE'S AGENT AT THE PORT WHERE THE LOSS OR DAMAGE**

**IS DISCOVERED**

in order that a Surveyor may, if necessary be appointed

**CLAIMS**

payable at **TORONTO**

by **SUN ALLIANCE'S AGENT**

This Certificate is not valid unless countersigned

**NATHAN & COLES LTD**

Group Marine Manager

Date of issue 10.8.94

Authorised Signatory

This certificate may require to be stamped within a given period in order to conform with the laws of the country of destination. Holders are therefore advised to ascertain the amount of Stamp Duty, if any, required.

**THIS CERTIFICATE REQUIRES ENDORSEMENT BY THE ASSURED**

Sun Alliance International policies are issued by Sun Alliance and London Insurance plc

**Bill of Lading Combined Transport shipment or Port to Port shipment  
Shipper**

NATHAN AND COLES  
NATHAN ROAD  
LONDON SE11 8JB

B/L No. FLX TOR 1  
Booking ref.:  
Shipper's Ref.: 65785

Consigned to the order of

ORDER

**P&O**



**Containers**

**Notify Party/Address** (It is agreed that no responsibility shall attach to the carrier  
Or his Agents for failure to notify of the arrival of the goods)

MURRAY CORPORATION  
1052 CAUSEWAY BOULEVARD  
TORONTO CANADA

**Place of Receipt** (Applicable only when this document is used as a  
Combined Transport Bill of Lading)

LONDON

**Vessel and Voy. No.**

WATERSTOKER 129

**Place of Delivery** (Applicable only when this document is used as a  
Combined Transport Bill of Lading)

TORONTO

Port of Lading  
Felixstowe

Port of Discharge

MONTREAL

Marks and Nos: Container Nos:	Number and kind of Packages: description of Goods	Gross Weight(kg)	Measurements (cbm)
JLSU 2105933	8 x 20 FT		
JLSU 2104599	CONTAINERS		
JLSU 2104650	SAID TO CONTAIN		
JLSU 2104665	16	120615	146.32
JLSU 2103041	PRINTING MACHINES		
JLSU 2104900			
JLSU 2105790			
JLSU 2103102			

SHIPPERS LOAD, STOW & COUNT

FREIGHT PREPAID

Above particulars as declared by shipper, but not acknowledged by the carrier (see clause 11)

\* Total No. of Containers/Packages received by the carrier

EIGHT

Movement

Freight and Charges (indicate whether prepaid or collect):

Origin Inland Haulage Charge.. ....

Origin Terminal Handling/LCL Service Charge... PAYABLE AT

Ocean Freight.. .... LONDON

Destination Terminal Handling/LCL Service Charge...

Destination Inland Haulage Charge.... ..

(3) THREE  
Number of Original Bills of Lading

Received by the Carrier from the Shipper in apparent good order and condition (unless otherwise noted herein) the total number or quantity of Containers or other packages or units indicated in the box opposite entitled "Total No. of Containers/Packages received by the Carrier" for Carriage subject to all the terms and conditions hereof (INCLUDING THE TERMS AND CONDITIONS ON THE REVERSE HEREOF AND THE TERMS AND CONDITIONS OF THE CARRIER'S APPLICABLE TARIFF) from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever, whichever is applicable. Before the Carrier arranges delivery of the goods one original Bill of Lading, duly endorsed must be surrendered by the Merchant to the Carrier at the Port of Discharge or at some other location acceptable to the Carrier. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its terms and conditions whether printed, stamped or written, or otherwise incorporated, notwithstanding the non-signing of this Bill of Lading by the Merchant.

Place and Date of Issue

LONDON 11 AUGUST 1994

IN WITNESS of the contact herein contained the number of  
Originals stated opposite has been issued, one of which  
Being accomplished the other(s) to be void.

For P&O Containers Limited as Carrier:

SHIPPED ON BOARD PER

OCEAN VESSEL.....

AT.....ON.....

330006

..... P&OCL B/L 2 3/92

## The Hague-Visby Rules

### The Hague Rules as Amended by the Brussels Protocol 1968

#### Article I

In these Rules the following words are employed, with the meanings set out below:

- (a) 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) 'Ship' means any vessel used for the carriage of goods by sea.
- (e) 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

#### Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

#### Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- (a) Make the ship seaworthy;
- (b) Properly man, equip and supply the ship;
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall,

on demand of the shipper, issue to the shipper a bill of lading showing among other things:

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6 bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the

carrier, to the shipper shall, if the shipper so demands be a 'shipped' bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a 'shipped' bill of lading.

**8 .** Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

#### Article IV

**1 .** Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

**2 .** Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters.
- (d) Act of God.
- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- (h) Quarantine restrictions.
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.

(m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods.

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

**3 .** The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

**4 .** Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

**5 (a)** Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 666.67 units of account per package or unit or units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

**6 .** Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

#### **Article IV bis**

**1 .** The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

**2 .** If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.

**3 .** The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.

**4 .** Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

#### **Article V**

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

#### **Article VI**

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any

terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

An agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

#### **Article VII**

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

#### **Article VIII**

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

#### **Article IX**

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

#### **Article X**

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if

- (a) the bill of lading is issued in a contracting State, or
- (b) the carriage is from a port in a contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract;

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

(The last two paragraphs of this Article are not reproduced. They require contracting States to apply the Rules to bills of lading mentioned in the Article and authorise them to apply the Rules to other bills of lading).

(Article 11 to 16 of the International Convention for the unification of certain rules of law relating to bills of lading signed at Brussels on August 25, 1974 are not reproduced. They deal with the coming into force of the Convention, procedure for ratification, accession and denunciation and the right to call for a fresh conference to consider amendments to the Rules contained in the Convention).

## The Hamburg Rules

### United Nations Convention on the Carriage of Goods by Sea, 1978

#### Preamble

Status of this Convention

The States Parties to this Convention,

Having recognised the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

Have decided to conclude a Convention for this purpose and have thereto agreed as follows:

#### PART I - GENERAL PROVISIONS

##### Article 1 - Definitions

In this Convention:

- 1 . "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
- 2 . "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
- 3 . "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.
- 4 . "Consignee" means the person entitled to take delivery of the goods.
- 5 . "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar Article of transport or where they are packed, "goods" includes such Article of transport or packaging if supplied by the shipper.
- 6 . "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.
- 7 . "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

8 . "Writing" includes, inter alia, telegram and telex.

##### Article 2 - Scope of application

- 1 . The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:
  - (a) The port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
  - (b) The port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
  - (c) One of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
  - (d) The bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
  - (e) The bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

2 . The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3 . The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4 . If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this Article apply.

##### Article 3 - Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

#### PART II - LIABILITY OF THE CARRIER

##### Article 4 - Period of responsibility

- 1 . The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.
- 2 . For the purpose of paragraph 1 of this Article, the carrier is deemed to be in charge of the goods
  - (a) From the time he has taken over the goods from:
  - (i) The shipper, or a person acting on his behalf; or



(ii) An authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) Until the time he has delivered the goods:

(i) By handing over the goods to the consignee; or

(ii) In cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge, or

(iii) By handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this Article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

#### Article 5 - Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in Article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this Article.

4. (a) The carrier is liable

(i) For loss or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

(ii) For such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipment practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof

that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

#### Article 6 - Limits of liability

1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of Article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this Article, the following rules apply:

(a) Where a container, pallet or similar Article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such Article of transport are deemed packages or shipping units. Except as aforesaid the goods in such Article of transport are deemed one shipping unit.

(b) In cases where the Article of transport itself has been lost or damaged, that Article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. Unit of account means the unit of account mentioned in Article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

#### Article 7 - Application to non - contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

2. If such action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3 . Except as provided in Article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this Article shall not exceed the limits of liability provided for in this Convention.

#### **Article 8 - Loss of right to limit responsibility**

1 . The carrier is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2 . Notwithstanding the provisions of paragraph 2 of Article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

#### **Article 9 - Deck cargo**

1 . The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

2 . If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3 . Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this Article or where the carrier may not under paragraph 2 of this Article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of Article 6 or Article 8 of this Convention, as the case may be.

4 . Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of Article 8.

#### **Article 10 - Liability of the carrier and actual carrier**

1 . Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2 . All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of Article 7 and of paragraph 2 of Article 8 apply if an action is brought against a servant or agent of the actual carrier.

3 . Any special agreement under which the carrier assumes obligations not imposed by this

Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4 . Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5 . The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

6 . Nothing in this Article shall prejudice any right of recourse as between the carrier and the actual carrier.

#### **Article 11 - Through carriage**

1 . Notwithstanding the provisions of paragraph 1 of Article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2 . The actual carrier is responsible in accordance with the provisions of paragraph 2 of Article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

### **PART III - LIABILITY OF THE SHIPPER**

#### **Article 12 - General rule**

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

#### **Article 13 - Special rules on dangerous goods**

1 . The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2 . Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

(a) The shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and

(b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3 . The provisions of paragraph 2 of this Article may not be invoked by any person if during the

carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this Article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of Article 5.

#### PART IV - TRANSPORT DOCUMENTS

##### Article 14 - Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if no inconsistent with the law of the country where the bill of lading is issued.

##### Article 15 - Contents of bill of lading

1. The bill of lading must include, inter alia, the following particulars:

- (a) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
- (b) the apparent condition of the goods;
- (c) the name and principal place of business of the carrier;
- (d) the name of the shipper;
- (e) the consignee if named by the shipper;
- (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
- (g) the port of discharge under the contract of carriage by sea;
- (h) the number of originals of the bill of lading, if more than one;
- (i) the place of issuance of the bill of lading;
- (j) the signature of the carrier or a person acting on his behalf;
- (k) the freight to the extent payable by the consignee or other indication that freight is payable by him;

(l) the statement referred to in paragraph 3 of Article 23;

(m) the statement, if applicable, that the goods shall or may be carried on deck;

(n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and

(o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of Article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this Article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this Article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of Article 1.

##### Article 16 - Bills of lading: reservations and evidentiary effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this Article has been entered:

(a) The bill of lading is prima facie evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(b) Proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (h) of Article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is prima facie evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

**Article 17 - Guarantees by the shipper**

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this Article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this Article.

4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

**Article 18 - Documents other than bills of lading**

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

**PART V - CLAIMS AND ACTIONS****Article 19 - Notice of loss, damage or delay**

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is prima facie evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this Article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this Article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of Article 4, whichever is later, the failure to give such notice is prima facie evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this Article, notice given to a person acting on the carrier's or the actual carriers' behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

**Article 20 - Limitation of actions**

1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

**Article 21 - Jurisdiction**

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

(a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or

(b) The place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(c) The port of loading or the port of discharge; or

(d) Any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this Article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this Article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this Article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4. (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this Article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action instituted is not enforceable in the country in which the new proceedings are instituted.

(b) For the purpose of this Article the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;

(c) For the purpose of this Article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2 (a) of this Article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

#### Article 22 - Arbitration

1. Subject to the provisions of this Article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charterparty does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) A place in a State within whose territory is situated:

(i) The principal place of business of the defendant or, in the absence thereof, the habitual

residence of the defendant; or

(ii) The place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(iii) The port of loading or the port of discharge; or

(b) Any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraph 3 and 4 of this Article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.

6. Nothing in this Article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

#### PART VI - SUPPLEMENTARY PROVISIONS

##### Article 23 - Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.

2. Notwithstanding the provisions of paragraph 1 of this Article, a carrier may increase his responsibilities and obligations under this Convention.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present Article, or as a result of the omission of the statement referred to in paragraph 3 of this Article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

##### Article 24 - General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of Article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect

of any such contribution made or any salvage paid.

#### **Article 25 - Other conventions**

**1.** This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

**2.** The provisions of Articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said Articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of Article 22 of this Convention.

**3.** No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

**(a)** Under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

**(b)** By virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

**4.** No liability that arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

**5.** Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

#### **Article 26 - Unit of account**

**1.** The unit of account referred to in Article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

**2.** Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as: 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of gross weight of the goods.

**3.** The monetary unit referred to in paragraph 2 of this Article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

**4.** The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this Article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in Article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion mentioned in paragraph 3 of this Article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this Article and whenever there is a change in the manner of such calculation or in the result of such conversion.

### **PART VII - FINAL CLAUSES**

#### **Article 27 - Depositary**

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

#### **Article 28 - Signature, ratification, acceptance, approval, accession**

**1.** This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

**2.** This Convention is subject to ratification, acceptance or approval by the signatory States.

**3.** After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

**4.** Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

#### **Article 29 - Reservations**

No reservations may be made to this Convention.

#### **Article 30 - Entry into force**

**1.** This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession.

**2.** For each State which becomes a Contracting State to this Convention after the date of the deposit of the 20th instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

**3.** Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

#### **Article 31 - Denunciation of other conventions**

**1.** Upon becoming a Contracting State to this Convention, any State party to the International

Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this Article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

4. Notwithstanding Article 2 of this Convention, for the purposes of paragraph 1 of this Article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

#### **Article 32 - Revision and amendment**

1. At the request of not less than one-third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

#### **Article 33 - Revision of the limitation amounts and unit of account or monetary unit**

1. Notwithstanding the provisions of Article 32, a conference only for the purpose of altering the amount specified in Article 6 and paragraph 2 of Article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of Article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into

force of an amendment to this Convention, is deemed to apply to the Convention as amended.

#### **Article 34 - Denunciation**

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Done at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

In witness whereof the undersigned plenipotentiaries, being duly authorised by their respective Governments, have signed the present Convention.

Common understanding adopted by the United Nations Conference on the

Carriage of Goods by Sea (A/CONF.89/13, annex 11)

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.

Resolution adopted by the United Nations Conference on the Carriage of Goods by Sea (A/CON.89/13, annex III)

The United Nations Conference on the Carriage of Goods by Sea,

Noting with appreciation the kind invitation of the Federal Republic of Germany to hold the Conference in Hamburg,

Being aware that the facilities placed at the disposal of the Conference and the generous hospitality bestowed on the participants by the Government of the Federal Republic of Germany and by the Free and Hanseatic City of Hamburg, have in no small measure contributed to the success of the Conference.

Expresses its gratitude to the Government and people of the Federal Republic of Germany, and

Having adopted the Convention on the Carriage of Goods by Sea on the basis of a draft Convention prepared by the United Nations Commission on International Trade Law at the request of the United Nations Conference on Trade and Development,


Expresses its gratitude to the United Nations Commission on International Trade Law and to the United Nations Conference on Trade and Development for their outstanding contribution to the simplification and harmonisation of the law of the carriage of goods by sea, and

Decides to designate the Convention adopted by the Conference as the: "UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978", and

Recommends that the rules embodied therein be known as the "HAMBURG RULES".



Hague Visby 19	Hamburg 1993	Rotterdam 2009
<p>Art III Rule 1 Exercise due diligence before and at beginning of voyage to make vessel seaworthy, equip, man, and cargoworthy</p> <p>Art III Rule 2 Properly and carefully load, handle, stow, carry, keep, care for and discharge goods.</p>	<p>Art 5.1 Carrier, servant and agents must take all measures that could reasonably be required to avoid the event causing loss and its consequences.</p>	<p>Art 13 Properly and carefully receive, load, handle, stow, carry, keep, care for, unload, and deliver the goods. Load, handle, stow, unload can be made responsibility of shipper.</p> <p>Art 14 Before, at the beginning of, and during the voyage by sea – exercise due diligence to make and keep the ship seaworthy, equip, and man, and cargoworthy.</p>
<p>Defences for careful to carry listed in ArtIV.2. Seaworthiness only defence is to show exercise of due diligence to make vessel seaworthy.</p>	<p>Art 5.1 Carrier must prove that he, servant and agents took take all measures that could reasonably be required to avoid the event causing loss and its consequences.</p>	<p>Art 17 Similar to HV ArtIV.2 except no error in navigation defence. Unseaworthiness – not causative or is able to show exercise of due diligence to make vessel seaworthy.</p>
<p>Limit of liability: ArtIV Rule 5: 2 2SDR per kg or 666.67SDR per package</p>	<p>2.5SDR per kg or 835SDR per package or shipping unit</p>	<p>3SDR per kg or 875SDR per package or other shipping unit whichever amount is the higher.</p>
<p>Art IV Rule 5 (e) Right to limit lost if carrier intends to cause loss or is reckless knowing loss would probably result.</p>	<p>Art 8 Carrier will only lose right to limit liability if he intended to cause loss or was reckless knowing such loss would probably result.</p>	<p>Art 61 Carrier will only lose right to limit liability if he intended to cause loss or was reckless knowing such loss would probably result.</p>
<p>Time limit to claim: 12 months</p>	<p>Time limit to claim: 24 months</p>	<p>Time limit to claim: 24 months</p>
<p>10 Articles</p>	<p>34 Articles</p>	<p>96 Articles</p>

1. Shipbroker		THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM TIME-CHARTER (Box Layout 1974) CODE NAME: "BALTIME 1939"		 <b>PART I</b>
		2. Place and date		
3. Owners/Place of business		4. Charterers/Place of business		
5. Vessel's name		6. GRT/NRT		
7. Class		8. Indicated horse power		
9. Total tons d.w. (abt.) on Board of Trade summer freeboard		10. Cubic feet grain/bale capacity		
11. Permanent bunkers (abt.)				
12. Speed capability in knots (abt.) on a consumption in tons (abt.) of				
13. Present position				
14. Period of hire (Cl. 1)		15. Port of delivery (Cl. 1)		
		16. Time of delivery (Cl. 1)		
17. (a) Trade limits (Cl. 2)				
(b) Cargo exclusions specially agreed				
18. Bunkers on re-delivery (state min. and max. quantity) (Cl. 5)				
19. Charter hire (Cl. 6)		20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6)		
21. Place or range of re-delivery (Cl. 7)		22. War (only to be filled in if Section (C) agreed) (Cl. 21)		
23. Cancelling date (Cl. 22)		24. Place of arbitration (only to be filled in if place other than London agreed) (Cl. 23)		
25. Brokerage commission and to whom payable (Cl. 25)		26. Numbers of additional clauses covering special provisions, if agreed		

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)
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# PART II

## "BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

It is agreed between the party mentioned in Box 3 as owners of the Vessel named in Box 5 of the gross/net Register tonnage indicated in Box 6, classed as stated in Box 7 and of indicated horse power as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on Board of Trade summer freeboard inclusive of bunkers, stores, provisions and boiler water, having as per builder's plan a cubic-feet grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons best Welsh coal or oil-fuel stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows:			1	dinary runners capable of handling lifts up to 2 tons.	81	10. <b>Directions and Logs</b>	159
			2		82	The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents.	160 161 162 163
			3				
			4	5. <b>Bunkers</b>	83		
			5	The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports.	84 85 86 87		
			6	The Vessel to be re-delivered with not less than the number of tons and not exceeding the number of tons of coal or oil-fuel in the Vessel's bunkers stated in Box 18.	88 89 90 91	11. <b>Suspension of Hire etc.</b>	164
			7			(A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than twentyfour consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.	165 166 167 168 169 170 171 172 173 174 175
			8	6. <b>Hire</b>	92	(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.	176 177 178 179 180 181 182 183 184 185
			9	The Charterers to pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners.	93 94 95		
			10	<i>Payment</i>	96	12. <b>Cleaning Boilers</b>	186
			11	Payment of hire to be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20.	97 98 99 100	Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready.	187 188 189 190 191
			12	In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.	101 102 103 104 105 106 107		
1. <b>Period/Port of Delivery/Time of Delivery</b>	19	The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, she being in every way fitted for ordinary cargo service.	20 21 22 23 24 25 26 27 28 29 30	7. <b>Re-delivery</b>	108		
		The Vessel to be delivered at the time indicated in Box 16.	31 32	The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.	109 110 111 112 113 114 115 116	13. <b>Responsibility and Exemption</b>	192
2. <b>Trade</b>	33	No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped.	34 35 36 37 38 39 40 41 42	<i>Notice</i>	117	The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general.	193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209
				The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.	118 119 120	The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.	210 211 212 213 214 215 216
				Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.	121 122 123 124 125 126 127 128 129 130	14. <b>Advances</b>	217
3. <b>Owners to Provide</b>	43	The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.	44 45 46 47 48	8. <b>Cargo Space</b>	131	The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 per cent. p.a., such advances to be deducted from hire.	218 219 220 221 222
		The Owners to provide one winchman per hatch. If further winchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified shore-winchmen.	49 50 51 52 53	The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.	132 133 134 135 136		
4. <b>Charterers to Provide</b>	54	The Charterers to provide and pay for all coals, including galley coal, oil-fuel, water for boilers, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, Officers and Crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection).	55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74	9. <b>Master</b>	137	15. <b>Excluded Ports</b>	223
		All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and or	75 76 77 78 79 80	The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.	138 139 140 141 142 143 144 145 146 147 148 149 150 151 152	The Vessel not to be ordered to nor bound to enter: a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel	224 225 226 227
				If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.	153 154 155 156 157 158	b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the	228 229 230 231 232 233 234 235 236 237

## PART II

### "BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.	238 239 240 241	Unforeseen detention through any of above causes to be for the Charterers' account.	242 243
<b>16. Loss of Vessel</b>	244		
Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.	245 246 247 248 249 250 251		
<b>17. Overtime</b>	252		
The Vessel to work day and night if required. The Charterers to refund the Owners their outlays for all overtime paid to Officers and Crew according to the hours and rates stated in the Vessel's articles.	253 254 255 256 257		
<b>18. Lien</b>	258		
The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	259 260 261 262 263 264		
<b>19. Salvage</b>	265		
All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.	266 267 268 269 270 271 272 273 274		
<b>20. Sublet</b>	275		
The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.	276 277 278 279 280		
<b>21. War</b>	281		
(A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.	282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299		
(B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of Clause 11 hire to be paid for all time lost including any lost owing to loss of or injury to the Master, Officers, or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks.	300 301 302 303 304 305 306 307 308 309 310 311 312 313		
(C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.	314 315 316 317 318 319 320 321 322		
(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.	323 324 325 326 327 328 329 330 331 332 333		
(E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agreed, the Vessel to be re-delivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharge of any cargo on board.	334 335 336 337 338 339 340 341 342 343 344		
(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation.	345 346 347		
<i>Section (C) is optional and should be considered deleted unless agreed according to Box 22.</i>	348 349		
<b>22. Cancelling</b>	350		
Should the Vessel not be delivered by the date indicated in Box 23, the Charterers to have the option of cancelling.	351 352 353		
If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.	354 355 356 357 358		
<b>23. Arbitration</b>	359		
Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed according to Box 24) one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.	360 361 362 363 364 365 366 367 368		
<b>24. General Average</b>	369		
General Average to be settled according to York/Antwerp Rules, 1974. Hire not to contribute to General Average.	370 371 372		
<b>25. Commission</b>	373		
The Owners to pay a commission at the rate stated in Box 25 to the party mentioned in Box 25 on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.	374 375 376 377 378 379 380 381 382		
Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.	383 384 385 386 387		

	IT IS THIS DAY AGREED between _____	1
	of _____ (hereinafter referred to as "Owners"), being owners	2
	of the good motor/steam* vessel called _____	3
	(hereinafter referred to as "the vessel") described as per <a href="#">Clause 1</a> hereof and _____	4
	of _____ (hereinafter referred to as "Charterers"):	5
Description	1. At the date of delivery of the vessel under this charter and throughout the charter period:	6
And	(a) she shall be classed by a Classification Society which is a member of the International	7
Condition of	Association of Classification Societies;	8
Vessel	(b) she shall be in every way fit to carry crude petroleum and/or its products;	9
	(c) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the	10
	service, with her machinery, boilers, hull and other equipment (including but not limited to hull	11
	stress calculator, radar, computers and computer systems) in a good and efficient state;	12
	(d) her tanks, valves and pipelines shall be oil-tight;	13
	(e) she shall be in every way fitted for burning, in accordance with the grades specified in <a href="#">Clause</a>	14
	<a href="#">29</a> hereof:	15
	(i) at sea, fuel oil for main propulsion and fuel oil/marine diesel oil* for auxiliaries;	16
	(ii) in port, fuel oil/marine diesel oil* for auxiliaries;	17
	(f) she shall comply with the regulations in force so as to enable her to pass through the Suez and	18
	Panama Canals by day and night without delay;	19
	(g) she shall have on board all certificates, documents and equipment required from time to time by	20
	any applicable law to enable her to perform the charter service without delay;	21
	(h) she shall comply with the description in the OCIMF Harmonised Vessel Particulars Questionnaire appended	22
	hereto as Appendix A, provided however that if there is any conflict between the provisions of	23
	this questionnaire and any other provision, including this <a href="#">Clause 1</a> , of this charter such other	24
	provisions shall govern;	25
	(i) her ownership structure, flag, registry, classification society and management company shall	26
	not be changed;	27
Safety	(j) Owners will operate:	28
Management	(i) a safety management system certified to comply with the International Safety	29
	Management Code ("ISM Code") for the Safe Operation of Ships and for	30
	Pollution Prevention;	31
	(ii) a documented safe working procedures system (including procedures for the	32
	identification and mitigation of risks);	33
	(iii) a documented environmental management system;	34
	(iv) documented accident/incident reporting system compliant with flag state	35
	requirements;	36
	(k) Owners shall submit to Charterers a monthly written report detailing all accidents/incidents and	37
	environmental reporting requirements, in accordance with the "Shell Safety and Environmental	38
	Monthly Reporting Template" appended hereto as Appendix B;	39
	(l) Owners shall maintain Health Safety Environmental ("HSE") records sufficient to demonstrate	40
	compliance with the requirements of their HSE system and of this charter. Charterers reserve	41
	the right to confirm compliance with HSE requirements by audit of Owners.	42
	(m) Owners will arrange at their expense for a SIRE inspection to be carried out at intervals of six	43
	months plus or minus thirty days.	44
Shipboard	2. (a) At the date of delivery of the vessel under this charter and throughout the charter period:	45
Personnel	(i) she shall have a full and efficient complement of master, officers and crew for a	46
And their	vessel of her tonnage, who shall in any event be not less than the number required	47
Duties	by the laws of the flag state and who shall be trained to operate the vessel and her	48
	equipment competently and safely;	49
	(ii) all shipboard personnel shall hold valid certificates of competence in accordance	50

\* Delete as appropriate.

\* Delete as appropriate.

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		with the requirements of the law of the flag state;	51
	(iii)	all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995 or any additions, modifications or subsequent versions thereof;	52 53 54 55
	(iv)	there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging places to be carried out efficiently and safely and to enable communications between the vessel and those loading the vessel or accepting discharge there from to be carried out quickly and efficiently;	56 57 58 59 60
	(v)	the terms of employment of the vessel's staff and crew will always remain acceptable to The International Transport Worker's Federation and the vessel will at all times carry a Blue Card;	61 62 63
	(vi)	the nationality of the vessel's officers given in the OCIMF Vessel Particulars Questionnaire referred to in <a href="#">Clause 1(h)</a> will not change without Charterers' prior agreement.	64 65 66
	(b)	Owners guarantee that throughout the charter service the master shall with the vessel's officers and crew, unless otherwise ordered by Charterers;	67 68
	(i)	prosecute all voyages with the utmost despatch;	69
	(ii)	render all customary assistance; and	70
	(iii)	load and discharge cargo as rapidly as possible when required by Charterers or their agents to do so, by night or by day, but always in accordance with the laws of the place of loading or discharging (as the case may be) and in each case in accordance with any applicable laws of the flag state.	71 72 73 74
Duty to Maintain	3. (a)	Throughout the charter service Owners shall, whenever the passage of time, wear and tear or any event (whether or not coming within <a href="#">Clause 27</a> hereof) requires steps to be taken to maintain or restore the conditions stipulated in <a href="#">Clauses 1</a> and <a href="#">2(a)</a> , exercise due diligence so to maintain or restore the vessel.	75 76 77 78
	(b)	If at any time whilst the vessel is on hire under this charter the vessel fails to comply with the requirements of <a href="#">Clauses 1, 2(a)</a> or <a href="#">10</a> then hire shall be reduced to the extent necessary to indemnify Charterers for such failure. If and to the extent that such failure affects the time taken by the vessel to perform any services under this charter, hire shall be reduced by an amount equal to the value, calculated at the rate of hire, of the time so lost. Any reduction of hire under this <a href="#">sub-Clause (b)</a> shall be without prejudice to any other remedy available to Charterers, but where such reduction of hire is in respect of time lost, such time shall be excluded from any calculation under <a href="#">Clause 24</a> .	79 80 81 82 83 84 85 86
	(c)	If Owners are in breach of their obligations under <a href="#">Clause 3(a)</a> , Charterers may so notify Owners in writing and if, after the expiry of 30 days following the receipt by Owners of any such notice, Owners have failed to demonstrate to Charterers' reasonable satisfaction the exercise of due diligence as required in <a href="#">Clause 3(a)</a> , the vessel shall be off-hire, and no further hire payments shall be due, until Owners have so demonstrated that they are exercising such due diligence.	87 88 89 90 91
	(d)	Owners shall advise Charterers immediately, in writing, should the vessel fail an inspection by, but not limited to, a governmental and/or port state authority, and/or terminal and/or major charterer of similar tonnage. Owners shall simultaneously advise Charterers of their proposed course of action to remedy the defects which have caused the failure of such inspection.	92 93 94 95
	(e)	If, in Charterers reasonably held view:	96
	(i)	failure of an inspection, or,	97
	(ii)	any finding of an inspection,	98
		referred to in <a href="#">Clause 3 (d)</a> , prevents normal commercial operations then Charterers have the option to place the vessel off-hire from the date and time that the vessel fails such inspection, or becomes commercially inoperable, until the date and time that the vessel passes a re-inspection by the same organisation, or becomes commercially operable, which shall be in a position no less favourable to Charterers than at which she went off-hire.	99 100 101 102 103
	(f)	Furthermore, at any time while the vessel is off-hire under this <a href="#">Clause 3</a> (with the exception of <a href="#">Clause 3(e)(ii)</a> ), Charterers have the option to terminate this charter by giving notice in writing with effect from the date on which such notice of termination is received by Owners or from any later date stated in such notice. This <a href="#">sub-Clause (f)</a> is without prejudice to any rights of Charterers or obligations of Owners under this charter or otherwise (including without limitation Charterers' rights under <a href="#">Clause 21</a> hereof).	104 105 106 107 108 109

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Period,	4. (a)	Owners agree to let and Charterers agree to hire the vessel for a period of _____	110
Trading		plus or minus _____ days in Charterers' option, commencing from the time and date of delivery	111
Limits and		of the vessel, for the purpose of carrying all lawful merchandise (subject always to <a href="#">Clause 28</a> )	112
Safe Places		including in particular;	113
		_____	114
		in any part of the world, as Charterers shall direct, subject to the limits of the current British	115
		Institute Warranties and any subsequent amendments thereof. Notwithstanding the foregoing,	116
		but subject to <a href="#">Clause 35</a> , Charterers may order the vessel to ice-bound waters or to any part of	117
		the world outside such limits provided that Owner's consent thereto (such consent not to be	118
		unreasonably withheld) and that Charterers pay for any insurance premium required by the	119
		vessel's underwriters as a consequence of such order.	120
	(b)	Any time during which the vessel is off-hire under this charter may be added to the charter	121
		period in Charterers' option up to the total amount of time spent off-hire. In such cases the rate	122
		of hire will be that prevailing at the time the vessel would, but for the provisions of this Clause,	123
		have been redelivered.	124
	(c)	Charterers shall use due diligence to ensure that the vessel is only employed between and at safe	125
		places (which expression when used in this charter shall include ports, berths, wharves, docks,	126
		anchorage, submarine lines, alongside vessels or lighters, and other locations including	127
		locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in	128
		this or any other clause of this charter, Charterers do not warrant the safety of any place to	129
		which they order the vessel and shall be under no liability in respect thereof except for loss or	130
		damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the	131
		vessel shall be loaded and discharged at any places as Charterers may direct, provided that	132
		Charterers shall exercise due diligence to ensure that any ship-to-ship transfer operations shall	133
		conform to standards not less than those set out in the latest published edition of the	134
		ICS/OCIMF Ship-to-Ship Transfer Guide.	135
	(d)	Unless otherwise agreed, the vessel shall be delivered by Owners dropping outward pilot at a	136
		port in _____	137
		_____	138
		at Owners' option and redelivered to Owners dropping outward pilot at a port in _____	139
		_____	140
		at Charterers' option.	141
	(e)	The vessel will deliver with last cargo(es) of _____ and will redeliver with last cargo(es) of _____	142
	(f)	Owners are required to give Charterers _____ days prior notice of delivery and Charterers are	143
		required to give Owners _____ days prior notice of redelivery.	144
Laydays/ Cancelling	5.	The vessel shall not be delivered to Charterers before _____	145
		and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their	146
		disposal on or before _____	147
Owners to Provide	6.	Owners undertake to provide and to pay for all provisions, wages (including but not limited to all	148
		overtime payments), and shipping and discharging fees and all other expenses of the master, officers	149
		and crew; also, except as provided in <a href="#">Clauses 4</a> and <a href="#">34</a> hereof, for all insurance on the vessel, for all	150
		deck, cabin and engine-room stores, and for water; for all drydocking, overhaul, maintenance and	151
		repairs to the vessel; and for all fumigation expenses and de-rat certificates. Owners' obligations under	152
		this <a href="#">Clause 6</a> extend to all liabilities for customs or import duties arising at any time during the	153
		performance of this charter in relation to the personal effects of the master, officers and crew, and in	154
		relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for	155
		and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been	156
		compelled to pay in respect of any such liability. Any amounts allowable in general average for wages	157
		and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a	158
		Period when the vessel is on-hire.	159
Charterers to Provide	7. (a)	Charterers shall provide and pay for all fuel (except fuel used for domestic services), towage	160
		and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and	161
		unloading cargoes, canal dues and all charges other than those payable by Owners in	162
		accordance with <a href="#">Clause 6</a> hereof, provided that all charges for the said items shall be for	163
		Owners' account when such items are consumed, employed or incurred for Owners' purposes or	164
		while the vessel is off-hire (unless such items reasonably relate to any service given or distance	165
		made good and taken into account under <a href="#">Clause 21</a> or <a href="#">22</a> ); and provided further that any fuel	166
		used in connection with a general average sacrifice or expenditure shall be paid for by Owners.	167
	(b)	In respect of bunkers consumed for Owners' purposes these will be charged on each occasion	168



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	by Charterers on a "first-in-first-out" basis valued on the prices actually paid by Charterers.	169
	(c) If the trading limits of this charter include ports in the United States of America and/or its protectorates then Charterers shall reimburse Owners for port specific charges relating to additional premiums charged by providers of oil pollution cover, when incurred by the vessel calling at ports in the United States of America and/or its protectorates in accordance with Charterers orders.	170 171 172 173 174
Rate of Hire	8. Subject as herein provided, Charterers shall pay for the use and hire of the vessel at the rate of United States Dollars _____ per day, and pro rata for any part of a day, from the time and date of her delivery (local time) to Charterers until the time and date of redelivery (local time) to Owners.	175 176 177 178
Payment of Hire	9. Subject to <a href="#">Clause 3 (c)</a> and <a href="#">3 (e)</a> , payment of hire shall be made in immediately available funds to: _____ Account: _____ _____	179 180 181 182 183 184
	in United States Dollars per calendar month in advance, less:	185
	(i) any hire paid which Charterers reasonably estimate to relate to off hire periods, and;	186
	(ii) any amounts disbursed on Owners' behalf, any advances and commission thereon, and charges which are for Owners' account pursuant to any provision hereof, and;	187 188
	(iii) any amounts due or reasonably estimated to become due to Charterers under <a href="#">Clause 3 (c)</a> or <a href="#">24</a> hereof,	189 190
	any such adjustments to be made at the due date for the next monthly payment after the facts have been ascertained. Charterers shall not be responsible for any delay or error by Owners' bank in crediting Owners' account provided that Charterers have made proper and timely payment.	191 192 193 194
	In default of such proper and timely payment:	195
	(a) Owners shall notify Charterers of such default and Charterers shall within seven days of receipt of such notice pay to Owners the amount due, including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise; and;	196 197 198 199
	(b) Interest on any amount due but not paid on the due date shall accrue from the day after that date up to and including the day when payment is made, at a rate per annum which shall be 1% above the U.S. Prime Interest Rate as published by the Chase Manhattan Bank in New York at 12.00 New York time on the due date, or, if no such interest rate is published on that day, the interest rate published on the next preceding day on which such a rate was so published, computed on the basis of a 360 day year of twelve 30-day months, compounded semi-annually.	200 201 202 203 204 205
Space Available to Charterers	10. The whole reach, burthen and decks on the vessel and any passenger accommodation (including Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed _____ tonnes at any time during the charter period.	206 207 208 209 210
Segregated Ballast	11. In connection with the Council of the European Union Regulation on the Implementation of IMO Resolution A747(18) Owners will ensure that the following entry is made on the International Tonnage Certificate (1969) under the section headed "remarks": "The segregated ballast tanks comply with the Regulation 13 of Annex 1 of the International Convention for the prevention of pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto, and the total tonnage of such tanks exclusively used for the carriage of segregated water ballast is _____. The reduced gross tonnage which should be used for the calculation of tonnage based fees is _____".	211 212 213 214 215 216 217 218
Instructions And Logs	12. Charterers shall from time to time give the master all requisite instructions and sailing directions, and the master shall keep a full and, correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall when required furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.	219 220 221 222 223 224
Bills of Lading	13. (a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign Bills of Lading as Charterers or their agents may direct (subject always to <a href="#">Clauses 35 (a)</a> and	225 226 227

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	<u>40)</u> without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise;	228
	(i) from signing Bills of Lading in accordance with the directions of Charterers or their agents, to the extent that the terms of such Bills of Lading fail to conform to the requirements of this charter, or (except as provided in <u>Clause 13 (b)</u> from the master otherwise complying with Charterers' or their agents' orders;	229
	(ii) from any irregularities in papers supplied by Charterers or their agents.	230
(b)	If Charterers by telex, facsimile or other form of written communication that specifically refers To this Clause request Owners to discharge a quantity of cargo either without Bills of Lading and/or at a discharge place other than that named in a Bill of Lading and/or that is different from the Bill of Lading quantity, then Owners shall discharge such cargo in accordance with Charterer's instructions in consideration of receiving the following indemnity which shall be deemed to be given by Charterers on each and every such occasion and which is limited in value to 200% of the CIF value of the cargo carried on board;	231
	" (i) Charterers shall indemnify Owners and Owners' servants and agents in respect of any liability loss or damage of whatsoever nature (including legal costs as between attorney or solicitor and client and associated expenses) which Owners may sustain by reason of delivering such cargo in accordance with Charterers' request.	232
	(ii) If any proceeding is commenced against Owners or any of Owners' servants or agents in connection with the vessel having delivered cargo in accordance with such request, Charterers shall provide Owners or any of Owners' servants or agents from time to time on demand with sufficient funds to defend the said proceedings.	233
	(iii) If the vessel or any other vessel or property belonging to Owners should be arrested or detained, or if the arrest or detention thereof should be threatened, by reason of discharge in accordance with Charterers instruction as aforesaid, Charterers shall provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such vessel or property and Charterers shall indemnify Owners in respect of any loss, damage or expenses caused by such arrest or detention whether or not same may be justified.	234
	(iv) Charterers shall, if called upon to do so at any time while such cargo is in Charterers' possession, custody or control, redeliver the same to Owners.	235
	(v) As soon as all original Bills of Lading for the above cargo which name as discharge port the place where delivery actually occurred shall have arrived and/or come into Charterers' possession, Charterers shall produce and deliver the same to Owners whereupon Charterers' liability hereunder shall cease.	236
	Provided however, if Charterers have not received all such original Bills of Lading by 24.00 hours on the day 36 calendar months after the date of discharge, that this indemnity shall terminate at that time unless before that time Charterers have received from Owners written notice that:	237
	aaa) Some person is making a claim in connection with Owners delivering cargo pursuant to Charterers request or,	238
	bbb) Legal proceedings have been commenced against Owners and/or carriers and/or Charterers and/or any of their respective servants or agents and/or the vessel for the same reason.	239
	When Charterers have received such a notice, then this indemnity shall continue in force until such claim or legal proceedings are settled. Termination of this indemnity shall not prejudice any legal rights a party may have outside this indemnity.	240
	(vi) Owners shall promptly notify Charterers if any person (other than a person to whom Charterers ordered cargo to be delivered) claims to be entitled to such cargo and/or if the vessel or any other property belonging to Owners is arrested by reason of any such discharge of cargo.	241
	vii) This indemnity shall be governed and construed in accordance with the English law and each and any dispute arising out of or in connection with this indemnity shall be subject to the jurisdiction of the High Court of Justice of England".	242
(c)	Owners warrant that the Master will comply with orders to carry and discharge against one or more Bills of Lading from a set of original negotiable Bills of Lading should Charterers so require.	243
Conduct of Vessel's Personnel	14. If Charterers complain of the conduct of the master or any of the officers or crew, Owners shall immediately investigate the complaint. If the complaint proves to be well founded, Owners shall without delay, make a change in the appointments and Owners shall in any event communicate the result of their investigations to Charterers as soon as possible.	244

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Bunkers at Delivery and Redelivery	15. Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery (whether it occurs at the end of the charter or on the earlier termination of this charter) accept and pay for all bunkers remaining on board, at the price actually paid, on a "first-in-first-out" basis. Such prices are to be supported by paid invoices.	287 288 289 290
	Vessel to be delivered to and redelivered from the charter with, at least, a quantity of bunkers on board sufficient to reach the nearest main bunkering port.	291 292
	Notwithstanding anything contained in this charter all bunkers on board the vessel shall, throughout the duration of this charter, remain the property of Charterers and can only be purchased on the terms specified in the charter at the end of the charter period or, if earlier, at the termination of the charter.	293 294 295 296
Stevedores, Pilots, Tugs	16. Stevedores, when required, shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers their agents or any affiliated company); provided, however, that:	297 298 299 300 301 302 303 304
	(a) the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and;	305 306 307
	(b) Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefor from stevedores.	308 309 310
Super-Numeraries	17. Charterers may send representatives in the vessel's available accommodation upon any voyage made under this charter, Owners finding provisions and all requisites as supplied to officers, except alcohol. Charterers paying at the rate of United States Dollars 15 (fifteen) per day for each representative while on board the vessel.	311 312 313 314
Sub-letting/ Assignment/ Novation	18. Charterers may sub-let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter. Additionally Charterers may assign or novate this charter to any company of the Royal Dutch/ Shell Group of Companies.	315 316 317
Final Voyage	19. If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the vessel before the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers' reasonable estimate of the time necessary to complete Charterers' programme up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for:	318 319 320 321
	(a) disbursements on Owners' behalf or charges for Owners' account pursuant to any provision hereof, and;	322 323
	(b) bunkers on board at redelivery pursuant to <a href="#">Clause 15</a> .	324
	Promptly after redelivery any overpayment shall be refunded by Owners or any underpayment made good by Charterers.	325 326
	If at the time this charter would otherwise terminate in accordance with <a href="#">Clause 4</a> the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.	327 328 329 330 331
Loss of Vessel	20. Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel's underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port.	332 333 334 335 336 337 338
Off-hire	21. (a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner);	339 340
	(i) due to deficiency of personnel or stores; repairs; gas-freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and	341 342 343 344 345

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		such loss continues for more than three consecutive hours (if resulting from interruption in the vessel's service) or cumulates to more than three hours (if resulting from partial loss of service); or;	346
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	(ii)	due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or;	349
			350
	(iii)	for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under <a href="#">Clause 17</a> hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or;	351
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	(iv)	due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or;	354
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	(v)	due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); then;	360
			361
		without prejudice to Charterers' rights under <a href="#">Clause 3</a> or to any other rights of Charterers hereunder, or otherwise, the vessel shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced; provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire.	362
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	(b)	If the vessel fails to proceed at any guaranteed speed pursuant to <a href="#">Clause 24</a> , and such failure arises wholly or partly from any of the causes set out in <a href="#">Clause 21(a)</a> above, then the period for which the vessel shall be off-hire under this <a href="#">Clause 21</a> shall be the difference between;	369
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	(i)	the time the vessel would have required to perform the relevant service at such guaranteed speed, and;	372
			373
	(ii)	the time actually taken to perform such service (including any loss of time arising from interruption in the performance of such service).	374
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		For the avoidance of doubt, all time included under (ii) above shall be excluded from any computation under <a href="#">Clause 24</a> .	376
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	(c)	Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes without limitation putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or purpose mentioned in <a href="#">Clause 21(a)</a> , the vessel shall be off-hire from the commencement of such deviation until the time when she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced, provided, however, that any service given or distance made good by the vessel whilst so off-hire shall be taken into account in assessing the amount to be deducted from hire. If the vessel, for any cause or purpose mentioned in <a href="#">Clause 21(a)</a> , puts into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress of weather hire shall continue to be due and payable during any time lost thereby.	378
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	(d)	If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence of such hostilities find it commercially impracticable to employ the vessel and have given Owners written notice thereof then from the date of receipt by Owners of such notice until the termination of such commercial impracticability the vessel shall be off-hire and Owners shall have the right to employ the vessel on their own account.	390
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	(e)	Time during which the vessel is off-hire under this charter shall count as part of the charter period except where Charterers declare their option to add off-hire periods under <a href="#">Clause 4(b)</a> .	395
			396
	(f)	All references to "time" in this charter party shall be references to local time except where otherwise stated.	397
			398
Periodical	22. (a)	Owners have the right and obligation to drydock the vessel at regular intervals of ____	399
Drydocking		On each occasion Owners shall propose to Charterers a date on which they wish to drydock the vessel, not less than ____ before such date, and Charterers shall offer a port for such periodical drydocking and shall take all reasonable steps to make the vessel available as near to such date as practicable.	400
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		Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers	404

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		place the vessel at Owners' disposal clear of cargo other than tank washings and residues.	405
		Owners shall be responsible for and pay for the disposal into reception facilities of such tank	406
		washings and residues and shall have the right to retain any monies received therefor, without	407
		prejudice to any claim for loss of cargo under any Bill of Lading or this charter.	408
	(b)	If a periodical drydocking is carried out in the port offered by Charterers (which must have	409
		suitable accommodation for the purpose and reception facilities for tank washings and	410
		residues), the vessel shall be off-hire from the time she arrives at such port until drydocking is	411
		completed and she is in every way ready to resume Charterers' service and is at the position at	412
		which she went off-hire or a position no less favourable to Charterers, whichever she first	413
		attains. However;	414
	(i)	provided that Owners exercise due diligence in gas-freeing, any time lost in gas-	415
		freeing to the standard required for entry into drydock for cleaning and painting the hull	416
		shall not count as off-hire, whether lost on passage to the drydocking port or after arrival	417
		there (notwithstanding <a href="#">Clause 21</a> ), and;	418
	(ii)	any additional time lost in further gas-freeing to meet the standard required for hot work	419
		or entry to cargo tanks shall count as off-hire, whether lost on passage to the drydocking	420
		port or after arrival there.	421
		Any time which, but for <a href="#">sub-Clause (i)</a> above, would be off-hire, shall not be included in any	422
		calculation under <a href="#">Clause 24</a> .	423
		The expenses of gas-freeing, including without limitation the cost of bunkers, shall be for	424
		Owners account.	425
	(c)	If Owners require the vessel, instead of proceeding to the offered port, to carry out periodical	426
		drydocking at a special port selected by them, the vessel shall be off-hire from the time when	427
		she is released to proceed to the special port until she next presents for loading in accordance	428
		with Charterers' instructions, provided, however, that Charterers shall credit Owners with the	429
		time which would have been taken on passage at the service speed had the vessel not proceeded	430
		to drydock. All fuel consumed shall be paid for by Owners but Charterers shall credit Owners	431
		with the value of the fuel which would have been used on such notional passage calculated at	432
		the guaranteed daily consumption for the service speed, and shall further credit Owners with	433
		any benefit they may gain in purchasing bunkers at the special port.	434
	(d)	Charterers shall, insofar as cleaning for periodical drydocking may have reduced the amount of	435
		tank-cleaning necessary to meet Charterers' requirements, credit Owners with the value of any	436
		bunkers which Charterers calculate to have been saved thereby, whether the vessel drydocks at	437
		an offered or a special port.	438
Ship	23.	Charterers shall have the right at any time during the charter period to make such inspection of the	439
Inspection		vessel as they may consider necessary. This right may be exercised as often and at such intervals as	440
		Charterers in their absolute discretion may determine and whether the vessel is in port or on passage.	441
		Owners affording all necessary co-operation and accommodation on board provided, however:	442
	(a)	that neither the exercise nor the non-exercise, nor anything done or not done in the exercise	443
		or non-exercise, by Charterers of such right shall in any way reduce the master's or Owners'	444
		authority over, or responsibility to Charterers or third parties for, the vessel and every aspect of	445
		her operation, nor increase Charterers' responsibilities to Owners or third parties for the same;	446
		and;	447
	(b)	that Charterers shall not be liable for any act, neglect or default by themselves, their	448
		servants or agents in the exercise or non-exercise of the aforesaid right.	449
Detailed	24. (a)	Owners guarantee that the speed and consumption of the vessel shall be as follows:-	450
Description		Average speed	451
and		in knots	452
Performance		Maximum average bunker consumption per day	453
		main propulsion	454
		auxiliaries	455
		fuel oil/ diesel oil	456
		fuel oil/diesel oil	457
		tonnes	458
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	The service speed of the vessel is _____ knots laden and _____ knots in ballast and in the absence of Charterers' orders to the contrary the vessel shall proceed at the service speed. However if more than one laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to steam at any speed within the range set out in the table (the "ordered speed").	464 465 466 467 468
	If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, and the average speed actually attained by the vessel during the currency of such order exceeds such ordered speed plus 0.5 knots (the "maximum recognised speed"), then for the purpose of calculating a decrease of hire under this <a href="#">Clause 24</a> the maximum recognised speed shall be used in place of the average speed actually attained.	469 470 471 472 473
	For the purposes of this charter the "guaranteed speed" at any time shall be the then-current ordered speed or the service speed, as the case may be.	474 475
	The average speeds and bunker consumptions shall for the purposes of this <a href="#">Clause 24</a> be calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each period stipulated in <a href="#">Clause 24 (c)</a> , but excluding any time during which the vessel is (or but for <a href="#">Clause 22 (b) (i)</a> would be) off-hire and also excluding "Adverse Weather Periods", being:	476 477 478 479 480
	(i) any periods during which reduction of speed is necessary for safety in congested waters or in poor visibility;	481 482
	(ii) any days, noon to noon, when winds exceed force 8 on the Beaufort Scale for more than 12 hours.	483 484
	(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) the vessel falls below or exceeds the performance guaranteed in <a href="#">Clause 24 (a)</a> then if such shortfall or excess results;	485 486 487
	(i) from a reduction or an increase in the average speed of the vessel, compared to the speed guaranteed in <a href="#">Clause 24 (a)</a> , then an amount equal to the value at the hire rate of the time so lost or gained, as the case may be, shall be included in the performance calculation;	488 489 490
	(ii) from an increase or a decrease in the total bunkers consumed, compared to the total bunkers which would have been consumed had the vessel performed as guaranteed in <a href="#">Clause 24 (a)</a> , an amount equivalent to the value of the additional bunkers consumed or the bunkers saved, as the case may be, based on the average price paid by Charterers for the vessel's bunkers in such period, shall be included in the performance calculation.	491 492 493 494 495
	The results of the performance calculation for laden and ballast mileage respectively shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather Periods, by dividing such addition or deduction by the number of miles over which the performance has been calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather Periods, in order to establish the total performance calculation for such period.	496 497 498 499 500 501
	Reduction of hire under the foregoing <a href="#">sub-Clause (b)</a> shall be without prejudice to any other remedy available to Charterers.	502 503
	(c) Calculations under this <a href="#">Clause 24</a> shall be made for the yearly periods terminating on each successive anniversary of the date on which the vessel enters service, and for the period between the last such anniversary and the date of termination of this charter if less than a year. Claims in respect of reduction of hire arising under this Clause during the final year or part year of the charter period shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period. Any necessary adjustment after this charter terminates shall be made by payment by Owners to Charterers or by Charterers to Owners as the case may require.	504 505 506 507 508 509 510 511
	(d) Owners and Charterers agree that this <a href="#">Clause 24</a> is assessed on the basis that Owners are not entitled to additional hire for performance in excess of the speeds and consumptions given in this <a href="#">Clause 24</a> .	512 513 514
Salvage	25. Subject to the provisions of <a href="#">Clause 21</a> hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this <a href="#">Clause 25</a> . All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share.	515 516 517 518 519 520 521
Lien	26. Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any	522

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	amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.	523 524 525
Exceptions	27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that <a href="#">Clauses 1, 2, 3</a> and <a href="#">24</a> hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restraints of labour, civil commotions or arrest or restraint of princes, rulers or people.	526 527 528 529 530 531 532 533 534 535 536 537
	(b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property.	538 539
	(c) <a href="#">Clause 27(a)</a> shall not apply to, or affect any liability of Owners or the vessel or any other relevant person in respect of;	540 541
	(i) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or;	542 543 544 545
	(ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules or the Hamburg Rules, as the case may be, which ought pursuant to <a href="#">Clause 38</a> hereof to have been incorporated in the relevant Bill of Lading (whether or not such Rules were so incorporated) or, if no such Bill of Lading is issued, to the Hague-Visby Rules unless the Hamburg Rules compulsorily apply in which case to the Hamburg Rules.	546 547 548 549 550 551 552
	(d) In particular and without limitation, the foregoing <a href="#">subsections (a)</a> and <a href="#">(b)</a> of this Clause shall not apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire.	553 554 555
Injurious Cargoes	28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers' account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments.	556 557 558 559
Grade of Bunkers	29. Charterers shall supply fuel oil with a maximum viscosity of _____ centistokes at 50 degrees centigrade and/or marine diesel oil for main propulsion and fuel oil with a maximum viscosity of _____ centistokes at 50 degrees centigrade and/or diesel oil for the auxiliaries. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof.	560 561 562 563 564
	Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with ISO Standard 8217 for Marine Residual Fuels and Marine Distillate Fuels as applicable.	565 566 567
Disbursements	30. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of two and a half per cent, and all such advances and commission shall be deducted from hire.	568 569 570
Laying-up	31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay up. Charterers may exercise the said option any number of times during the charter period.	571 572 573 574 575
Requisition	32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition, and any hire paid by such governments in respect of such requisition period shall be for Owners' account. Any such requisition period shall count as part of the charter period.	576 577 578 579
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: U.S.A., the countries or republics having been part of the former U.S.S.R (except that declaration of war or	580 581



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	hostilities solely between any two or more of the countries or republics having been part of the	582
	former USSR shall be exempted), P.R.C., U.K., Netherlands, then both Owners and Charterers shall	583
	have the right to cancel this charter.	584
Additional	34. If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war,	585
War	Charterers shall reimburse Owners for any additional insurance premia, crew bonuses and other	586
Expenses	expenses which are reasonably incurred by Owners as a consequence of such orders, provided that	587
	Charterers are given notice of such expenses as soon as practicable and in any event before such	588
	expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any	589
	subrogated rights against Charterers in respect of any claims by Owners under their war risk	590
	insurance arising out of compliance with such orders.	591
	Any payments by Charterers under this clause will only be made against proven documentation. Any	592
	discount or rebate refunded to Owners, for whatever reason, in respect of additional war risk premium	593
	shall be passed on to Charterers.	594
War Risks	35. (a) The master shall not be required or bound to sign Bills of Lading for any place which in his or	595
	Owners' reasonable opinion is dangerous or impossible for the vessel to enter or reach owing	596
	to any blockade, war, hostilities, warlike operations, civil war, civil commotions or	597
	revolutions.	598
	(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out	599
	in <a href="#">Clause 35</a> (a) or by the operation of international law, dangerous, impossible or prohibited	600
	for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel	601
	has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents	602
	shall be immediately notified in writing or by radio messages, and Charterers shall thereupon	603
	have the right to order the cargo, or such part of it as may be affected, to be loaded or	604
	discharged, as the case may be, at any other place within the trading limits of this charter	605
	(provided such other place is not itself a place of peril). If any place of discharge is or	606
	becomes a place of peril, and no orders have been received from Charterers or their agents	607
	within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge	608
	the cargo or such part of it as may be affected at any place which they or the master may in	609
	their or his discretion select within the trading limits of this charter and such discharge shall	610
	be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so	611
	discharged is concerned.	612
	(c) The vessel shall have liberty to comply with any directions or recommendations as to	613
	departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in	614
	any other wise whatsoever given by the government of the state under whose flag the vessel	615
	sails or any other government or local authority or by any person or body acting or purporting	616
	to act as or with the authority of any such government or local authority including any de	617
	facto government or local authority or by any person or body acting or purporting to act as or	618
	with the authority of any such government or local authority or by any committee or person	619
	having under the terms of the war risks insurance on the vessel the right to give any such	620
	directions or recommendations. If by reason of or in compliance with any such directions or	621
	recommendations anything is done or is not done, such shall not be deemed a deviation.	622
	If by reason of or in compliance with any such direction or recommendation the vessel does	623
	not proceed to any place of discharge to which she has been ordered pursuant to this charter,	624
	the vessel may proceed to any place which the master or Owners in his or their discretion	625
	select and there discharge the cargo or such part of it as may be affected. Such discharge shall	626
	be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so	627
	discharged is concerned.	628
	Charterers shall procure that all Bills of Lading issued under this charter shall contain the	629
	Chamber of Shipping War Risks Clause 1952.	630
Both to	36. If the liability for any collision in which the vessel is involved while performing this charter falls to	631
Blame	be determined in accordance with the laws of the United States of America, the following provision	632
Collision	shall apply:	633
Clause	"If the ship comes into collision with another ship as a result of the negligence of the other ship and	634
	any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation	635
	or in the management of the ship, the owners of the cargo carried hereunder will indemnify the	636
	carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss	637
	or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said	638
	cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo	639
	and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their	640

**Code word for this Charter Party**  
**"SHELLTIME 4"**

Issued December 1984 amended December 2003

	claim against the carrying ship or carrier."	641
	"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."	642
	Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in the foregoing terms to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the laws of the United States of America.	643
New Jason Clause	37. General average contributions shall be payable according to York/Antwerp Rules, 1994, as amended from time to time, and shall be adjusted in London in accordance with English law and practice but should adjustment be made in accordance with the law and practice of the United States of America, the following position shall apply:	644
	"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo."	645
	"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery."	646
	Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.	647
Clause Paramount	38. Charterers shall procure that all Bills of Lading issued pursuant to this charter shall contain the following:	648
	"(1) Subject to <a href="#">sub-clause (2)</a> or <a href="#">(3)</a> hereof, this Bill of Lading shall be governed by, and have effect subject to, the rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the "Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities under the Hague-Visby Rules."	649
	"(2) If there is governing legislation which applies the Hague Rules compulsorily to this Bill of Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hague Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rules."	650
	"(3) If there is governing legislation which applies the United Nations Convention on the Carriage of Goods by Sea 1978 (hereafter the "Hamburg Rules") compulsorily to this Bill of Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hamburg Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg Rules."	651
	"(4) If any term of this Bill of Lading is repugnant to the Hague-Visby Rules, or Hague Rules, or Hamburg Rules, as applicable, such term shall be void to that extent but no further."	652
	"(5) Nothing in this Bill of Lading shall be construed as in any way restricting, excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law."	653
Insurance/ITOPF	39. Owners warrant that the vessel is now, and will, throughout the duration of the charter:	654
	(a) be owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited;	655
	(b) be properly entered in _____ P & I Club, being a member of the International Group of P and I Clubs;	656
	(c) have in place insurance cover for oil pollution for the maximum on offer through the International Group of P&I Clubs but always a minimum of United States Dollars 1,000,000,000 (one thousand million);	657
	(d) have in full force and effect Hull and Machinery insurance placed through reputable brokers	658

**Code word for this Charter Party**  
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		on Institute Time Clauses or equivalent for the value of United States Dollars _____ as from	700
		time to time may be amended with Charterers' approval, which shall not be unreasonably	701
		withheld.	702
		Owners will provide, within a reasonable time following a request from Charterers to do so,	703
		documented evidence of compliance with the warranties given in this <a href="#">Clause 39</a> .	704
Export	40.	The master shall not be required or bound to sign Bills of Lading for the carriage of cargo to any	705
Restrictions		place to which export of such cargo is prohibited under the laws, rules or regulations of the country	706
		in which the cargo was produced and/or shipped.	707
		Charterers shall procure that all Bills of Lading issued under this charter shall contain the following	708
		clause:	709
		"If any laws rules or regulations applied by the government of the country in which the cargo was	710
		produced and/or shipped, or any relevant agency thereof, impose a prohibition on export of the cargo	711
		to the place of discharge designated in or ordered under this Bill of Lading, carriers shall be entitled	712
		to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the	713
		cargo, or such part of it as may be affected, which alternative place shall not be subject to the	714
		prohibition, and carriers shall be entitled to accept orders from cargo owners to proceed to and	715
		discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72	716
		hours after they or their agents have received from carriers notice of such prohibition, carriers shall	717
		be at liberty to discharge the cargo or such part of it as may be affected by the prohibition at any safe	718
		place on which they or the master may in their or his absolute discretion decide and which is not	719
		subject to the prohibition, and such discharge shall constitute due performance of the contract	720
		contained in this Bill of Lading so far as the cargo so discharged is concerned".	721
		The foregoing provision shall apply mutatis mutandis to this charter, the references to a Bill of	722
		Lading being deemed to be references to this charter.	723
Business	41.	Owners will co-operate with Charterers to ensure that the "Business Principles", as amended	724
Principles		from time to time, of the Royal Dutch/Shell Group of Companies, which are posted on the Shell	725
		Worldwide Web ( <a href="http://www.Shell.com">www.Shell.com</a> ), are complied with.	726
Drugs and	42.	(a) Owners warrant that they have in force an active policy covering the vessel which meets or	727
Alcohol		exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol On	728
		Board Ship" as published by the Oil Companies International Marine Forum (OCIMF) dated	729
		January 1990 (or any subsequent modification, version, or variation of these guidelines) and	730
		that this policy will remain in force throughout the charter period, and Owners will exercise	731
		due diligence to ensure the policy is complied with.	732
		(b) Owners warrant that the current policy concerning drugs and alcohol on board is acceptable	733
		to ExxonMobil and will remain so throughout the charter period.	734
Oil Major	43.	If, at any time during the charter period, the vessel becomes unacceptable to any Oil Major, Charterers	735
Acceptability		shall have the right to terminate the charter.	736
Pollution and	44.	Owners are to advise Charterers of organisational details and names of Owners personnel together	737
Emergency		with their relevant telephone/facsimile/e-mail/telex numbers, including the names and contact details	738
Response		of Qualified Individuals for OPA 90 response, who may be contacted on a 24 hour basis in the event of	739
		oil spills or emergencies.	740
ISPS	45.	(a) (i) From the date of coming into force of the International Code for the Security of Ships	741
Code/US		and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS	742
MTSA 2002		Code) and the US Maritime Transportation Security Act 2002 (MTSA) in relation to the	743
		Vessel and thereafter during the currency of this charter, Owners shall procure that both	744
		the Vessel and "the Company" (as defined by the ISPS Code) and the "owner" (as	745
		defined by the MTSA) shall comply with the requirements of the ISPS Code relating to	746
		the Vessel and "the Company" and the requirements of MTSA relating to the vessel and	747
		the "owner". Upon request Owners shall provide documentary evidence of compliance	748
		with this <a href="#">Clause 45(a) (i)</a> .	749
		(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by	750
		failure on the part of Owners or "the Company"/"owner" to comply with the	751
		requirements of the ISPS Code/MTSA or this Clause shall be for Owners' account.	752
	(b)	(i) Charterers shall provide Owners/Master with their full style contact details and shall	753
		ensure that the contact details of all sub-charterers are likewise provided to	754
		Owners/Master. Furthermore, Charterers shall ensure that all sub-charter parties they	755
		enter into during the period of this charter contain the following provision:	756
		"The Charterers shall provide the Owners with their full style contact details and, where	757
		sub-letting is permitted under the terms of the charter party, shall ensure that the	758

**Code word for this Charter Party**  
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	contact details of all sub-charterers are likewise provided to the Owners".	759
	(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by failure on the part of Charterers to comply with this <a href="#">sub-Clause 45(b)</a> shall be for Charterers' account.	760 761 762
	(c) Notwithstanding anything else contained in this charter costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for Charterers' account, unless such costs or expenses result solely from Owners' negligence in which case such costs or expenses shall be for Owners' account. All measures required by Owners to comply with the security plan required by the ISPS Code/MTSA shall be for Owners' account.	763 764 765 766 767 768 769
	(d) Notwithstanding any other provision of this charter, the vessel shall not be off-hire where there is a loss of time caused by Charterers' failure to comply with the ISPS Code/MTSA(when in force).	770 771 772
	(e) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	773 774
Law and Litigation	46. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.	775 776
	(b) All disputes arising out of this charter shall be referred to Arbitration in London in accordance with the Arbitration Act 1996 (or any re-enactment or modification thereof for the time being in force) subject to the following appointment procedure:	777 778 779
	(i) The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so.	780 781
	(ii) If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.	782 783 784 785 786
	(iii) If a party fails to appoint an arbitrator within the time specified in (ii) (the "Party in Default"), the party who has duly appointed his arbitrator shall give notice in writing to the Party in Default that he proposes to appoint his arbitrator to act as sole arbitrator.	787 788 789
	(iv) If the Party in Default does not within 7 days of the notice given pursuant to (iii) make The required appointment and notify the other party that he has done so the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.	790 791 792 793
	(v) Any Award of the arbitrator(s) shall be final and binding and not subject to appeal.	794
	(vi) For the purposes of this <a href="#">clause 46(b)</a> any requests or notices in writing shall be sent by fax, e-mail or telex and shall be deemed received on the day of transmission.	795 796
	(c) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that that party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.	797 798 799 800
Confidentiality	47. All terms and conditions of this charter arrangement shall be kept private and confidential	801
Construction	48. The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof.	802 803
	Appendix A: OCIMF Vessel Particulars Questionnaire for the vessel, as attached, shall be incorporated herein.	804 805
	Appendix B: Shell Safety and Environmental Monthly Reporting Template, as attached, shall be incorporated herein.	806 807
	Additional Clauses: As attached, shall be incorporated herein.	808
	SIGNED FOR OWNERS SIGNED FOR CHARTERERS	809
	FULL NAME _____ FULL NAME _____	810
	POSITION _____ POSITION _____	811

## SHELLTIME 4

<b>Shell Safety and Environmental Monthly Reporting Template</b>	Return to: Charterers marked for the attention of: Fax: Phone: Email:
--	---

Time Chartered Vessel Name	
Management Company	
Month	

<b>OIL SPILL INCIDENTS</b> (Any amount entering the water) Approximate volume in barrels and brief details	
<b>ANY OTHER INCIDENTS</b> resulting in or having potential for injury, damage or loss	

FOR DEFINITIONS OF INCIDENT CLASSIFICATION AND EXPOSURE HOURS PLEASE SEE OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF) BOOKLET "Marine Injury Reporting Guidelines" (February 1997) or any subsequent version, amendment, or variation to them

A. No. Of crew:	
B. Days in month / period:	
<b>EXPOSURE HOURS</b> (A x B x 24):	

<b>LOST TIME INJURIES (LTI'S)</b> including brief details / any treatments

<b>TOTAL RECORDABLE CASE INJURIES (TRC'S)</b> including brief details / any treatments

## PLEASE CONFIRM YOUR RETURN CONTACT DETAILS:

Name:
Phone:
Fax:
Email:

Return for each calendar month – by 10<sup>th</sup> of following month.

<b>Shell Safety and Environmental Monthly Reporting Template</b>	Return to: Charterers marked for the attention of: Fax: Phone: Email:
--	---

Time Chartered Vessel Name	
Management Company	
Month	

Notes : Please enter zero i.e. "0" where any amount is nil (rather than entering "Nil" or N/A")  
Please do not enter a % sign in the entry boxes for Fuel Sulphur content i.e. if it is 3% then just enter "3".  
Cargo loaded for LNG vessels should also be reported as tonnes and not as m³.

Monthly Consumption – Fuel Oil mt	
Sulphur content of Fuel Oil (percentage weight)	
Monthly Consumption – Diesel and/or Gas Oil mt	
Monthly Consumption (LNG ships only) – Fuel Gases mt	

Please do not enter a % sign in the entry boxes for Fuel Sulphur content i.e. if it is 3% then just enter 3".  
Cargo loaded for LNG vessels should also be reported as tonnes and not as m3.

Monthly Distance Steamed	
Monthly Cargo Loaded - mt	

Refrigerant Gas Consumption - Type	
Refrigerant Gas Consumption – Quantity (litres)	

Garbage Disposal m3 – At Sea	
Garbage Disposal m3 – Incinerated on Board	
Garbage Disposal m3 – Sent Ashore	

OIL SPILL INCIDENTS  (Other than those entering the water) Approx. volume & brief details	
--	--

Return for each calendar month – by 10<sup>th</sup> of following month.



# Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

1 **This Charter Party**, made and concluded in ..... day of ..... 19 .....

2 Between .....

3 Owners of the good ..... { Steamship } ..... of .....

4 of ..... tons gross register, and ..... Motorship ..... tons net register, having engines of ..... indicated horse power

5 and with hull, machinery and equipment in a thoroughly efficient state, and classed .....

6 at ..... of about ..... cubic feet bale capacity, and about ..... ton of 2240 lbs.

7 deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity,

8 allowing a minimum of fifty tons) on a draft of ..... feet ..... inches on ..... Summer freeboard, inclusive of permanent bunkers,

9 which are of the capacity of about ..... tons of fuel, and capable of steaming, fully laden, under good weather

10 conditions about ..... knots on a consumption of about ..... tons of best Welsh coal—best grade fuel oil—best grade Diesel oil,

11 now .....

12 ..... and ..... Charterers of the City of .....

13 **Witnesseth**, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for

14 about ..... within below mentioned trading limits.

15 Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for

16 the fulfillment of this Charter Party.

17 Vessel to be placed at the disposal of the Charterers, at .....

18 in such dock or at such wharf or place (where she may safely lie, always afloat, at all time of tide, except as otherwise provided in clause No. 6), as

19 the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be

20 ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and

21 donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same

22 time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchan-

23 dise, including petroleum or its products, in proper containers, excluding .....

24 (vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk,

25 all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports in British North

26 America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or

27 Mexico, and/or South America ..... and/or Europe

28 and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between

29 October 31st and May 15th, Hudson Bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the Baltic,

30 ..... and/or

31 ..... and/or

32 ..... and/or

33 ..... and/or

34 as the Charterers or their Agents shall direct, on the following conditions:

35 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

36 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

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

38 2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions,

39 Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into

40 a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of

41 illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this

42 charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period

43 of six months or more.

44 Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but

45 Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards

46 for dunnage, they making good any damage thereto.

47 3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on

48 board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than ..... tons and not more than

49 ..... tons and to be re-delivered with not less than ..... tons and not more than ..... tons.

50 4. That Charterers shall pay for the use and hire of the said Vessel at the rate of ..... United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and

51 stores, on ..... summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at

52 and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary

53 wear and tear excepted, to the Owners (unless lost) at ..... unless otherwise mutually agreed. Charterers are to give Owners not less than ..... days

54 notice of vessels expected date of re-delivery, and probable port.

55 5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or

56 part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes

57 due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the

58 hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Char-

59 terers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day

60 following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they

61 to have the privilege of using vessel at once, such time used to count as hire.

62 Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers on their Agents, subject

63 to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application

64 of such advances.

65 6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may

66 direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely

67 lie aground.

68 7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also

69 accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew,

70 tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers

71 paying Owners ..... per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are

72 incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

73 8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and

74 boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and

75 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

76 cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

77 9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on

78 receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

79 10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted

80 with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the

81 rate of \$1.00 per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally

82 Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

83 11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the

84 Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Char-

85 terers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the con-

86 sumption of fuel.

87 12. That the captain shall use diligence in caring for the ventilation of the cargo.

88 13. That the Charterers shall have the option of continuing this charter for a further period of .....

89

90

91



92 .....  
93 on giving written notice thereof to the Owners or their Agents ..... days previous to the expiration of the first-named term, or any declared option.  
94 14. That if required by Charterers, time not to commence before ..... and should vessel  
95 not have given written notice of readiness on or before ..... but not later than 4 p.m. Charterers or  
96 their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.  
97 15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment,  
98 grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause,  
99 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  
100 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  
101 thereof, and all extra expenses shall be deducted from the hire.  
102 16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be  
103 returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas,  
104 Rivers, Machinery, Boilers and Steam navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.  
105 The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the  
106 purpose of saving life and property.  
107 17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York,  
108 one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for  
109 the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.  
110 18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Aver-  
111 age contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess  
112 deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which  
113 might have priority over the title and interest of the owners in the vessel.  
114 19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and  
115 Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of  
116 York-Antwerp Rules 1924, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these  
117 Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into  
118 United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at  
119 the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or  
120 bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier  
121 or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if  
122 required, be made by the goods, shippers, consignees or owners of the goods to carrier before delivery. Such deposit shall, at the option of the  
123 carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the  
124 place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in  
125 United States money.  
126 In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever,  
127 whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the  
128 goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices,  
129 losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the  
130 goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or  
131 ships belonged to strangers.  
132 Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.  
133 20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the  
134 cost of replacing same, to be allowed by Owners.  
135 21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a  
136 convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from  
137 time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.  
138 .....  
139 .....  
140 22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to three tons, also  
141 providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for  
142 same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for  
143 night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The  
144 Charterers to have the use of any gear on board the vessel.  
145 23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging;  
146 steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen,  
147 deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the  
148 port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or  
149 insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned  
150 thereby.  
151 24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained  
152 in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels,  
153 etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both  
154 of which are to be included in all bills of lading issued hereunder:  
155 **U.S.A. Clause Paramount**  
156 This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April  
157 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of  
158 any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading  
159 be repugnant to said Act to any extent, such term shall be void to that extent, but no further.  
160 **Both-to-Blame Collision Clause**  
161 If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the  
162 Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried  
163 hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss  
164 or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-  
165 carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her  
166 owners as part of their claim against the carrying ship or carrier.  
167 25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be with-  
168 drawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the  
169 port or to get out after having completed loading or discharging.  
170 26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the  
171 navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.  
172 27. A commission of 2% per cent is payable by the Vessel and Owners to  
173 .....  
174 on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.  
175 28. An address commission of 2% per cent payable to ..... on the hire earned and paid under this Charter.

By cable authority from

The original Charter Party in our possession.

BROKERS.

As ..... For Owners

Code Name: "NYPE 93"

Recommended by:  
The Baltic and International Maritime Council (BIMCO)  
The Federation of National Associations of  
Ship Brokers and Agents (FONASBA)



## TIME CHARTER<sup>®</sup>

New York Produce Exchange Form  
Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc.

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946;  
Revised June 12th, 1981; September 14th 1993.

**THIS CHARTER PARTY**, made and concluded in  
this \_\_\_\_\_ day of \_\_\_\_\_

19

Between

Owners of the Vessel described below, and

Charterers.

### Description of Vessel

Name	Flag	Built	(year).
Port and number of Registry			
Classed			
Deadweight		in	
stores not exceeding		long*/metric* tons (cargo and bunkers, including freshwater and	
on summer freeboard.		long*/metric* tons) on a salt water draft of	
Capacity		cubic feet grain	cubic feet bale space.
Tonnage	GT/GRT.		
Speed about		knots, fully laden, in good weather conditions up to and including maximum	
Force	on the Beaufort wind scale, on a consumption of about		long*/metric*
tons of			

\* Delete as appropriate.

For further description see Appendix "A" (if applicable)

### 1. Duration

The Owners agree to let and the Charterers agree to hire the Vessel from the time of delivery for a period  
of \_\_\_\_\_

within below mentioned trading limits.

### 2. Delivery

The Vessel shall be placed at the disposal of the Charterers at

The Vessel on her delivery  
shall be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted  
for ordinary cargo service, having water ballast and with sufficient power to operate all cargo-handling gear  
simultaneously.

The Owners shall give the Charterers not less than \_\_\_\_\_ days notice of expected date of

delivery.	38
<b>3. <u>On-Off Hire Survey</u></b>	39
Prior to delivery and redelivery the parties shall, unless otherwise agreed, each appoint surveyors, for their respective accounts, who shall not later than at first loading port/last discharging port respectively, conduct joint on-hire/off-hire surveys, for the purpose of ascertaining quantity of bunkers on board and the condition of the Vessel. A single report shall be prepared on each occasion and signed by each surveyor, without prejudice to his right to file a separate report setting forth items upon which the surveyors cannot agree.	40 41 42 43 44
If either party fails to have a representative attend the survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party.	45 46
On-hire survey shall be on Charterers' time and off-hire survey on Owners' time.	47
<b>4. <u>Dangerous Cargo/Cargo Exclusions</u></b>	48
(a) The Vessel shall be employed in carrying lawful merchandise excluding any goods of a dangerous, injurious, flammable or corrosive nature unless carried in accordance with the requirements or recommendations of the competent authorities of the country of the Vessel's registry and of ports of shipment and discharge and of any intermediate countries or ports through whose waters the Vessel must pass. Without prejudice to the generality of the foregoing, in addition the following are specifically excluded: livestock of any description, arms, ammunition, explosives, nuclear and radioactive materials,	49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64
(b) If IMO-classified cargo is agreed to be carried, the amount of such cargo shall be limited to tons and the Charterers shall provide the Master with any evidence he may reasonably require to show that the cargo is packaged, labelled, loaded and stowed in accordance with IMO regulations, failing which the Master is entitled to refuse such cargo or, if already loaded, to unload it at the Charterers' risk and expense.	65 66 67 68 69
<b>5. <u>Trading Limits</u></b>	70
The Vessel shall be employed in such lawful trades between safe ports and safe places within	71 72
excluding	73 74 75
as the Charterers shall direct.	76
<b>6. <u>Owners to Provide</u></b>	77
The Owners shall provide and pay for the insurance of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, including boiler water; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of officers and crew.	78 79 80 81 82
<b>7. <u>Charterers to Provide</u></b>	83
The Charterers, while the Vessel is on hire, shall provide and pay for all the bunkers except as otherwise agreed; shall pay for port charges (including compulsory watchmen and cargo watchmen and compulsory garbage disposal), all communication expenses pertaining to the Charterers' business at cost, pilotages,	84 85 86

towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the Vessel), and all other usual expenses except those stated in Clause 6, but when the Vessel puts into a port for causes for which the Vessel is responsible (other than by stress of weather), then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew shall be for the Owners' account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers' account. All other fumigations shall be for the Charterers' account after the Vessel has been on charter for a continuous period of six months or more.

The Charterers shall provide and pay for necessary dunnage and also any extra fittings requisite for a special trade or unusual cargo, but the Owners shall allow them the use of any dunnage already aboard the Vessel. Prior to redelivery the Charterers shall remove their dunnage and fittings at their cost and in their time.

#### 8. Performance of Voyages

(a) The Master shall perform the voyages with due despatch, and shall render all customary assistance with the Vessel's crew. The Master shall be conversant with the English language and (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and the Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashng, discharging, and tallying, at their risk and expense, under the supervision of the Master.

(b) If the Charterers shall have reasonable cause to be dissatisfied with the conduct of the Master or officers, the Owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

#### 9. Bunkers

(a) The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the Vessel as hereunder. The Vessel shall be delivered with:  
long\*/metric\* tons of fuel oil at the price of per ton;  
tons of diesel oil at the price of per ton. The vessel shall  
be redelivered with: tons of fuel oil at the price of per ton;  
tons of diesel oil at the price of per ton.

\* Same tons apply throughout this clause.

(b) The Charterers shall supply bunkers of a quality suitable for burning in the Vessel's engines and auxiliaries and which conform to the specification(s) as set out in Appendix A.

The Owners reserve their right to make a claim against the Charterers for any damage to the main engines or the auxiliaries caused by the use of unsuitable fuels or fuels not complying with the agreed specification(s). Additionally, if bunker fuels supplied do not conform with the mutually agreed specification(s) or otherwise prove unsuitable for burning in the Vessel's engines or auxiliaries, the Owners shall not be held responsible for any reduction in the Vessel's speed performance and/or increased bunker consumption, nor for any time lost and any other consequences.

#### 10. Rate of Hire/Redelivery Areas and Notices

The Charterers shall pay for the use and hire of the said Vessel at the rate of \$  
U.S. currency, daily, or \$ U.S. currency per ton on the Vessel's total deadweight  
carrying capacity, including bunkers and stores, on summer freeboard, per 30 days,  
commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part  
of a month; hire shall continue until the hour of the day of her redelivery in like good order and condition,  
ordinary wear and tear excepted, to the Owners (unless Vessel lost) at

unless otherwise mutually agreed.

The Charterers shall give the Owners not less than	days notice of the Vessel's	135
expected date and probable port of redelivery.		136
For the purpose of hire calculations, the times of delivery, redelivery or termination of charter shall be		137
adjusted to GMT.		138
<b>11. Hire Payment</b>		139
(a) <u>Payment</u>		140
Payment of Hire shall be made so as to be received by the Owners or their designated payee in		141
, viz		142
		143
	in	144
	currency, or in United States Currency, in funds available to the	145
Owners on the due date, 15 days in advance, and for the last month or part of same the approximate		146
amount of hire, and should same not cover the actual time, hire shall be paid for the balance day by day		147
as it becomes due, if so required by the Owners. Failing the punctual and regular payment of the hire,		148
or on any fundamental breach whatsoever of this Charter Party, the Owners shall be at liberty to		149
withdraw the Vessel from the service of the Charterers without prejudice to any claims they (the Owners)		150
may otherwise have on the Charterers.		151
		152
At any time after the expiry of the grace period provided in Sub-clause 11 (b) hereunder and while the		153
hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold		154
the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever		155
for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and hire		156
shall continue to accrue and any extra expenses resulting from such withholding shall be for the		157
Charterers' account.		158
(b) <u>Grace Period</u>		159
Where there is failure to make punctual and regular payment of hire due to oversight, negligence, errors		160
or omissions on the part of the Charterers or their bankers, the Charterers shall be given by the Owners		161
clear banking days (as recognized at the agreed place of payment) written notice to rectify the		162
failure, and when so rectified within those	days following the Owners' notice, the payment shall	163
stand as regular and punctual.		164
Failure by the Charterers to pay the hire within	days of their receiving the Owners' notice as	165
provided herein, shall entitle the Owners to withdraw as set forth in Sub-clause 11 (a) above.		166
(c) <u>Last Hire Payment</u>		167
Should the Vessel be on her voyage towards port of redelivery at the time the last and/or the penultimate		168
payment of hire is/are due, said payment(s) is/are to be made for such length of time as the Owners and		169
the Charterers may agree upon as being the estimated time necessary to complete the voyage, and taking		170
into account bunkers actually on board, to be taken over by the Owners and estimated disbursements for		171
the Owners' account before redelivery. Should same not cover the actual time, hire is to be paid for the		172
balance, day by day, as it becomes due. When the Vessel has been redelivered, any difference is to be		173
refunded by the Owners or paid by the Charterers, as the case may be.		174
(d) <u>Cash Advances</u>		175
Cash for the Vessel's ordinary disbursements at any port may be advanced by the Charterers, as required		176
by the Owners, subject to 2½ percent commission and such advances shall be deducted from the hire.		177
The Charterers, however, shall in no way be responsible for the application of such advances.		178
<b>12. Berths</b>		179



The Vessel shall be loaded and discharged in any safe dock or at any safe berth or safe place that Charterers or their agents may direct, provided the Vessel can safely enter, lie and depart always afloat at any time of tide.

**13. Spaces Available**

(a) The whole reach of the Vessel's holds, decks, and other cargo spaces (not more than she can reasonably and safely stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for the Vessel's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

(b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature caused to the Vessel as a result of the carriage of deck cargo and which would not have arisen had deck cargo not been loaded.

**14. Supercargo and Meals**

The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and same fare as provided for the Master's table, the Charterers paying at the rate of per day. The Owners shall victual pilots and customs officers, and also, when authorized by the Charterers or their agents, shall victual tally clerks, stevedore's foreman, etc., Charterers paying at the rate of per meal for all such victualling.

**15. Sailing Orders and Logs**

The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.

**16. Delivery/Cancelling**

If required by the Charterers, time shall not commence before Vessel not be ready for delivery on or before the Charterers shall have the option of cancelling this Charter Party. and should the but not later than hours,

**Extension of Cancelling**

If the Owners warrant that, despite the exercise of due diligence by them, the Vessel will not be ready for delivery by the cancelling date, and provided the Owners are able to state with reasonable certainty the date on which the Vessel will be ready, they may, at the earliest seven days before the Vessel is expected to sail for the port or place of delivery, require the Charterers to declare whether or not they will cancel the Charter Party. Should the Charterers elect not to cancel, or should they fail to reply within two days or by the cancelling date, whichever shall first occur, then the seventh day after the expected date of readiness for delivery as notified by the Owners shall replace the original cancelling date. Should the Vessel be further delayed, the Owners shall be entitled to require further declarations of the Charterers in accordance with this Clause.

**17. Off Hire**

In the event of loss of time from deficiency and/or default and/or strike of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the Vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the Vessel, the payment of

hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. 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 bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire.

**18. Sublet**

Unless otherwise agreed, the Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party.

**19. Drydocking**

The Vessel was last drydocked

\*(a) The Owners shall have the option to place the Vessel in drydock during the currency of this Charter at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances.

\*(b) Except in case of emergency no drydocking shall take place during the currency of this Charter Party.

*\* Delete as appropriate*

**20. Total Loss**

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

**21. Exceptions**

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers, and navigation, and errors of navigation throughout this Charter, always mutually excepted.

**22. Liberties**

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

**23. Liens**

The Owners shall have a lien upon all cargoes and all sub-freights and/or sub-hire for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessities or services, including any port expenses and bunkers, on the credit of the Owners or in the Owners' time.



<b>24. <u>Salvage</u></b>	268
All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting Owners' and Charterers' expenses and crew's proportion.	269 270
<b>25. <u>General Average</u></b>	271
General average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in and settled in currency.	272 273 274
The Charterers shall procure that all bills of lading issued during the currency of the Charter Party will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof and will include the "New Jason Clause" as per Clause 31.	275 276 277 278
Time charter hire shall not contribute to general average.	279
<b>26. <u>Navigation</u></b>	280
Nothing herein stated is to be construed as a demise of the Vessel to the Time Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.	281 282 283
<b>27. <u>Cargo Claims</u></b>	284
Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club New York Produce Exchange Agreement of February 1970, as amended May, 1984, or any subsequent modification or replacement thereof.	285 286 287
<b>28. <u>Cargo Gear and Lights</u></b>	288
The Owners shall maintain the cargo handling gear of the Vessel which is as follows:	289 290 291 292
providing gear (for all derricks or cranes) capable of lifting capacity as described. The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' stevedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on hire.	293 294 295 296 297 298 299 300 301 302
<b>29. <u>Crew Overtime</u></b>	303
In lieu of any overtime payments to officers and crew for work ordered by the Charterers or their agents, the Charterers shall pay the Owners, concurrently with the hire per month or pro rata.	304 305 306
<b>30. <u>Bills of Lading</u></b>	307
(a) The Master shall sign the bills of lading or waybills for cargo as presented in conformity with mates or tally clerk's receipts. However, the Charterers may sign bills of lading or waybills on behalf of the Master, with the Owner's prior written authority, always in conformity with mates or tally clerk's receipts.	308 309 310

(b) All bills of lading or waybills shall be without prejudice to this Charter Party and the Charterers shall indemnify the Owners against all consequences or liabilities which may arise from any inconsistency between this Charter Party and any bills of lading or waybills signed by the Charterers or by the Master at their request.

(c) Bills of lading covering deck cargo shall be claused: "Shipped on deck at Charterers', Shippers' and Receivers' risk, expense and responsibility, without liability on the part of the Vessel, or her Owners for any loss, damage, expense or delay howsoever caused."

### 31. Protective Clauses

This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder:

#### (a) CLAUSE PARAMOUNT

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague-Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this bill of lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further."

and

#### (b) BOTH-TO-BLAME COLLISION CLAUSE

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and

#### (c) NEW JASON CLAUSE

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

and

#### (d) U.S. TRADE - DRUG CLAUSE

"In pursuance of the provisions of the U.S. Anti Drug Abuse Act 1986 or any re-enactment thereof, the Charterers warrant to exercise the highest degree of care and diligence in preventing unmanifested narcotic drugs and marijuana to be loaded or concealed on board the Vessel."

Non-compliance with the provisions of this clause shall amount to breach of warranty for consequences 358  
of which the Charterers shall be liable and shall hold the Owners, the Master and the crew of the Vessel 359  
harmless and shall keep them indemnified against all claims whatsoever which may arise and be made 360  
against them individually or jointly. Furthermore, all time lost and all expenses incurred, including fines, 361  
as a result of the Charterers' breach of the provisions of this clause shall be for the Charterer's account 362  
and the Vessel shall remain on hire. 363

Should the Vessel be arrested as a result of the Charterers' non-compliance with the provisions of this 364  
clause, the Charterers shall at their expense take all reasonable steps to secure that within a reasonable 365  
time the Vessel is released and at their expense put up the bails to secure release of the Vessel. 366

The Owners shall remain responsible for all time lost and all expenses incurred, including fines, in the 367  
event that unmanifested narcotic drugs and marijuana are found in the possession or effects of the 368  
Vessel's personnel." 369

and 370

(e) WAR CLAUSES 371

"(i) No contraband of war shall be shipped. The Vessel shall not be required, without the consent of the 372  
Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state 373  
of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration 374  
of war or not, where the Vessel, cargo or crew might reasonably be expected to be subject to capture, 375  
seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de 376  
facto authority or any purported governmental organization maintaining naval, military or air forces). 377

(ii) If such consent is given by the Owners, the Charterers will pay the provable additional cost of insuring 378  
the Vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not 379  
exceeding a valuation of In addition, the Owners may purchase and the 380  
Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, 381  
total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a 382  
government program, the Vessel shall not be required to enter or remain at any such port or zone. 383

(iii) In the event of the existence of the conditions described in (i) subsequent to the date of this Charter, 384  
or while the Vessel is on hire under this Charter, the Charterers shall, in respect of voyages to any such 385  
port or zone assume the provable additional cost of wages and insurance properly incurred in connection 386  
with master, officers and crew as a consequence of such war, warlike operations or hostilities. 387

(iv) Any war bonus to officers and crew due to the Vessel's trading or cargo carried shall be for the 388  
Charterers' account." 389

32. **War Cancellation** 390

In the event of the outbreak of war (whether there be a declaration of war or not) between any two or 391  
more of the following countries: 392

either the Owners or the Charterers may cancel this Charter Party. Whereupon, the Charterers shall 396  
redeliver the Vessel to the Owners in accordance with Clause 10; if she has cargo on board, after 397  
discharge thereof at destination, or, if debarred under this Clause from reaching or entering it, at a near 398  
open and safe port as directed by the Owners; or, if she has no cargo on board, at the port at which she 399  
then is; or, if at sea, at a near open and safe port as directed by the Owners. In all cases hire shall 400  
continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this 401  
Charter Party shall apply until redelivery. 402

33. **Ice** 403

The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area 404

where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging. Subject to the Owners' prior approval the Vessel is to follow ice-breakers when reasonably required with regard to her size, construction and ice class.

#### 34. Requisition

Should the Vessel be requisitioned by the government of the Vessel's flag during the period of this Charter Party, the Vessel shall be deemed to be off hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by the Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.  
If the period of requisition exceeds months, either party shall have the option of cancelling this Charter Party and no consequential claim may be made by either party.

#### 35. Stevedore Damage

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite Charterers to appoint a surveyor to assess the extent of such damage.

(a) In case of any and all damage(s) affecting the Vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the Vessel, the Charterers shall immediately arrange for repairs of such damage(s) at their expense and the Vessel is to remain on hire until such repairs are completed and if required passed by the Vessel's classification society.

(b) Any and all damage(s) not described under point (a) above shall be repaired at the Charterers' option, before or after redelivery concurrently with the Owners' work. In such case no hire and/or expenses will be paid to the Owners except and insofar as the time and/or the expenses required for the repairs for which the Charterers are responsible, exceed the time and/or expenses necessary to carry out the Owners' work.

#### 36. Cleaning of Holds

The Charterers shall provide and pay extra for sweeping and/or washing and/or cleaning of holds between voyages and/or between cargoes provided such work can be undertaken by the crew and is permitted by local regulations, at the rate of per hold.

In connection with any such operation, the Owners shall not be responsible if the Vessel's holds are not accepted or passed by the port or any other authority. The Charterers shall have the option to re-deliver the Vessel with unclean/upswept holds against a lumpsum payment of in lieu of cleaning.

#### 37. Taxes

Charterers to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners).

#### 38. Charterers' Colors

The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.

39. **Laid up Returns** 450

The Charterers shall have the benefit of any return insurance premium receivable by the Owners from their underwriters as and when received from underwriters by reason of the Vessel being in port for a minimum period of 30 days if on full hire for this period or pro rata for the time actually on hire. 451 452 453

40. **Documentation** 454

The Owners shall provide any documentation relating to the Vessel that may be required to permit the Vessel to trade within the agreed trade limits, including, but not limited to certificates of financial responsibility for oil pollution, provided such oil pollution certificates are obtainable from the Owners' P & I club, valid international tonnage certificate, Suez and Panama tonnage certificates, valid certificate of registry and certificates relating to the strength and/or serviceability of the Vessel's gear. 455 456 457 458 459

41. **Stowaways** 460

(a) (i) The Charterers warrant to exercise due care and diligence in preventing stowaways in gaining access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers. 461 462 463

(ii) If, despite the exercise of due care and diligence by the Charterers, stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers, this shall amount to breach of charter for the consequences of which the Charterers shall be liable and shall hold the Owners harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them. Furthermore, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Charterers' account and the Vessel shall remain on hire. 464 465 466 467 468 469 470

(iii) Should the Vessel be arrested as a result of the Charterers' breach of charter according to sub-clause (a)(ii) above, the Charterers shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 471 472 473 474

(b) (i) If, despite the exercise of due care and diligence by the Owners, stowaways have gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Owners' account and the Vessel shall be off hire. 475 476 477 478

(ii) Should the Vessel be arrested as a result of stowaways having gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, the Owners shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 479 480 481 482

42. **Smuggling** 483

In the event of smuggling by the Master, Officers and/or crew, the Owners shall bear the cost of any fines, taxes, or imposts levied and the Vessel shall be off hire for any time lost as a result thereof. 484 485

43. **Commissions** 486

A commission of \_\_\_\_\_ percent is payable by the Vessel and the Owners to \_\_\_\_\_ 487 488 489 490 on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter. 491

44. **Address Commission** 492

An address commission of \_\_\_\_\_ percent is payable to \_\_\_\_\_ 493



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on hire earned and paid under this Charter.

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45. **Arbitration**

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(a) **NEW YORK**

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All disputes arising out of this contract shall be arbitrated at New York in the following manner, and subject to U.S. Law:

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One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.

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For disputes where the total amount claimed by either party does not exceed US \$ \*\*, the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.

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(b) **LONDON**

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All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in Shipping, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.

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For disputes where the total amount claimed by either party does not exceed US \$ \*\*, the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

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*\*Delete para (a) or (b) as appropriate*

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*\*\* Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.*

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If mutually agreed, clauses to , both inclusive, as attached hereto are fully incorporated in this Charter Party.

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**APPENDIX "A"**

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To Charter Party dated  
Between  
and

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**Further details of the Vessel:**

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Owners  
Charterers

**CIRCULAR REF: 2011/028**

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS  
ATTENTION INSURANCE DEPARTMENT**

**1 SEPTEMBER 2011  
MDA/PO**

**INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996 (AS AMENDED SEPTEMBER 2011)**

The Inter-Club New York Produce Exchange Agreement, which was first formulated and entered into by Clubs in 1970 (the CA), provides a relatively simple mechanism whereby liability for cargo claims arising under New York Produce Exchange Form (NYPE) or Asbatime charterparties and/or contracts of carriage authorised under such charterparties, can be swiftly and fairly apportioned between Owners and Charterers. The purpose behind the development of the ICA was to avoid costly and protracted litigation.

The ICA, since its inception, has been amended on two occasions. The first in 1984 was to meet one particular shortcoming relating to the time limit for making claims. The second in 1996, whilst not deviating from the fundamental nature of the ICA, was more substantial and was introduced in particular to meet the needs of the container trade. It took the form of re-arranging the text in a more logical way and:

- (a) broadened the definition of what constituted a Cargo Claim under the ICA
- (b) included claims arising under through or combined transport bills of lading in certain defined circumstances
- (c) amended the time bar provision to cater for the possibility that the Hamburg Rules might apply to a Cargo Claim.

Following the 1996 amendment, the ICA was renamed the Inter-Club New York Produce Exchange Agreement 1996 (the 1996 Agreement).

Both the ICA and the 1996 Agreement have worked well, been widely adopted by the maritime industry and have achieved their purpose.

However, Clubs, members of the International Group of P&I Clubs (the Group), have recently expressed concern about the time and costs associated with dealing with issues of and demands for security as between Owners and Charterers under the 1996 Agreement and felt that a greater degree of co-operation between Clubs (in the spirit of the 1996 Agreement), could substantially reduce such costs.

Clause (4)(c) of the 1996 Agreement provides:

*“(4) Apportionment under this Agreement shall only be applied to Cargo Claims where .....  
(c) the claim has been properly settled or compromised and paid.”*

**CIRCULAR**

**NORTH OF ENGLAND P&I ASSOCIATION LIMITED 100 The Quayside, Newcastle upon Tyne, UK, NE1 3DU**  
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The North of England Protecting and Indemnity Association Limited. Registered in England No. 505456. Registered Office above  
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North Insurance Management Limited. Registered in England No. 3922841. Registered Office above. Regulated in the UK by the Financial Services Authority



The Group has taken the view, which Counsel has confirmed, that this provision makes payment of a Cargo Claim (as defined under clause (3) of the 1996 Agreement) a condition precedent to a right to indemnity. Accordingly in the absence of payment, no accrued cause of action crystallises and there is therefore no right, prior to payment, for the party sued in respect of a Cargo Claim to require that the other party to the charterparty, provide security (which could be sought, by, for example, arresting or threatening to arrest a vessel or other property).

The Group believes that this situation is unsatisfactory and has led to unnecessary, wasteful and costly disputes between Clubs.

The Group has therefore taken a decision to incorporate a new provision into the 1996 Agreement, which creates an entitlement to security on the basis of reciprocity, once one of the parties to a charterparty has put up security in respect of a Cargo Claim, provided that the time limits set out in clause (6) of the 1996 Agreement have been complied with (the Security Provision).

The amended 1996 Agreement, which has been named "Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011)" (the 2011 Agreement) is attached. The Security Provision has been incorporated into the 2011 Agreement as clause (9). As will be seen, it has also been necessary to make a number of additional consequential but not substantive amendments to the 1996 Agreement.

The 2011 Agreement will take effect from 1 September 2011.

Contractually the 2011 Agreement:

(a) will not, subject to (c) below, apply to charterparties entered into prior to 01/09/11 or to claims arising under such charterparties whether such claims arise before or after 01/09/11.

(b) will apply to charterparties entered into on or after 01/09/11 and to claims arising under such charterparties if the 2011 Agreement is incorporated into such charterparties either by way of:

- (i) a specific reference to the "ICA 1996 (as amended September 2011)"; or
- (ii) if the charterparty contains a reference to the ICA 1996 'or any amendments thereto' or similar wording

(c) can be incorporated into charterparties entered into before 01/09/11 and to claims arising under such charterparties if the parties to such charterparties agree that it should e.g. by way of an addendum to the charterparty.

Notwithstanding the contractual application of the 2011 Agreement, as set out in the preceding paragraph, Clubs will nevertheless, in accordance with the second paragraph of the preamble to the 2011 Agreement, recommend to their Members that they apply the 2011 Agreement to all NYPE / Asbatime charterparties and claims arising under such charterparties whenever entered into and whether or not they incorporate the 1996 Agreement or the 2011 Agreement.

The Club recommends that Members specifically incorporate the 2011 Agreement into NYPE and Asbatime charterparties entered into on or after 01/09/11.

All Group Clubs have issued a similar Circular.

MICHAEL ASHERSON  
ASSOCIATE DIRECTOR - North Insurance Management Limited  
As Managers on behalf of the North of England P&I Association Limited

CIRCULAR

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## **Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011)**

This Agreement, the Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011) (the Agreement), made on 1 September 2011 between the P&I Clubs being members of The International Group of P&I Associations listed below (hereafter referred to as "the Clubs") amends the Inter-Club New York Produce Exchange Agreement 1996 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the Clubs but it is open to any Club to withdraw from the Agreement on giving to all the other Clubs not less than three months' written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the Clubs, other than the Club giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all Cargo Claims arising out of charterparties commenced prior to the expiration of such notice.

The Clubs will recommend to their Members without qualification that their Members adopt this Agreement for the purpose of apportioning liability for claims in respect of cargo which arise under, out of or in connection with all charterparties on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms), whether or not this Agreement has been incorporated into such charterparties.

### **Scope of application**

- (1) This Agreement applies to any charterparty which is entered into after the date hereof on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms).
- (2) The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause (6) (time bar) shall apply notwithstanding any provision of the charterparty or rule of law to the contrary.
- (3) For the purposes of this Agreement, Cargo Claim(s) mean claims for loss, damage, shortage (including slackage, ullage or pilferage), overcarriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, overcarriage or delay and include:
  - (a) any legal costs claimed by the original person making any such claim;
  - (b) any interest claimed by the original person making any such claim;
  - (c) all legal, Club correspondents' and experts' costs reasonably incurred in the defence of or in the settlement of the claim made by the original person, but shall not include any costs of whatsoever nature incurred in making a claim under this Agreement or in seeking an indemnity under the charterparty.
- (4) Apportionment under this Agreement shall only be applied to Cargo Claims where:
  - (a) the claim was made under a contract of carriage, whatever its form,
    - (i) which was authorised under the charterparty;or
  - (ii) which would have been authorised under the charterparty but for the inclusion in that contract of carriage of Through Transport or Combined Transport provisions, provided that

- (iii) in the case of contracts of carriage containing Through Transport or Combined Transport provisions (whether falling within (i) or (ii) above) the loss, damage, shortage, overcarriage or delay occurred after commencement of the loading of the cargo on to the chartered vessel and prior to completion of its discharge from that vessel (the burden of proof being on the Charterer to establish that the loss, damage, shortage, overcarriage or delay did or did not so occur); and
  - (iv) the contract of carriage (or that part of the transit that comprised carriage on the chartered vessel) incorporated terms no less favourable to the carrier than the Hague or Hague Visby Rules, or, when compulsorily applicable by operation of law to the contract of carriage, the Hamburg Rules or any national law giving effect thereto; and
- (b) the cargo responsibility clauses in the charterparty have not been materially amended. A material amendment is one which makes the liability, as between Owners and Charterers, for Cargo Claims clear. In particular, it is agreed solely for the purposes of this Agreement:
  - (i) that the addition of the words "and responsibility" in clause 8 of the New York Produce Exchange Form 1946 or 1993 or clause 8 of the Asbatime Form 1981, or any similar amendment of the charterparty making the Master responsible for cargo handling, is not a material amendment; and
  - (ii) that if the words "cargo claims" are added to the second sentence of clause 26 of the New York Produce Exchange Form 1946 or 1993 or clause 25 of the Asbatime Form 1981, apportionment under this Agreement shall not be applied under any circumstances even if the charterparty is made subject to the terms of this Agreement; and
- (c) the claim has been properly settled or compromised and paid.
- (5) This Agreement applies regardless of legal forum or place of arbitration specified in the charterparty and regardless of any incorporation of the Hague, Hague Visby Rules or Hamburg Rules therein.

#### **Time Bar**

- (6) Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed.

#### **The apportionment**

- (7) The amount of any Cargo Claim to be apportioned under this Agreement shall be the amount in fact borne by the party to the charterparty seeking apportionment, regardless of whether that claim may be or has been apportioned by application of this Agreement to another charterparty.
- (8) Cargo Claims shall be apportioned as follows:
  - (a) Claims in fact arising out of unseaworthiness and/or error or fault in navigation or management of the vessel:

100% Owners

save where the Owner proves that the unseaworthiness was caused by the loading, stowage, lashing, discharge or other handling of the cargo, in which case the claim shall be apportioned under sub-clause (b).

- (b) Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo:

100% Charterers

unless the words "and responsibility" are added in clause 8 or there is a similar amendment making the Master responsible for cargo handling in which case:

50% Charterers

50% Owners

save where the Charterer proves that the failure properly to load, stow, lash, discharge or handle the cargo was caused by the unseaworthiness of the vessel in which case:

100% Owners

- (c) Subject to (a) and (b) above, claims for shortage or overcarriage:

50% Charterers

50% Owners

unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

- (d) All other cargo claims whatsoever (including claims for delay to cargo):

50% Charterers

50% Owners

unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

## **Security**

- (9) If a party to the charterparty provides security to a person making a Cargo Claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that Cargo Claim from the other party to the charterparty, regardless of whether a right to apportionment between the parties to the charterparty has arisen under this Agreement provided that:

- (a) written notification of the Cargo Claim has been given by the party demanding security to the other party to the charterparty within the relevant period specified in clause (6); and

- (b) the party demanding such security reciprocates by providing acceptable security for an equivalent amount to the other party to the charterparty in respect of the Cargo Claim if requested to do so.

## **Governing Law**

- (10) This Agreement shall be subject to English Law and the exclusive Jurisdiction of the English Courts, unless it is incorporated into the charterparty (or the settlement of claims in respect of cargo under the charterparty is made subject to this Agreement), in which case it shall be subject to the law and jurisdiction provisions governing the charterparty.

American Steamship Owners Mutual Protection & Indemnity Association, Inc.

Assuranceforeningen Gard

Gard P&I (Bermuda) Ltd

Assuranceforeningen Skuld

The Britannia Steam Ship Insurance Association Ltd.

The Japan Ship Owners' Mutual Protection and Indemnity Association

The London Steam-Ship Owners' Mutual Insurance Association Ltd.

The North of England Protecting and Indemnity Association Ltd.

The Shipowners' Mutual Protection and indemnity Association (Luxembourg)

Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd.

The Standard Steamship Owners' Protection and Indemnity Association (Asia) Ltd

The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd.

The Standard Steamship Owners' Protection and Indemnity Association (Europe) Ltd

The Standard Steamship Owners' Protection and Indemnity Association (London) Ltd

The Steamship Mutual Underwriting Association Ltd

The Steamship Mutual Underwriting Association (Bermuda) Ltd.

Sveriges Angfartygs Assurans Forening (The Swedish Club)

The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd.

United Kingdom Mutual Steam Ship Assurance Association (Europe) Ltd

The West of England Ship Owners Mutual Insurance Association (Luxembourg)



Part I

1. Shipbroker	<b>RECOMMENDED</b> <b>THE BALTIC AND INTERNATIONAL MARITIME COUNCIL</b> <b>UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994)</b> <b>(To be used for trades for which no specially approved form is in force)</b> <b>CODE NAME: "GENCON"</b>	
	2. Place and date	
3. Owners/Place of business (Cl. 1)	4. Charterers/Place of business (Cl. 1)	
5. Vessel's name (Cl. 1)	6. GT/NT (Cl. 1)	
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1)	8. Present position (Cl. 1)	
9. Expected ready to load (abt.) (Cl. 1)		
10. Loading port or place (Cl. 1)	11. Discharging port or place (Cl. 1)	
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)		
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 4)	14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)	
15. State if vessel's cargo handling gear shall not be used (Cl. 5)	16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl. 6)	
17. Shippers/Place of business (Cl. 6)	a) Laytime for loading	
18. Agents (loading) (Cl. 6)	b) Laytime for discharging	
19. Agents (discharging) (Cl. 6)	c) Total laytime for loading and discharging	
20. Demurrage rate and manner payable (loading and discharging) (Cl. 7)	21. Cancelling date (Cl. 9)	
	22. General Average to be adjusted at (Cl. 12)	
23. Freight Tax (state if for the Owners' account) (Cl. 13 (c))	24. Brokerage commission and to whom payable (Cl. 15)	
25. Law and Arbitration (state 19 (a), 19 (b) or 19 (c) of Cl. 19; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 19)		
(a) State maximum amount for small claims/shortened arbitration (Cl. 19)	26. Additional clauses covering special provisions, if agreed	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)
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## PART II

### "Gencon" Charter (As Revised 1922, 1976 and 1994)

1. It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that: The said Vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the Charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.	1 2 3 4 5 6 7 8 9 10 11 12 13 14	always work under the supervision of the Master. (c) <i>Stevedore Damage</i> The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability. The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.	75 76 77 78 79 80 81 82 83 84 85 86 87 88
2. <b>Owners' Responsibility Clause</b> The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager. And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.	15 16 17 18 19 20 21 22 23 24 25 26 27	6. <b>Laytime</b> (a) <i>Separate laytime for loading and discharging</i> The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. (b) <i>Total laytime for loading and discharging</i> The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count. (c) <i>Commencement of laytime (loading and discharging)</i> Laytime for loading and discharging shall commence at 13.00 hours, if notice of readiness is given up to and including 12.00 hours, and at 06.00 hours next working day if notice given during office hours after 12.00 hours. Notice of readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19. If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime. If, after inspection, the Vessel is found not to be ready in all respects to load/dischARGE time lost after the discovery thereof until the Vessel is again ready to load/dischARGE shall not count as laytime. Time used before commencement of laytime shall count. * <i>Indicate alternative (a) or (b) as agreed, in Box 16.</i>	89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121
3. <b>Deviation Clause</b> The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.	28 29 30 31		
4. <b>Payment of Freight</b> (a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo. (b) <i>Prepaid.</i> If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost. Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid. (c) <i>On delivery.</i> If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally. Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.	32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49		
5. <b>Loading/Discharging</b> (a) <i>Costs/Risks</i> The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners. The Charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board, the Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed. (b) <i>Cargo Handling Gear</i> Unless the Vessel is gearless or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order. Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winches required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage. On request the Owners shall provide free of charge cranesmen/winchemen from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranesmen/winchemen shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall	50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74		
		7. <b>Demurrage</b> Demurrage at the loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owners' invoice. In the event the demurrage is not paid in accordance with the above, the Owners shall give the Charterers 96 running hours written notice to rectify the failure. If the demurrage is not paid at the expiration of this time limit and if the vessel is in or at the loading port, the Owners are entitled at any time to terminate the Charter Party and claim damages for any losses caused thereby.	122 123 124 125 126 127 128 129 130 131
		8. <b>Lien Clause</b> The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same.	132 133 134 135 136
		9. <b>Cancelling Clause</b> (a) Should the Vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party. (b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date. Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that	137 138 139 140 141 142 143 144 145 146 147 148



## PART II

### "Gencon" Charter (As Revised 1922, 1976 and 1994)

the seventh day after the new readiness date stated in the Owners' notification	149	at any time during the voyage to the port or ports of loading or after her arrival	220
to the Charterers shall be the new cancelling date.	150	there, the Master or the Owners may ask the Charterers to declare, that they	221
The provisions of sub-clause (b) of this Clause shall operate only once, and in	151	agree to reckon the laydays as if there were no strike or lock-out. Unless the	222
case of the Vessel's further delay, the Charterers shall have the option of	152	Charterers have given such declaration in writing (by telegram, if necessary)	223
cancelling the Charter Party as per sub-clause (a) of this Clause.	153	within 24 hours, the Owners shall have the option of cancelling this Charter	224
		Party. If part cargo has already been loaded, the Owners must proceed with	225
<b>10. Bills of Lading</b>	154	same, (freight payable on loaded quantity only) having liberty to complete with	226
Bills of Lading shall be presented and signed by the Master as per the	155	other cargo on the way for their own account.	227
"Congenbill" Bill of Lading form, Edition 1994, without prejudice to this Charter	156	(b) If there is a strike or lock-out affecting or preventing the actual discharging	228
Party, or by the Owners' agents provided written authority has been given by	157	of the cargo on or after the Vessel's arrival at or off port of discharge and same	229
Owners to the agents, a copy of which is to be furnished to the Charterers. The	158	has not been settled within 48 hours, the Charterers shall have the option of	230
Charterers shall indemnify the Owners against all consequences or liabilities	159	keeping the Vessel waiting until such strike or lock-out is at an end against	231
that may arise from the signing of bills of lading as presented to the extent that	160	paying half demurrage after expiration of the time provided for discharging	232
the terms or contents of such bills of lading impose or result in the imposition of	161	until the strike or lock-out terminates and thereafter full demurrage shall be	233
more onerous liabilities upon the Owners than those assumed by the Owners	162	payable until the completion of discharging, or of ordering the Vessel to a safe	234
under this Charter Party.	163	port where she can safely discharge without risk of being detained by strike or	235
		lock-out. Such orders to be given within 48 hours after the Master or the	236
<b>11. Both-to-Blame Collision Clause</b>	164	Owners have given notice to the Charterers of the strike or lock-out affecting	237
If the Vessel comes into collision with another vessel as a result of the	165	the discharge. On delivery of the cargo at such port, all conditions of this	238
negligence of the other vessel and any act, neglect or default of the Master,	166	Charter Party and of the Bill of Lading shall apply and the Vessel shall receive	239
Mariner, Pilot or the servants of the Owners in the navigation or in the	167	the same freight as if she had discharged at the original port of destination,	240
management of the Vessel, the owners of the cargo carried hereunder will	168	except that if the distance to the substituted port exceeds 100 nautical miles,	241
indemnify the Owners against all loss or liability to the other or non-carrying	169	the freight on the cargo delivered at the substituted port to be increased in	242
vessel or her owners in so far as such loss or liability represents loss of, or	170	proportion.	243
damage to, or any claim whatsoever of the owners of said cargo, paid or	171	(c) Except for the obligations described above, neither the Charterers nor the	244
payable by the other or non-carrying vessel or her owners to the owners of said	172	Owners shall be responsible for the consequences of any strikes or lock-outs	245
cargo and set-off, recouped or recovered by the other or non-carrying vessel	173	preventing or affecting the actual loading or discharging of the cargo.	246
or her owners as part of their claim against the carrying Vessel or the Owners.	174		
The foregoing provisions shall also apply where the owners, operators or those	175	<b>17. War Risks ("Voywar 1993")</b>	247
in charge of any vessel or vessels or objects other than, or in addition to, the	176	(1) For the purpose of this Clause, the words:	248
colliding vessels or objects are at fault in respect of a collision or contact.	177	(a) The "Owners" shall include the shipowners, bareboat charterers,	249
		disponent owners, managers or other operators who are charged with the	250
<b>12. General Average and New Jason Clause</b>	178	management of the Vessel, and the Master; and	251
General Average shall be adjusted in London unless otherwise agreed in Box	179	(b) "War Risks" shall include any war (whether actual or threatened), act of	252
22 according to York-Antwerp Rules 1994 and any subsequent modification	180	war, civil war, hostilities, revolution, rebellion, civil commotion, warlike	253
thereof. Proprietors of cargo to pay the cargo's share in the general expenses	181	operations, the laying of mines (whether actual or reported), acts of piracy,	254
even if same have been necessitated through neglect or default of the Owners'	182	acts of terrorists, acts of hostility or malicious damage, blockades	255
servants (see Clause 2).	183	(whether imposed against all Vessels or imposed selectively against	256
If General Average is to be adjusted in accordance with the law and practice of	184	Vessels of certain flags or ownership, or against certain cargoes or crews	257
the United States of America, the following Clause shall apply: "In the event of	185	or otherwise howsoever), by any person, body, terrorist or political group,	258
accident, danger, damage or disaster before or after the commencement of the	186	or the Government of any state whatsoever, which, in the reasonable	259
voyage, resulting from any cause whatsoever, whether due to negligence or	187	judgement of the Master and/or the Owners, may be dangerous or are	260
not, for which, or for the consequence of which, the Owners are not	188	likely to be or to become dangerous to the Vessel, her cargo, crew or other	261
responsible, by statute, contract or otherwise, the cargo shippers, consignees	189	persons on board the Vessel.	262
or the owners of the cargo shall contribute with the Owners in General Average	190	(2) If at any time before the Vessel commences loading, it appears that, in the	263
to the payment of any sacrifices, losses or expenses of a General Average	191	reasonable judgement of the Master and/or the Owners, performance of	264
nature that may be made or incurred and shall pay salvage and special charges	192	the Contract of Carriage, or any part of it, may expose, or is likely to expose,	265
incurred in respect of the cargo. If a salving vessel is owned or operated by the	193	the Vessel, her cargo, crew or other persons on board the Vessel to War	266
Owners, salvage shall be paid for as fully as if the said salving vessel or vessels	194	Risks, the Owners may give notice to the Charterers cancelling this	267
belonged to strangers. Such deposit as the Owners, or their agents, may deem	195	Contract of Carriage, or may refuse to perform such part of it as may	268
sufficient to cover the estimated contribution of the goods and any salvage and	196	expose, or may be likely to expose, the Vessel, her cargo, crew or other	269
special charges thereon shall, if required, be made by the cargo, shippers,	197	persons on board the Vessel to War Risks; provided always that if this	270
consignees or owners of the goods to the Owners before delivery."	198	Contract of Carriage provides that loading or discharging is to take place	271
		within a range of ports, and at the port or ports nominated by the Charterers	272
<b>13. Taxes and Dues Clause</b>	199	the Vessel, her cargo, crew, or other persons onboard the Vessel may be	273
(a) <u>On Vessel</u> . -The Owners shall pay all dues, charges and taxes customarily	200	exposed, or may be likely to be exposed, to War Risks, the Owners shall	274
levied on the Vessel, howsoever the amount thereof may be assessed.	201	first require the Charterers to nominate any other safe port which lies	275
(b) <u>On cargo</u> . -The Charterers shall pay all dues, charges, duties and taxes	202	within the range for loading or discharging, and may only cancel this	276
customarily levied on the cargo, howsoever the amount thereof may be	203	Contract of Carriage if the Charterers shall not have nominated such safe	277
assessed.	204	port or ports within 48 hours of receipt of notice of such requirement.	278
(c) <u>On freight</u> . -Unless otherwise agreed in Box 23, taxes levied on the freight	205	(3) The Owners shall not be required to continue to load cargo for any voyage,	279
shall be for the Charterers' account.	206	or to sign Bills of Lading for any port or place, or to proceed or continue on	280
		any voyage, or on any part thereof, or to proceed through any canal or	281
<b>14. Agency</b>	207	waterway, or to proceed to or remain at any port or place whatsoever,	282
In every case the Owners shall appoint their own Agent both at the port of	208	where it appears, either after the loading of the cargo commences, or at	283
loading and the port of discharge.	209	any stage of the voyage thereafter before the discharge of the cargo is	284
		completed, that, in the reasonable judgement of the Master and/or the	285
<b>15. Brokerage</b>	210	Owners, the Vessel, her cargo (or any part thereof), crew or other persons	286
A brokerage commission at the rate stated in Box 24 on the freight, dead-freight	211	on board the Vessel (or any one or more of them) may be, or are likely to be,	287
and demurrage earned is due to the party mentioned in Box 24.	212	exposed to War Risks. If it should so appear, the Owners may by notice	288
In case of non-execution 1/3 of the brokerage on the estimated amount of	213	request the Charterers to nominate a safe port for the discharge of the	289
freight to be paid by the party responsible for such non-execution to the	214	cargo or any part thereof, and if within 48 hours of the receipt of such	290
Brokers as indemnity for the latter's expenses and work. In case of more	215	notice, the Charterers shall not have nominated such a port, the Owners	291
voyages the amount of indemnity to be agreed.	216	may discharge the cargo at any safe port of their choice (including the port	292
		of loading) in complete fulfilment of the Contract of Carriage. The Owners	293
<b>16. General Strike Clause</b>	217	shall be entitled to recover from the Charterers the extra expenses of such	294
(a) If there is a strike or lock-out affecting or preventing the actual loading of the	218	discharge and, if the discharge takes place at any port other than the	295
cargo, or any part of it, when the Vessel is ready to proceed from her last port or	219	loading port, to receive the full freight as though the cargo had been	296

## PART II

### "Gencon" Charter (As Revised 1922, 1976 and 1994)

carried to the discharging port and if the extra distance exceeds 100 miles, 297  
to additional freight which shall be the same percentage of the freight 298  
contracted for as the percentage which the extra distance represents to 299  
the distance of the normal and customary route, the Owners having a lien 300  
on the cargo for such expenses and freight. 301

(4) If at any stage of the voyage after the loading of the cargo commences, it 302  
appears that, in the reasonable judgement of the Master and/or the 303  
Owners, the Vessel, her cargo, crew or other persons on board the Vessel 304  
may be, or are likely to be, exposed to War Risks on any part of the route 305  
(including any canal or waterway) which is normally and customarily used 306  
in a voyage of the nature contracted for, and there is another longer route 307  
to the discharging port, the Owners shall give notice to the Charterers that 308  
this route will be taken. In this event the Owners shall be entitled, if the total 309  
extra distance exceeds 100 miles, to additional freight which shall be the 310  
same percentage of the freight contracted for as the percentage which the 311  
extra distance represents to the distance of the normal and customary 312  
route. 313

(5) The Vessel shall have liberty:- 314

(a) to comply with all orders, directions, recommendations or advice as to 315  
departure, arrival, routes, sailing in convoy, ports of call, stoppages, 316  
destinations, discharge of cargo, delivery or in any way whatsoever which 317  
are given by the Government of the Nation under whose flag the Vessel 318  
sails, or other Government to whose laws the Owners are subject, or any 319  
other Government which so requires, or any body or group acting with the 320  
power to compel compliance with their orders or directions; 321

(b) to comply with the orders, directions or recommendations of any war 322  
risks underwriters who have the authority to give the same under the terms 323  
of the war risks insurance; 324

(c) to comply with the terms of any resolution of the Security Council of the 325  
United Nations, any directives of the European Community, the effective 326  
orders of any other Supranational body which has the right to issue and 327  
give the same, and with national laws aimed at enforcing the same to which 328  
the Owners are subject, and to obey the orders and directions of those who 329  
are charged with their enforcement; 330

(d) to discharge at any other port any cargo or part thereof which may 331  
render the Vessel liable to confiscation as a contraband carrier; 332

(e) to call at any other port to change the crew or any part thereof or other 333  
persons on board the Vessel when there is reason to believe that they may 334  
be subject to internment, imprisonment or other sanctions; 335

(f) where cargo has not been loaded or has been discharged by the 336  
Owners under any provisions of this Clause, to load other cargo for the 337  
Owners' own benefit and carry it to any other port or ports whatsoever, 338  
whether backwards or forwards or in a contrary direction to the ordinary or 339  
customary route. 340

(6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this 341  
Clause anything is done or not done, such shall not be deemed to be a 342  
deviation, but shall be considered as due fulfilment of the Contract of 343  
Carriage. 344

#### 18. General Ice Clause 345

*Port of loading* 346

(a) In the event of the loading port being inaccessible by reason of ice when the 347  
Vessel is ready to proceed from her last port or at any time during the voyage or 348  
on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the 349  
Master for fear of being frozen in is at liberty to leave without cargo, and this 350  
Charter Party shall be null and void. 351

(b) If during loading the Master, for fear of the Vessel being frozen in, deems it 352  
advisable to leave, he has liberty to do so with what cargo he has on board and 353  
to proceed to any other port or ports with option of completing cargo for the 354  
Owners' benefit for any port or ports including port of discharge. Any part 355  
cargo thus loaded under this Charter Party to be forwarded to destination at the 356  
Vessel's expense but against payment of freight, provided that no extra 357  
expenses be thereby caused to the Charterers, freight being paid on quantity 358  
delivered (in proportion if lumpsum), all other conditions as per this Charter 359  
Party. 360

(c) In case of more than one loading port, and if one or more of the ports are 361  
closed by ice, the Master or the Owners to be at liberty either to load the part 362  
cargo at the open port and fill up elsewhere for their own account as under 363  
section (b) or to declare the Charter Party null and void unless the Charterers 364  
agree to load full cargo at the open port. 365

*Port of discharge* 366

(a) Should ice prevent the Vessel from reaching port of discharge the 367  
Charterers shall have the option of keeping the Vessel waiting until the re- 368  
opening of navigation and paying demurrage or of ordering the Vessel to a safe 369  
and immediately accessible port where she can safely discharge without risk of 370  
detention by ice. Such orders to be given within 48 hours after the Master or the 371  
Owners have given notice to the Charterers of the impossibility of reaching port 372

of destination. 373

(b) If during discharging the Master for fear of the Vessel being frozen in deems 374  
it advisable to leave, he has liberty to do so with what cargo he has on board and 375  
to proceed to the nearest accessible port where she can safely discharge. 376

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall 377  
apply and the Vessel shall receive the same freight as if she had discharged at 378  
the original port of destination, except that if the distance of the substituted port 379  
exceeds 100 nautical miles, the freight on the cargo delivered at the substituted 380  
port to be increased in proportion. 381

#### 19. Law and Arbitration 382

\* (a) This Charter Party shall be governed by and construed in accordance with 383  
English law and any dispute arising out of this Charter Party shall be referred to 384  
arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or 385  
any statutory modification or re-enactment thereof for the time being in force. 386  
Unless the parties agree upon a sole arbitrator, one arbitrator shall be 387  
appointed by each party and the arbitrators so appointed shall appoint a third 388  
arbitrator, the decision of the three-man tribunal thus constituted or any two of 389  
them, shall be final. On the receipt by one party of the nomination in writing of 390  
the other party's arbitrator, that party shall appoint their arbitrator within 391  
fourteen days, failing which the decision of the single arbitrator appointed shall 392  
be final. 393

For disputes where the total amount claimed by either party does not exceed 394  
the amount stated in Box 25\*\* the arbitration shall be conducted in accordance 395  
with the Small Claims Procedure of the London Maritime Arbitrators 396  
Association. 397

\* (b) This Charter Party shall be governed by and construed in accordance with 398  
Title 9 of the United States Code and the Maritime Law of the United States and 399  
should any dispute arise out of this Charter Party, the matter in dispute shall be 400  
referred to three persons at New York, one to be appointed by each of the 401  
parties hereto, and the third by the two so chosen; their decision or that of any 402  
two of them shall be final, and for purpose of enforcing any award, this 403  
agreement may be made a rule of the Court. The proceedings shall be 404  
conducted in accordance with the rules of the Society of Maritime Arbitrators, 405  
Inc.. 406

For disputes where the total amount claimed by either party does not exceed 407  
the amount stated in Box 25\*\* the arbitration shall be conducted in accordance 408  
with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, 409  
Inc.. 410

\* (c) Any dispute arising out of this Charter Party shall be referred to arbitration at 411  
the place indicated in Box 25, subject to the procedures applicable there. The 412  
laws of the place indicated in Box 25 shall govern this Charter Party. 413

(d) If Box 25 in Part 1 is not filled in, sub-clause (a) of this Clause shall apply. 414

\* (a), (b) and (c) are alternatives; indicate alternative agreed in Box 25. 415

\*\* Where no figure is supplied in Box 25 in Part 1, this provision only shall be void but 416  
the other provisions of this Clause shall have full force and remain in effect. 417

October 1977

ASBATANKVOY

## TANKER VOYAGE CHARTER PARTY

### PREAMBLE

Place

Date

IT IS THIS DAY AGREED between \_\_\_\_\_  
chartered owner/owner (hereinafter called the "Owner") of the \_\_\_\_\_  
SS/MS \_\_\_\_\_ (hereinafter called the "Vessel")  
and \_\_\_\_\_ (hereinafter called the "Charterer")  
that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble  
and Part I and Part II. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

### PART I

A. Description and Position of Vessel:

Deadweight:	tons (2240 lbs.)	Classed:
Loaded draft of Vessel on assigned summer freeboard	ft.	in. in salt water.
Capacity for cargo:	tons (of 2240 lbs. each)	% more or less, Vessel's option.
Coated:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Coiled:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Last two cargoes:
Now:		Expected Ready:

B. Laydays:

Commencing:	Cancelling:
-------------	-------------

C. Loading Port(s)

Charterer's Option

D. Discharging Port(s):

Charterer's Option

E. Cargo:

Charterer's Option

F. Freight Rate:

per ton (of 2240 lbs. each).

G. Freight Payable to:

at

- H. Total Laytime in Running Hours:
- I. Demurrage per day:
- J. Commission of % is payable by Owner to  
on the actual amount freight, when and as freight is paid.
- K. The place of General Average and arbitration proceedings to be London/New York (strike out one).
- L. Tovalop: Owner warrants vessel to be a member of TOVALOP scheme and will be so maintained throughout duration of this charter.
- M. Special Provisions:

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of the day and year first above written.

Witness the signature of: \_\_\_\_\_

By: \_\_\_\_\_

Witness the Signature of: \_\_\_\_\_

By: \_\_\_\_\_

## PART II

1. **WARRANTY-VOYAGE-CARGO.** The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat) from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

2. **FREIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

3. **DEADFREIGHT.** Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

4. **NAMING LOADING AND DISCHARGE PORTS.**

(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

	<i>On a voyage to a port or ports in:</i>
ST. KITTS	Caribbean or U.S. Gulf loading port(s)
PORT SAID	Eastern Mediterranean or Persian Gulf loading port(s) (from ports west of Port Said.)

(b) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

<i>Place</i>	<i>On a voyage to a port or ports in:</i>
LAND'S END	United Kingdom/Continent (Bordeaux/Hamburg range) or Scandinavia (including Denmark)
SUEZ Mediterranean	(from Persian Gulf)
GIBRALTER	Mediterranean (from Western Hemisphere).

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used laytime.

5. **LAYDAYS.** Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect.

6. **NOTICE OF READINESS.** Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or

discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. **HOURS FOR LOADING AND DISCHARGING.** The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

8. **DEMURRAGE.** Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

9. **SAFE BERTHING-SHIFTING.** The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

10. **PUMPING IN AND OUT.** The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into its Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

11. **HOSES: MOORING AT SEA TERMINALS.** Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

12. **DUES-TAXES-WHARFAGE.** The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Irnposto de Comercio Maritime. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight, The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo; however, the Owner shall be responsible for charges for such berth when used solely for

Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a). **CARGOES EXCLUDED VAPOR PRESSURE.** Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100°F.) in excess of thirteen and one-half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-323.

(b) **FLASH POINT.** Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115°F.) (closed cup) A.S.T.M. Method D-56 shall not be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a). **ICE.** In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14(a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

15. **TWO OR MORE PORTS COUNTING AS ONE.** To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one port for purposes of calculating freight and demurrage only, subject to the following conditions:

(a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.

(b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.

(c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.

(d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. **GENERAL CARGO.** The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description; the cargo the Vessel is to load under this Charter is to consist only of liquid bulk cargo as specified in Clause I.

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.

(h) **FUMIGATION.** If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

18. **CLEANING.** The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

19. **GENERAL EXCEPTIONS CLAUSE.** The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:- any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent



defect, quality or vice of the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing, insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault of privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss of damage or delay or failure in performing hereunder, arising or resulting from:- Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

**20. ISSUANCE AND TERMS OF BILLS OF LADING**

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

(i) **CLAUSE PARAMOUNT.** This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be destined to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to the extent but no further.

(ii) **JASON CLAUSE.** In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

(iii) **GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by the Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposits being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) **BOTH TO BLAME.** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or

payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

(v) **LIMITATION OF LIABILITY.** Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) **WAR RISKS.** (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

(vii) **DEVIATION CLAUSE.** The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. **LIEN.** The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

22. **AGENTS.** The Owner shall appoint Vessel's agents at all ports.

23. **BREACH.** Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder.

24. **ARBITRATION.** Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer or the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. **SUBLET.** Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. **OIL POLLUTION CLAUSE.** Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record.

The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

BILL OF LADING

Shipped in apparent good order and condition by \_\_\_\_\_  
on board the \_\_\_\_\_ Steamship \_\_\_\_\_  
whereof \_\_\_\_\_ is Master, at the port of \_\_\_\_\_

to be delivered at the port of \_\_\_\_\_  
or so near thereto as the Vessel can safely get, always afloat, unto \_\_\_\_\_  
or order on payment of freight at the rate of \_\_\_\_\_

This shipment is carried under and pursuant to the terms of the \_\_\_\_\_ contract  
charter dated New York/London \_\_\_\_\_  
between \_\_\_\_\_ and \_\_\_\_\_, 89  
Charterer, and all the terms whatsoever of the said charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

In witness whereof the Master has signed \_\_\_\_\_ Bills of Lading  
of this tenor and date, one of which being accomplished, the others will be void.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
Master



# BIMCO

## CONGENBILL 2007

### BILL OF LADING

To be used with charter parties

Page I

Shipper	Bill of Lading No.	Reference No.
Consignee	Vessel	
Notify address	Port of loading	
	Port of discharge	
Shipper's description of goods		Gross weight
(of which          on deck at shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)		
Freight payable as per CHARTER PARTY dated:	<b>SHIPPED</b> at the Port of Loading in apparent good order and condition on the Vessel for carriage to the Port of Discharge or so near thereto as the Vessel may safely get the goods specified above.	
FREIGHT ADVANCE Received on account of freight:	Weight, measure, quality, quantity, condition, contents and value unknown.  IN WITNESS whereof the Master or Agent of the said vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.  FOR CONDITIONS OF CARRIAGE SEE OVERLEAF.	
	Date shipped on board	Place and date of issue
		Number of original Bills of Lading
Signature:  (i) .....Master Or      Master's name and signature  (ii) .....as Agent for the Master Agent's name and signature  Or      (iii) .....as Agent for the Owner* Agent's name and signature  ..... Owner *if option (iii) filled in, state Owner's name above		

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# CONGENBILL 2007

## BILL OF LADING

To be used with charter parties

Page 2

### Conditions of Carriage

- (1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated.

(2) **General Paramount Clause**

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(3) **General Average**

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or Crew.

(4) **New Jason Clause**

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier, or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Carrier before delivery.

(5) **Both-to-Blame Collision Clause**

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

For particulars of cargo, freight, destination, etc., see overleaf



1



2



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## TYPES OF CHARTERPARTY

1. Demise charter/ bareboat
2. Non-demise charter
  - Voyage charter
  - Time charter

3



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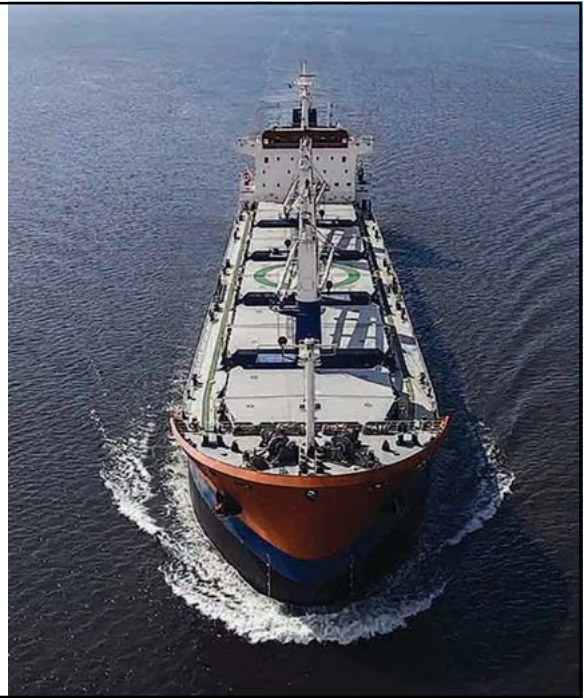
## DEMISE CHARTER

- Demise charterer employs master & crew
- Similar to leasing a car
  - All you get is the car
  - You supply the driver, the fuel, the maintenance

4

## NON-DEMISE CHARTER

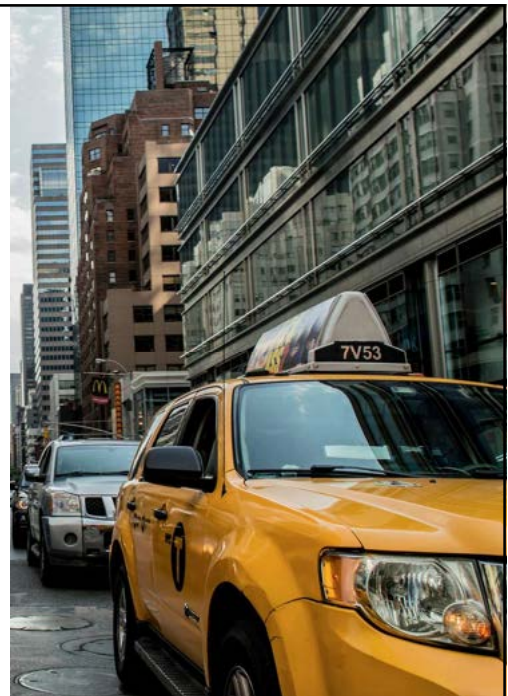
- Voyage charter
  - One voyage from port a to port b
  - Charterer pays freight to his owner (or disponent owner)
- Time charter
  - Charter is a period of time (e.g. 11-13 months)
  - Charterer pays hire – normally every 15 days in advance



5

## VOYAGE CHARTER

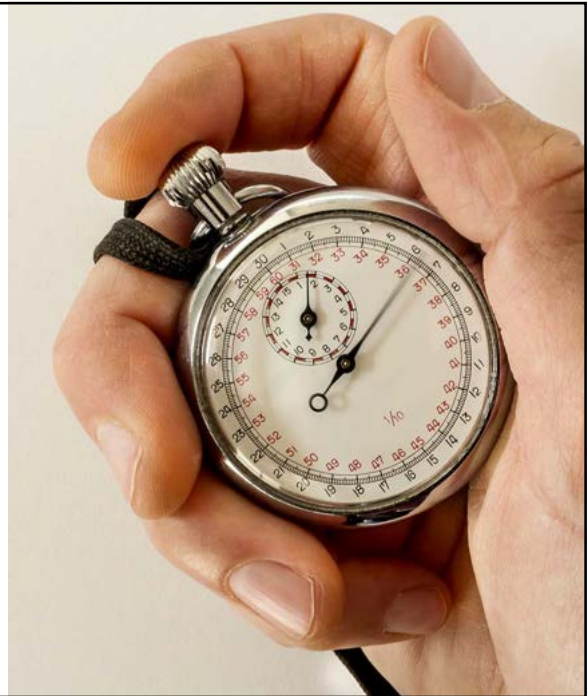
- Similar to hiring a taxi
  - Taxi driver will take you from a to b
  - An agreed fixed price
  - taxi company is responsible for the fuel and all costs applicable for the running of the car



6

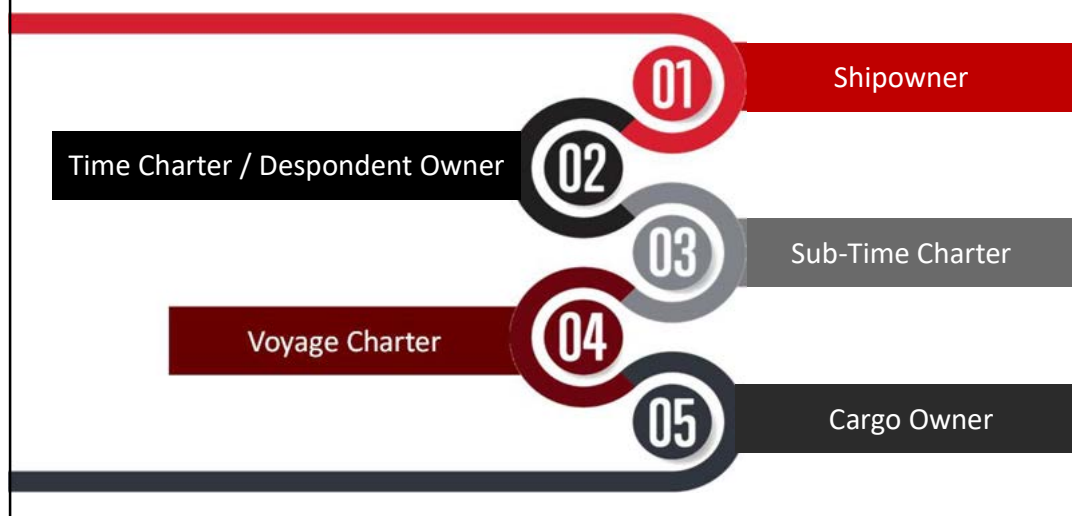
## TIME CHARTER

- Similar to hiring a car with a chauffeur
  - Chauffeur will drive you for a period of time
  - You pay daily hire rate for the car
  - You pay for the fuel and any parking (port fees)
  - Owner employs Chauffeur
  - owner is responsible for the upkeep of the car



7

## CONTRACTUAL CHAINS



8



9

## TYPICAL VOYAGE CHARTER

- GENCON 1994
- A voyage from port A to port B
- Charterer pays freight based on the amount of cargo loaded

10

---

## GENCON 1994

- Unamended GENCON favourable to shipowner
  - Cargo loaded and stowed by the charterer at his cost and risk (clause 5)

11

---

## GENCON 1994

- Shipowner responsible for loss, damage or delay to cargo when
  - “Personal” want of due diligence by shipowners/their managers to make the vessel seaworthy (clause 2)
  - Personal act or default of shipowner or their manager

12

---

## GENCON 1994

- However, amendments and rider (additional) clauses can significantly change the original cargo responsibility provisions
- e.g. inclusion of clause paramount

13

---

## GENCON 1994

- Frequent Examples

“...shipowners to be responsible for the number of bags loaded...”

“...stevedores, although appointed by charterers to be considered agents of the shipowners...”

14



---

## GENCON 1994

- A frequent amendment

“...clean bills of lading to be issued for cargo loaded...”

- Master should be aware of above clause before loading commences as this will affect what he is entitled to load or reject

15

---

## TIME CHARTERPARTIES

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## **TYPICAL TIME CHARTER**

- Contract to hire a ship for a period of time
- Charterer pays hire – normally every 15 days in advance
- Shipowner employs the Master
- NYPE 1946, 1993 or 2015

17

---

## **NYPE 1946**

- Responsibility
  - Cargo shortage claims
  - Cargo over-carriage claims
  - Cargo damage claims
- Depends on charterparty wording and facts

18

---

## NYPE 1946

- Time charterer responsible for
  - Loading, stowing and discharge of the cargo under supervision of the captain (clause 8 unamended)
  - Cargo damage due to bad stowage

19

---

## NYPE 1946

- Clause 8 “...under **supervision** of the captain...”
- Supervision means
  - Charterer loading and stowing cargo
  - Master has a right but not a duty to intervene to ensure vessel is seaworthy during and after cargo operation

20

---

## **NYPE 1946**

- If Master insists on changing the way charterers load and stow the cargo
  - Shipowner may be responsible for any subsequent cargo damage

21

---

## **NYPE 1946**

- Amendments and rider (additional) clauses can significantly change the original cargo responsibility provisions

22

---

## NYPE 1946

- Frequent examples

“...under supervision and **responsibility** of the master...”

- Transfers responsibility for loading and stowing onto shipowners

23



24

---

## INTRODUCTION

- Recommended by the international group clubs
- **Applicable to specific cargo claims**
- Incorporation as a charter party clause (NYPE / ASBATIME)
- IG publishes a recommended incorporation clause for charterparties
- English law and jurisdiction, but...

25

---

## WHY?

- Mechanical apportionment of cargo claims
- Surety of outcome - 100% or 50%/50% split of liability
- Expedited settlement and reduced costs

26

## WHEN IT APPLIES

- Must comply with requirements of clause 4:
  - CLAIM under the contract of carriage
  - Responsibility clauses not materially amended
  - **Claim properly settled or compromised and paid**

27

## WHAT IS A MATERIAL AMENDMENT?

- One that makes liability for cargo claims clear
  - addition of “cargo claims” to clause 26 (NYPE)
  - addition of “cargo claims” to clause 25 (ASBATIME)
- **Not the addition of “and responsibility” In Clause 8**



28



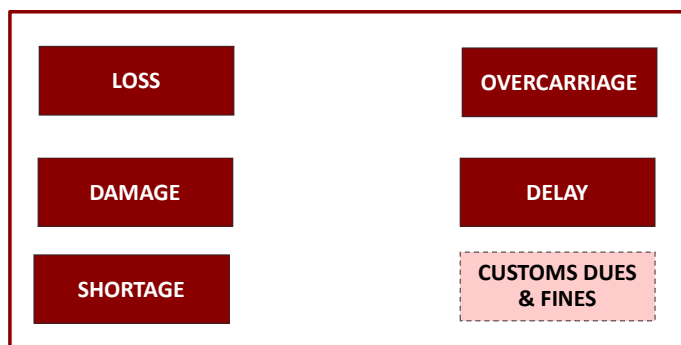
## WHAT IS PROPER SETTLEMENT?

- The settlement must be reasonable
  - Turns on the facts of each case
  - Practical steps that can assist
- The amount must have been paid

29

## WHAT IS COVERED (CLAIMS)

- Cargo claims as defined in the agreement:



30



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## WHAT IS COVERED (COSTS)

- Original claim:
  - Legal costs and interest of person bringing the claim
  - Certain COSTS INCURRED BY PERSON DEFENDING THE CLAIM
- Indemnity claim:
  - ALL COSTS in pursuing indemnity claim are EXCLUDED from agreement

31

---

## APPORTIONMENT

- Apportionment in accordance with clauses 8(a) – 8(d)
  - Clause 8(a) – unseaworthiness
  - Clause 8(b) – cargo handling
  - Clause 8(c) – shortage/ overcarriage
  - Clause 8(d) – all other claims

32

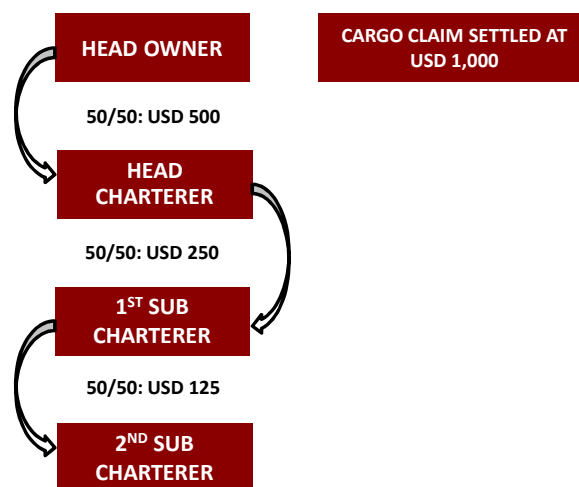
## APPORTIONMENT

- Initial apportionment subject to a further 'evaluation':
  - Cl.8 (a) – unless unseaworthiness arises from loading
  - Cl.8 (b) – material amendment
  - Cl.8 (c)&(d) - clear and irrefutable evidence of...

33

## APPORTIONMENT

- EXAMPLE:



34

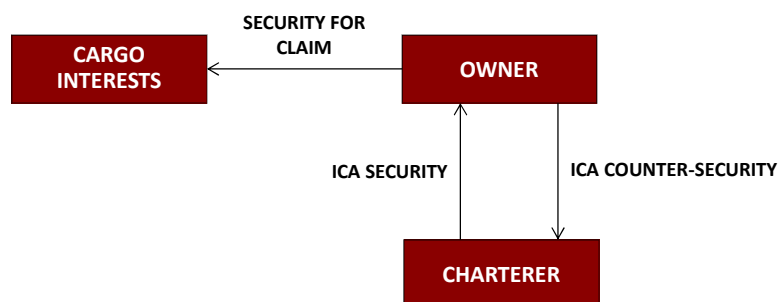
## NOTICES AND TIMEBARS

- Notification **must** be given in compliance with Clause 6.
  - 24 months from delivery
  - 36 months where Hamburg rules are applicable
- Timebar to bring the indemnity claim is a **separate** matter
- Conflicting **contractual** time-bars?

35

## SECURITY

- RIGHT FOR security is laid out at clause 9



36



37



1

## WORKSHOP 6 – CHARTERPARTY

### 1.1 What options might be available to the Master with regard to the damaged bags?

The master is under an obligation to suitably clause the mates' receipts / bills of lading unless the cargo is loaded in "apparent good order and condition". However, the governing NYPE Charterparty provides that only "shipped clean onboard" bills of lading are to be issued. Accordingly, the Master has no alternative but to reject the torn and / or wet stained bags and insist that only sound cargo is presented for shipment.

The moment the problem became apparent, the master should advise owners and owners' P&I club so that a correspondent and local surveyor attend to protect owners' and the club's best interests.

Owners and the master should resist any request by charterers to issue clean bills of lading for unsound cargo against an LOI. Such an LOI is likely to be void and un-enforceable (as a matter of English law) because it will be seen to be facilitating a fraud against subsequent innocent third party holders of the bills of lading.

Furthermore, knowingly issuing bills of lading with an incorrect description of the condition of the cargo might well prejudice owners' P&I cover under Rule 10 (17) (D) (vi) subject to directors' discretion. In such circumstances, any subsequent request for the P&I club to put in place security in order to avoid arrest on discharge may also be prejudiced.

2

## WORKSHOP 6 – CHARTERPARTY

### 1.2 Can the master insist that alternative suitable dunnage be supplied in adequate quantities to his satisfaction and/or insist that an alternative method of stowage is used?

Under NYPE un-amended Clause 8 states that charterers are to load, stow and trim the cargo under the "supervision" of the master. As a matter of English law, "under the supervision of the Captain", places no responsibility on owners/master to intervene unless either the vessel/crew and/or the cargo is put at risk by not doing so. Usually this is taken to mean ensuring the seaworthiness of the vessel as far as her stability is concerned.

Arguably, the right for charterers to require the master (or their agents) to sign bills of lading (under which owners assume responsibility and liability for the care of the cargo), necessarily implies that (a) charterers properly load cargo so that it is not put at risk and (b) they do so without exposing owners to a liability for failure to care for the cargo under the bills of lading issued in owners' name.

Dunnage is not, of course, a cargo. However, bamboo and timber dunnage are hygroscopic, and green timber dunnage can have high moisture content. Thus, particularly where large quantities are used, the dunnage may itself act as a reservoir of moisture in the same way as a hygroscopic cargo such as bagged wheat does. This may have an adverse impact on the safe carriage of the cargo particularly if there is no means of mechanical ventilation.

In these circumstances, the master should insist that an alternative method of stowage is used together with alternative dunnage (if available) and lodge an LOP reserving owners' position to make a full recovery in the event that charterers' failure to do so results in a claim against owners under the bills of lading.

If the Master considers that the safety of the vessel and/or cargo is being put at risk, he should stop loading until charterers employ a safe method of stowage. In those circumstances, it is essential that owners and owners' P&I club are advised and involved at the outset.

3

## WORKSHOP 6 – CHARTERPARTY

### 2.0 Are owners entitled to counter-security from charterers pending settlement of the cargo claims?

Under Clause 9 of the ICA 2011, a party which has provided security to someone making a cargo is entitled to security in an equivalent amount from the other party to the charter. Until owners have put up security to the cargo claimant, or settle and pay the claim, it is unlikely that they will be able to obtain counter-security from charterers. This is because until owners have actually put up security or settled the cargo claims (whether amicably by negotiated settlement or following a final judgment), owners are unable to assert a valid claim against charterers under the ICA.

4

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## WORKSHOP 6 – CHARTERPARTY

3.1 Advise owners as to their likely prospects of successfully making a recovery against charterers for:

- wet damage
- torn bags
- shortage/pilferage
- costs and surveys fees/legal advice.

5

---

## WORKSHOP 6 – CHARTERPARTY

Wet damage

- Under clause 8 (a) of the ICA the wet damage caused by seawater would remain 100% for owners' account. Owners may have a "perils of the sea" defence against cargo interests under the bills of lading, although they would have to prove that they exercised due diligence to make the ship seaworthy at the beginning of the voyage. If not, any liability would fall to be covered by P&I under Rule (19) (17) subject to the applicable cargo deductible. If Owners cannot defend the cargo claim, or they settle in light of the risk they might lose the claim, they will not be able to pursue an indemnity from Charterers under the ICA where the damage was in fact caused by unseaworthiness.

6



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## WORKSHOP 6 – CHARTERPARTY

### Torn bags

- Under clause 8 (b) of the ICA any liability owners incur towards cargo interests under the bills of lading in relation to torn bags caused by stevedores' bad handling on discharge would be 100% for charterers' account. In those circumstances, stevedores are viewed as charterer's servants.

### Shortage/pilferage

- Under Clause 8 (c) of the ICA the claim for shortage is to be split 50:50 unless there is clear evidence that the claim arose out of pilferage by the stevedores, or act of neglect in which case stevedores being charterers' servants, charterers bear 100%.

7

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## WORKSHOP 6 – CHARTERPARTY

### Costs and surveys fees/legal advice.

- As far as the costs and survey fees incurred by owners in the defence of the claim are concerned, these are fully recoverable. However, the legal advice owners obtained as to their rights of recover from charterers under the ICA are not - see ICA Clause 3 (c).

8

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## WORKSHOP 6 – CHARTERPARTY

3.2 Would your advice change if Clause 8 of the charterparty had been amended to include the words ".....under the supervision and responsibility of the Captain..."?

In general, if the words "and responsibility" have been added to NYPE Clause 8 (or there is a similar amendment making the Master responsible for cargo handling), the torn bags and any shortage relating to stevedores' bad handling would be split 50:50.

9

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# THANK YOU

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# NYPE 2015

## TIME CHARTER PARTY EXPLANATORY NOTES

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## Introduction

NYPE 2015 is the product of a co-operative effort between BIMCO, the Association of Shipbrokers and Agents (ASBA), who are the copyright holders of the NYPE form, and the Singapore Maritime Foundation (SMF) and is jointly authored by the three organisations. It is the result of three years work by a team of people who committed their greatly appreciated time and effort to the project. Valuable input was provided at the later stages of development from numerous individuals familiar with the NYPE charter who attended seminars on the new version of the charter held in London, Stamford and Singapore and shared their expertise. BIMCO, ASBA and the SMF are grateful to all of those who contributed to this important project and helped produce a modern NYPE charter that reflects current commercial practice and legal developments in the industry in a clearly worded, comprehensive and balanced form.

The members of the drafting groups from BIMCO, ASBA and the SMF deserve particular thanks for their time and effort:

### BIMCO Sub-committee

Chaired by Mrs Inga Froya (*Torvald Klaveness*), with John Freydag (*Schulte*); Jonathan Young (*Cargill*); Lasse Brautaset (*Nordisk*); Paul Kaye (*West of England P&I Club*); Sun Jia Di (*COSCO*) and Harry Fafalios (*Greek Shipping Co-operation Committee*).

### ASBA Committee

Chaired by Nigel Hawkins (*N W Johnsen & Co, Inc*), with Soren Wolmer (*Quincannon Associates*); Paul Hirtle (*LB Chartering LLC*); Gerry Desmond (*Salient (Americas) Inc.*); and Robert J Dillon (*John F. Dillon & Co., LLC*).

### SMF Committee

Chaired by David Chin (*Chief Executive SMF*), with Henry Mytton-Mills (*Aries Shipbrokers*); and Gina Lee-Wan (*Allen & Gledhill LLP*).

## Background

The New York Produce Exchange Form ("NYPE") is the most widely used standard time charter party in the dry cargo sector of the industry. The first NYPE form was published in November 1913 and amended in 1921, 1931, 1946, 1981 and 1993 and for a sixth time with the 2015 revision. The 1946 edition is arguably still the most commonly used version of the NYPE charter, although many of its twenty-eight clauses are commonly amended or replaced with numerous rider clauses.

The decision to revise the 1993 edition was taken because it was felt by BIMCO, ASBA and the SMF that the industry would benefit from a modern and comprehensive dry cargo charter party that reflects contemporary commercial practice and legal developments that have taken place in the past twenty years. The objective of the revision has been to produce a version of NYPE that will have global appeal and which takes proper stock of the most commonly applied amendments and additional clauses used by practitioners in the dry cargo sector. The revision process has benefited from the direct involvement of owners and charterers with the aim of achieving a balance of their respective interests.

The form can be used either for trip charters or period time charters. There are some additional clauses that apply only to period time charters (where the minimum charter period exceeds five months) and parties are advised to check carefully whether the additional clauses (see Clause 52 (Period Applicable Clauses)) should or should not apply in the context of their own agreement.

## Preamble

**THIS CHARTER PARTY**, made and concluded in [ ] this [ ] day of [ ] 20 [ ]

Between [ ] of [ ]

as \*Registered Owners/\*Disponent Owners/\*Time Chartered Owners (the "Owners") of the Vessel described below

*\*delete as applicable*

To clearly identify the legal status of the "Owners" under the agreement, the parties are required to indicate whether the "Owners" are the legal or registered owners of the ship, or whether they are operating the ship under a bareboat (demise) agreement or are time chartering the ship from another entity.

The preamble contains boxes for the parties to include a short summary of the key descriptive information about the ship. Less information is required than in previous versions of NYPE because the new edition incorporates an Annex A (Vessel Description) - a detailed vessel questionnaire that forms part of the Charter Party. The parties may also agree to incorporate the Owners' own Vessel description or a completed Charterers' questionnaire as Appendix A.

The initial capability warranty contained in the NYPE '93 preamble in relation to speed and consumption has been replaced by a continuing warranty in a separate Speed and Consumption clause (Clause 12).

This Charter Party shall be performed subject to all the terms and conditions herein consisting of this main body including any additional clauses and addenda, if applicable, as well as Appendix A attached hereto. In the event of any conflict of conditions, the provisions of any additional clauses and Appendix A shall prevail over those of the main body to the extent of such conflict, but no further.

New preamble text sets out what constitutes the agreement between the parties and how any conflict of conditions should be dealt with in terms of the main body of the contract, as may be amended, including any additional clauses or riders added by the parties, and Annex A (Vessel Description).

### **Clause 1 (Duration/Trip Description)**

- (a) The Owners agree to let, and the Charterers agree to hire, the Vessel from the time of delivery, for [ ] within below mentioned trading limits.

The amended title and content of Clause 1 reflects that parties can now choose to specify whether the agreement is for a period charter, by stating a number of months or years for the agreement to run (plus any options), or a trip charter, by stating the intended voyage.

Clause 1 has been expanded to consolidate related provisions previously found in separate clauses in NYPE '93, such as Trading Limits (formerly Clause 5), Berths (formerly Clause 12) and Sublet (formerly Clause 18). The berthing provisions of sub-clause 1(c) contain the charterers' usual safe berth/safe place warranty, but now also include a reference to "anchorage" in place of the previous "dock" (which is encompassed by "safe place" and is, in practice, no longer a term widely used).

- (d) The Vessel during loading and/or discharging may lie safely aground at any safe berth or safe place where it is customary for vessels of similar size, construction and type to lie at the following areas/ports [ ] (if this space is left blank then this sub-clause 1(d) shall not apply), if so requested by the Charterers, provided it can do so without suffering damage.

The Charterers shall indemnify the Owners for any loss, damage, costs, expenses or loss of time, including any underwater inspection required by class, caused as a consequence of the Vessel lying aground at the Charterers' request.

New to the agreement is the inclusion of an optional NAABSA provision (Not Always Afloat But Safely Aground). The clause gives the charterers the right to order the ship to lie safely aground during loading and/or discharging under the specified conditions. However, the parties must agree from the outset of the charter if the ship is capable of lying aground and, if so, the places where it's permitted to lie aground. If the parties do not identify the places in writing in sub-clause 1(d) then the clause will not apply. The provision has been phrased in this way because of the potential class and insurance implications for owners in agreeing to allow their ship to lie aground at specified places, which they should consider on a case-by-case basis. A NAABSA provision is included in NYPE '46 (Clause 6), but was dropped from the '93 revision. It has been re-introduced because the practice of lying aground while loading is still common in grain trades and remains an important provision for those involved in such trades, but with a separate indemnity provision added.

- (e) Sublet - The Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party.

The sublet provision has been carried through from NYPE '46 and '93 (Clause 18) without amendment. It gives the charterers the right to sub-charter the ship (voyage or time) by entering into a contract with the sub-charterers. The owners will not be a party to any sub-charter but may have a contractual relationship to sub-charterers under bills of lading that are issued under the sub-charter.

### **Clause 2 (Delivery)**

- (b) The Vessel on delivery shall be seaworthy and in every way fit to be employed in the intended service, having water ballast and with sufficient power to operate all cargo handling gear simultaneously, and, with full complement of Master, officers and ratings who meet the Standards for Training, Certification and Watchkeeping for Seafarers (STCW) requirements for a vessel of her tonnage.

Notable amendments have been made to the delivery provisions of Clause 2. In NYPE '46 and '93 the owners are obliged to deliver the ship at the delivery port or place in a seaworthy condition, ready to receive cargo. However, it is not uncommon practice for ships to be delivered at one place but the first cargo to be load at another place. The delivery provisions of NYPE '46 and '93 are often amended to take this practice into account. To avoid the need for such amendments, the 2015 edition splits the owners' obligation to deliver the ship in a seaworthy condition from the owners' obligation in relation to cargo readiness. The parties have the option either to agree that the ship will be delivered ready to receive cargo, or that it will be ready to receive cargo at the first loading port if different from the delivery place.

Sub-clause 2(b) deals with the owners' strict obligation in respect of the condition of the ship on delivery in terms of seaworthiness and its suitability for the "intended" service. The phrase "...in every way fitted for ordinary cargo service"

found in NYPE '93 has been amended. Firstly, the word "fitted" has been replaced with "fit to be employed". The intention is to give a plain English meaning to an archaic term. Secondly, the phrase "*ordinary cargo service*" was felt to be too broad given the wide variety of dry cargo trades and other trades in which the NYPE form is used. For greater clarity the wording now refers to "the intended service" as it is considered reasonable that the charterers should indicate to the owners the likely nature of the employment of the ship.

New wording has been added relating to the obligation on owners to provide a Master, officers and ratings that meet STCW requirements. Although the usual obligation to provide a full complement of crew is still to be found in Clause 6 (Owners to Provide), this additional reference to the crew and the training standards they need to meet has been added to emphasise the importance of this obligation on delivery.

(c) The Vessel's holds shall be clean and in all respects ready to receive the intended cargo, or if no intended cargo, any permissible cargo:

(i) On \*delivery; or

(ii) On \*arrival at first loading port if different from place of delivery. If the Vessel fails hold inspection then the Vessel shall be off-hire from the time of rejection until the Vessel has passed a subsequent inspection.

*\* (c)(i) and (c)(ii) are alternatives; delete as appropriate. If no deletion then Sub-clause (c)(i) shall apply.*

Sub-clause (c) provides two alternatives as to when the owners' obligation to provide the ship ready to receive cargo should apply. It is important that parties make a careful selection and delete the option not to apply. If parties overlook this sub-clause then the owners, by default, will be under a strict obligation to deliver the ship at the delivery place ready to receive cargo. It should be noted that if the charterers have indicated an intended first cargo, the owners' obligation is to make sure the holds are clean to the standard required of that particular cargo. If the ship has been trading coal cargoes prior to delivery and the time charterers intend the first cargo also to be coal, then the owners should not be under a broad obligation to meet hold cleanliness standards for the first voyage that exceed the requirements for the intended trade. However, if the time charterers have not indicated the intended first cargo, then the owners must present the vessel with holds cleaned to the standards required of any of the cargoes permitted under the charter party. In practical terms, this will often mean grain standard cleanliness.

Under option (c)(ii), the ship will be placed off-hire from the time of the failed inspection until the ship passes subsequent inspection. The charterers' usual right to have the option of cancelling the charter party if the ship is not delivered by the cancelling date applies only in relation to option (i). If option (ii) has been elected the Charterers' only remedy if the holds are not in a contractual condition on arrival at the first loading port is off-hire.

It should be noted that the "Extension of Cancelling" provision of Clause 16 (Delivery/Cancelling) first incorporated in NYPE '93 has not been included into the new edition. This so-called "interpellation clause", which is commonly found in many BIMCO voyage and time charter parties, requires the owners to notify the charterers in advance of any "unforeseen" delay to the ship beyond the cancelling date and to give an expected date of arrival. In return, the charterers are required to declare in advance of the ship arriving at the delivery place whether or not they will cancel the charter party. If the charterers decide not to cancel or simply fail to respond, then the later arrival date given by the owners becomes the new cancelling date.

The intention behind this clause is that it should be of practical and commercial benefit both to charterers and owners. The benefit to the owners is that they are otherwise legally obliged to tender the ship for delivery after perhaps a long ballast voyage knowing they cannot make the cancelling date. For the charterers it provides an advance warning of a potential delay to the ship and gives them the opportunity either to make arrangements for the delayed arrival or to seek an alternative ship.

The reason for not including the "Extension of Cancelling" wording in NYPE 2015 is that charterers' representatives involved in the revision project felt that it would be particularly difficult for charterers under a trip charter agreement to change at short notice the arrangements already in place for the cargo in terms of underlying sales contracts and letters of credit. They also felt that in terms of highlighting a potential delay to the ship en route to the delivery place, then vessel tracking methods and more stringent eta/itinerary provisions would serve much the same purpose from their perspective. While views on whether to maintain the "Extension of Cancelling" wording are split between owners who favour including the clause and charterers who are not in favour, BIMCO is of the view that it is beneficial to both parties to have as much advance warning of potential delays as possible and to have in place a mechanism for managing such delays should they occur. BIMCO encourages parties to discuss on a case-by-case the inclusion of the "Extension of Cancelling" clause if they feel it appropriate and important to their particular business.

(d) The Owners shall keep the Charterers informed of the Vessel's itinerary. Prior to the arrival of the Vessel at the delivery port or place, the Owners shall serve the Charterers with [ ] days' approximate and [ ] days' definite notices of the Vessel's delivery. Following the tender of any such notice the Owners shall give or allow to be given to the Vessel only such further employment orders, if any, as are reasonably expected when given to allow delivery to occur on or before the date notified. The Owners shall give the Charterers and/or their local agents notice of delivery when the Vessel is in a position to come on hire.



Vessel itinerary prior to delivery: [REDACTED].

A new and detailed delivery notice provision in sub-clause (d) replaces lines 37-38 of Clause 2 (Delivery) of NYPE '93. Instead of just a series of notices to be given by the owners prior to the "expected date of delivery", the new wording places the owners under an obligation to keep the charterers informed of the ship's itinerary. This means that the owners should provide the charterers with an initial itinerary for the ship and then advise them of any subsequent changes to that itinerary. This obligation is in addition to the agreed notice of delivery requirements.

The final sentence of sub-clause (d) is triggered by the giving of the first notice of delivery and applies to all subsequent notices. Its purpose is to ensure that any orders for the further employment of the ship given prior to delivery can be reasonably expected to allow delivery by the date notified by the owners to the charterers. A reciprocal provision for the charterers when redelivering the ship applies as per Clause 4 (Redelivery). This is designed to give greater certainty to the effect of delivery and redelivery notices given under the charter party and follows the concept of "legitimate/illegitimate final voyage orders found in a number of more recent time charter forms (see, for example, Clause 4(d) (Redelivery) of GENTIME).

- (e) Acceptance of delivery of the Vessel by the Charterers shall not prejudice their rights against the Owners under this Charter Party.

Regardless of whether the charterers accept delivery of the ship arriving after the cancellation date or decide to exercise their right to cancel the charter party, sub-clause (e) provides that they do not lose their right to claim damages from the owners for any loss suffered by the charterers due to the owners' breach of any of its obligations under the charter party.

### **Clause 3 (Laydays/Cancelling)**

If required by the Charterers, time on hire shall not commence before [REDACTED] (local time) and should the Vessel not have been delivered on or before [REDACTED] (local time) at the port or place stated in Sub-clause 2(a), the Charterers shall have the option of cancelling this Charter Party at any time but not later than the day of the Vessel's notice of delivery.

The first paragraph of Clause 16 (Delivery/Cancelling) of NYPE '93 has been moved to a more prominent position so that it more closely reflects the chronological order of events. There have been a few improvements to the language used in the Clause. The reference to "*time shall not commence...*" has been amended for clarification to read "*time on hire shall not commence...*" and are based on local time at the place of delivery. If the ship arrives at the delivery port after the cancelling date and tenders notice of readiness, then if the charterers do not want the ship they must cancel the charter party by midnight local time on the day the notice of delivery is given.

The reference to the owners being required to give a "written" notice of readiness does not appear in the new edition of NYPE. This is because a general "Notices" clause has been added to the charter party. Clause 55 (Notices) sets out the manner of and the form in which notices and other communications required by any clause in NYPE 2015 must be given.

### **Clause 4 (Redelivery)**

- (a) The Vessel shall be redelivered to the Owners in like good order and condition, ordinary wear and tear excepted, at [REDACTED] (state port or place).

The redelivery provisions have been separated from the provisions dealing with rate of hire (NYPE '93 Clause 10 (Rate of Hire/Redelivery Areas and Notices)) to form a new "Redelivery" Clause that is the reciprocal of Clause 2 (Delivery).

- (b) The Charterers shall keep the Owners informed of the Vessel's itinerary. Prior to the arrival of the Vessel at the redelivery port or place, the Charterers shall serve the Owners with [REDACTED] days' approximate and [REDACTED] days' definite notices of the Vessel's redelivery. Following the tender of any such notices the Charterers shall give or allow to be given to the Vessel only such further employment orders, if any, as are reasonably expected when given to allow redelivery to occur on or before the date notified.

In addition to the usual series of notices to be given by the charterers prior to the "expected date of redelivery", the clause obliges the charterers to keep the owners informed of the ship's itinerary, which is of particular importance to the owners in securing the next employment for the ship at the end of the time charter period.

The final sentence of sub-clause (b) is triggered by the giving of the first notice of delivery and applies to all subsequent notices. Its purpose is to ensure that any orders for the further employment of the ship given prior to redelivery can be reasonably expected to allow redelivery by the date notified by the charterers to the owners. A reciprocal provision for the owners when delivering the ship applies as per Clause 2 (Delivery). This is designed to give greater certainty to the effect of delivery and redelivery notices given under the charter party and follows the concept of "legitimate/illegitimate final voyage orders found in a number of more recent time charter forms.

- (c) Acceptance of redelivery of the Vessel by the Owners shall not prejudice their rights against the Charterers under this Charter Party.

Whatever the circumstances under which the owners accept redelivery of the ship, they do not affect the owners' rights to claim damages from the charterers for any loss suffered by the owners due to the charterers' breach of any of its obligations under the charter party.

#### **Clause 5 (On/Off-Hire Survey)**

The wording of the On-Off Hire Survey Clause has been maintained from NYPE '93, Clause 3, with the exception of the final sentence. NYPE '93 provides that the on-hire survey is to be done on charterers' time and the off-hire survey on owners' time.

Any time lost as a result of the on-hire survey shall be for the Owners' account and any time lost as a result of the off-hire survey shall be for the Charterers' account.

In NYPE 2015 the wording of the final sentence simply addresses any time lost as a result of the surveys, with the owners bearing the risk at delivery and the charterers on re-delivery.

#### **Clause 6 (Owners to Provide)**

- (a) The Owners shall provide and pay for the insurances of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, boiler water and lubricating oil; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew/crew visas; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of Master, officers and ratings.

Sub-clause (a) has been amended to include a reference to "lubricating oil" which the owners are to supply at their own expense. The owners are also made responsible for the cost of any crew visas that may need to be obtained for the purposes of crew changes or other local authority requirement. The complement of crew to be provided by the owners has been amended to correct an oversight in NYPE '93 that does not mention the Master. The term "crew" has been replaced by "ratings" – "crew" being the generic term to describe all seafarers employed on board the ship by the owners.

- (b) The Owners shall provide any documentation relating to the Vessel as required to permit the Vessel to trade within the agreed limits, including but not limited to International Tonnage Certificate, Suez and Panama tonnage certificates, Certificates of Registry, and certificates relating to the strength, safety and/or serviceability of the Vessel's gear. Such documentation shall be maintained during the currency of the Charter Party as necessary.

Owners shall also provide and maintain such Certificates of Financial Responsibility for oil pollution to permit the Vessel to trade within the agreed limits as may be required at the commencement of the Charter Party. However, in the event that, at the time of renewal, a Certificate of Financial Responsibility is unavailable in the market place, or, the premium for same increases significantly over the course of the Charter Party, then Owners and Charterers shall discuss each with the other to find a mutually agreeable solution for same, failing such solution the port(s) that require said Certificate of Financial Responsibility are to be considered as added to the Vessel's trading exclusions. (See also Clause 18 (Pollution)).

The first paragraph of sub-clause (b) is taken from Clause 40 (Documentation) of NYPE '93, but has been amended to deal with trade-specific documentation and certification other than that related to Certificates of Financial Responsibility for oil pollution. A new additional sentence extends the owners' documentary obligations to include maintaining such documentation and certificates during the entire charter period.

The second paragraph of sub-clause (b) deals exclusively with Certificates of Financial Responsibility (COFR) for oil pollution. The basic obligation on the owners is to meet all COFR requirements "*as may be required at the commencement of the Charter party*", which means only those requirements in force at the start of the charter for the trades in which the ship may be employed. Significantly, if a COFR comes up for renewal during the charter period and the cost of that renewal premium is considerably higher or if the COFR is no longer available in the market, then the owners and charterers are to try to find a solution acceptable to both. If they are unable to find a solution then the owners are no longer under an obligation to provide a COFR for that particular port (which will be deemed added to the list of excluded ports/areas under the charter party).

- (c) The Vessel to work night and day if required by the Charterers, with crew opening and closing hatches, when and where required and permitted by shore labor regulations, otherwise shore labor for same shall be for the Charterers' account.

Absent from NYPE '93 is a provision obliging the owners to provide and pay for the crew's assistance in opening and closing hatches, subject to local regulations. This has been added to NYPE 2015 as a new sub-clause 6(c).

#### **Clause 7 (Charterers to Provide)**

- (a) The Charterers, while the Vessel is on-hire, shall provide and pay for all the bunkers except as otherwise agreed; shall pay for port charges (including compulsory garbage disposal), compulsory gangway watchmen and cargo watchmen, compulsory and/or customary pilotages, canal dues, towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the Vessel), and all other usual expenses except those stated in Clause 6, but when the Vessel puts into a port for causes for which the Vessel is responsible (other than by stress of weather), then all such charges incurred shall be paid by the Owners.

A few notable amendments have been made to the list of items that the charterers must pay for while the ship is on hire. The reference to the charterers' obligation to pay for "pilotages" found in Clause 2 of the '46 edition and Clause 7 of the '93 edition has been clarified so that it now states that the obligation applies not just to compulsory pilotages but also to customary pilotages. In addition, the charterers are obliged to pay for canal dues incurred during the charter period. Under previous editions of NYPE canal dues would most likely have been covered by "other usual expenses" – however, for the avoidance of doubt, the item has been added to the list of charterers' obligations.

- (b) Fumigations ordered because of illness of the crew or for infestations prior to delivery under this Charter Party shall be for the Owners' account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers' account.

The fumigation provisions now exempt the charterers for responsibility for fumigations that are required due to infestations that occurred prior to delivery. The six-month time limit after delivery and before the charterers become liable for fumigations ordered due to cargoes carried or ports visited has been deleted. The reason for this is that the preceding sentence in sub-clause (b) deals with responsibility for fumigations ordered due to infestations that occurred before delivery. Infestations occurring after delivery are therefore a direct result of the employment orders given by the charterers and so they must bear the cost of fumigating the ship during the entire period of the charter party (other than fumigation required due to the illness of the crew).

For a more comprehensive fumigation provision, parties may wish to consider incorporating BIMCO's Cargo Fumigation Clause for Charter Parties.

- (c) The Charterers shall provide and pay for necessary dunnage, lashing materials and also any extra fittings requisite for a special trade or unusual cargo, but the Owners shall allow them the use of any dunnage already aboard the Vessel. Prior to redelivery the Charterers shall remove their dunnage, fittings and lashing materials at their cost and in their time.

The final part of Clause 7 is unchanged from NYPE '93 with the exception of the addition of a reference to "lashing materials" which is a common amendment to this provision.

#### **Clause 8 (Performance of Voyages)**

- (a) Subject to Clause 38 (Slow Steaming) the Master shall perform the voyages with due despatch and shall render all customary assistance with the Vessel's crew. The Master shall be conversant with the English language and (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and the Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashings, discharging, and tallying, at their risk and expense, under the supervision of the Master.

The addition of a "slow steaming" provision (Clause 38), permitting the charterers to instruct the Master to reduce or adjust the speed of the ship, has an important bearing on the Master's strict obligation to perform voyages with "due despatch" (i.e., without delay or interruption and as quickly as circumstances and safe navigation permits). Clause 8 (Performance of Voyages) has now been made subject to the provisions of Clause 38 (Slow Steaming). The wording of the Performance of Voyages Clause is otherwise unchanged.

#### **Clause 9 (Bunkers)**

This provision has been extensively re-written to provide a modern and comprehensive set of provisions dealing with all bunker-related matters under a time charter party. The seven separately headed provisions cover matters such as quantities and prices; bunkering prior to delivery/redelivery; bunkering operations and sampling; quality and liability; fuel testing; ECA trading; and grades and quantities on redelivery. All of these are matters that are commonly absent from or insufficiently provided for in many standard form time charter parties. Many older time charter forms contain bunker clauses covering the fundamental principles under the charter, but do not contemplate today's situation where ships are

required to carry and use different grades of fuel and where sampling and testing regimes are an integral part of the process.

(a) Bunker quantities and prices

\*(i) The Charterers on delivery, and the Owners on redelivery or any termination of this Charter Party, shall take over and pay for all bunkers remaining onboard the Vessel as hereunder. The Vessel's bunker tank capacities shall be at the Charterers' disposal. Bunker quantities and prices on delivery/redelivery to be [REDACTED].

The common position under most standard forms of time charter is that the charterers take over and pay for the fuel on board the ship at the time of delivery and the owners take over and pay for the fuel on board at redelivery. The fuel on board becomes the property of the charterers along with any fuel purchased during the charter period. NYPE 2015, however, offers two alternatives to this usual arrangement.

Sub-clause (a)(i) reflects the most common time charter bunker arrangement. Consistent with the bunker provisions of NYPE '93 Clause 9 (Bunkers), the parties can agree on the quantities and prices of fuel on board at delivery and redelivery. A reference to "or any termination" is intended to cover the transfer of property in the bunkers from the charterers to the owners in the event of the charter party being terminated, for example due to non-payment of hire (provided the charterers have paid their bunker suppliers for the fuel on board at the time of termination and have title to them).

\*(ii) The Owners shall provide sufficient bunkers onboard to perform the entire time charter trip. The Charterers shall not bunker the Vessel, and shall pay with the first hire payment for the mutually agreed estimated bunker consumption for the trip, namely [REDACTED] metric tons at [REDACTED] (price). Upon redelivery any difference between estimated and actual consumption shall be paid by the Charterers or refunded by the Owners as the case may be.

The second option (sub-clause (a)(ii)) provides for bunkering when NYPE 2015 is used for a trip time charter. In such cases, because of the short duration of the employment, it is often agreed by the parties that the owners will simply provide the necessary quantities and types of fuel required for the entire trip, much as they would do under a voyage charter arrangement. This means that the charterers do not purchase the fuel on board at delivery and they are not responsible for providing and paying for fuel during the voyage. Instead, the owners will invoice the charterers for the estimated fuel used based on an agreed daily consumption and price per ton cost. At the end of the trip the actual cost of the fuel used is calculated by the owners and the charterers are either reimbursed by the owners for any excess they have paid or are invoiced for any outstanding amount due.

\*(iii) The Charterers shall not take over and pay for bunkers Remaining On Board at delivery but shall redeliver the Vessel with about the same quantities and grades of bunkers as on delivery. Any difference between delivery quantity and redelivery quantity shall be paid by the Charterers or the Owners as the case may be. The price of the bunkers shall be the net contract price paid by the receiving party, as evidenced by suppliers' invoice or other supporting documents.

The third bunker option (sub-clause (a)(iii)) provides an alternative to the risk of price fluctuations in the bunker market that may leave the charterers receiving from the owners a considerably lower price per ton at redelivery than actually paid, or the owners being faced with buying bunkers from the charterers at redelivery for a much higher than market price. Under this option the owners get their ship back with the same grades and quantities of bunkers as were on board at delivery. The charterers provide and pay for fuel during the charter period – i.e., they pay only for what they consume. On redelivery, the financial exposure of the parties is limited to any differences in the quantities on board at delivery versus redelivery. The price for the difference in quantities is determined by the price actually paid.

(b) Bunkering Prior to Delivery/Redelivery

Provided that it can be accomplished at ports of call, without hindrance to the working or operation of or delay to the Vessel, and subject to prior consent, which shall not be unreasonably withheld, the Owners shall allow the Charterers to bunker for their account prior to delivery and the Charterers shall allow the Owners to bunker for their account prior to redelivery. If consent is given, the party ordering the bunkering shall indemnify the other party for any delays, losses, costs and expenses arising therefrom.

It is common practice in the industry for time charterers to agree with the owners to bunker the ship ahead of delivery – usually because fuel of the required grade or specification is not available at the place of delivery or because the cost of fuel is much higher there.

Sub-clause (b) provides a reciprocal arrangement for charterers to bunker the ship before delivery and for the owners to bunker prior to redelivery. It is important that each party obtains the consent of the other party before bunkering arrangements are made to avoid any interference with the operation the ship. This is of particular importance when bunkering prior to delivery as the ship may well be under the employment of another time charterer.

(c) Bunkering Operations and Sampling

(i) The Chief Engineer shall co-operate with the Charterers' bunkering agents and fuel suppliers during bunkering. Such cooperation shall include connecting/disconnecting hoses to the Vessel's bunker manifold, attending sampling, reading gauges or meters or taking soundings, before, during and/or after delivery of fuels.

(ii) During bunkering a primary sample of each grade of fuels shall be drawn in accordance with the International Maritime Organization (IMO) Resolution Marine Environment Protection Committee (MEPC) MEPC.182(59) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with the Marine Pollution Convention (MARPOL) 73/78 Annex VI or any subsequent amendments thereof. Each primary sample shall be divided into no fewer than five (5) samples; one sample of each grade of fuel shall be retained on board for MARPOL purposes and the remaining samples of each grade distributed between the Owners, the Charterers and the bunker suppliers.

(iii) The Charterers warrant that any bunker suppliers used by them to bunker the Vessel shall comply with the provisions of Sub-clause (c)(ii) above.

(iv) Bunkers of different grades, specifications and/or suppliers shall be segregated into separate tanks within the Vessel's natural segregation. The Owners shall not be held liable for any restriction in bunker capacity as a result of segregating bunkers as aforementioned.

Few standard time charter forms deal with bunker sampling. Rather than attempt to spell out a complete procedure for sampling fuel, the revised NYPE refers to the procedures set out in the IMO Guidelines for the Sampling Fuel Oil for Determination of Compliance with the Marine Pollution Convention (MARPOL) 73/78 Annex VI. The taking of a MARPOL sample is of course mandatory, but making sure that commercial samples are taken in the same manner should ensure consistency of results.

Sub-clause (c)(iv) takes into account that different grades of fuel will be required for general trading purposes and that these fuels need to be stored in separate fuel tanks unless the Master or Chief Engineer advises that the fuels can be mixed. The consequence of this for some older ships is that there may be a limited number of separate bunker tanks on board. This may restrict the quantities of different types of fuel that can be loaded by the charterers resulting, in some cases, in the need to take on fuel more frequently.

(d) Bunker Quality and Liability

(i) The Charterers shall supply bunkers of the agreed specifications and grades: [REDACTED]. The bunkers shall be of a stable and homogeneous nature and suitable for burning in the Vessel's engines and/or auxiliaries and, unless otherwise agreed in writing, shall comply with the International Organization for Standardization (ISO) standard 8217:2012 or any subsequent amendments thereof. If ISO 8217:2012 is not available then the Charterers shall supply bunkers which comply with the latest ISO 8217 standard available at the port or place of bunkering.

(ii) The Charterers shall be liable for any loss or damage to the Owners or the Vessel caused by the supply of unsuitable fuels and/or fuels which do not comply with the specifications and/or grades set out in Sub-clause (d)(i) above, including the off-loading of unsuitable fuels and the supply of fresh fuels to the Vessel. The Owners shall not be held liable for any reduction in the Vessel's speed and/or increased bunker consumption nor for any time lost and any other consequences arising as a result of such supply.

Fuels supplied by the charterers are to comply with the latest ISO 8217 standard, but other standards may be accepted if compliance is not possible at the intended bunkering port due to lack of supply.

"Stable and homogenous" is a phrase commonly found in bunker clauses in many charter parties and basically means that the fuel provided must be of "satisfactory quality" consistent with sale of goods legislation.

Sub-clause (d)(ii) deals with loss or damage suffered by the owners/vessel (e.g. physical damage to or underperformance of the engines) caused by unsuitable or off-spec fuel. The charterers' liability extends not only to the consequences of them loading unsuitable fuel, but also to liability for the cost and expense of off-loading the unsuitable fuel and replacing it with suitable fuel. In this respect it goes beyond the current provisions of sub-clause 9(b) of NYPE '93.

As the unsuitability of the charterers' fuel may not be detected until actually burned in the vessel's engines, the last part of the Clause provides the owners with protection against any potential claim by the charterers for under-performance or increased bunker consumption that can be directly attributed to the unsuitable fuel.

(e) Fuel Testing Program

Should the Owners participate in a recognized fuel testing program one of the samples retained by the Owners shall be forwarded for such testing. The cost of same shall be borne by the Owners and if the results of the testing show the fuel not to be in compliance with ISO 8217:2012, or any subsequent amendment thereof, or such other specification as may be agreed, the Owners shall notify the Charterers and provide a copy of the report as soon as reasonably possible.

In the event the Charterers call into question the results of the testing, a fuel sample drawn in accordance with IMO Resolution MEPC.96(47) Guidelines for the Sampling of Fuel Oil for Determination of Compliance with Annex VI of MARPOL 73/78 or any subsequent amendments thereof, shall be sent to a mutually agreed, qualified and independent laboratory whose analysis as regards the characteristics of the fuel shall be final and binding on the parties concerning the characteristics tested for. If the fuel sample is found not to be in compliance with the specification as agreed in the paragraph above, the Charterers shall meet the cost of this analysis, otherwise same shall be for the Owners' account.

If the owners test the fuel as part of a fuel testing programme and it does not comply with the required specification, the charterers have the right to challenge the results and obtain a "second opinion" from another, mutually agreed" testing laboratory. The results of the second laboratory will be final and binding on the owners and charterers.

(f) Bunker Fuel Sulphur Content

(i) Without prejudice to anything else contained in this Charter Party, the Charterers shall supply fuels of such specifications and grades to permit the Vessel, at all times, to comply with the maximum sulphur content requirements of any emission control area when the Vessel is ordered to trade within that area.

The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers to supply such bunkers shall comply with Regulations 14 and 18 of MARPOL Annex VI, including the Guidelines in respect of sampling and the provision of bunker delivery notes.

The Charterers shall indemnify, defend and hold harmless the Owners in respect of any loss, liability, delay, fines, costs or expenses arising or resulting from the Charterers' failure to comply with this Sub-clause (f)(i).

(ii) Provided always that the Charterers have fulfilled their obligations in respect of the supply of fuels in accordance with Sub-clause (f)(i), the Owners warrant that:

1. the Vessel shall comply with Regulations 14 and 18 of MARPOL Annex VI and with the requirements of any emission control area; and

2. the Vessel shall be able to consume fuels of the required sulphur content,

when ordered by the Charterers to trade within any such area.

Subject to having supplied the Vessel with fuels in accordance with Sub-clause (f)(i), the Charterers shall not otherwise bear any loss, liability, delay, fines, costs or expenses arising or resulting from the Vessel's failure to comply with Regulations 14 and 18 of MARPOL Annex VI.

(iii) For the purpose of this Clause, "emission control area" shall mean an area as stipulated in MARPOL Annex VI and/or an area regulated by regional and/or national authorities such as, but not limited to, the European Union (EU) and the United States (US) Environmental Protection Agency.

Most standard forms of time charter in current use do not reflect contemporary requirements for ships to operate with different types of fuels – in particular low sulphur fuels in specified areas. The addition of this clause obliges the charterers to provide the ship with fuels of the appropriate maximum sulphur content to allow trading within emission control areas if they intend for the ship to trade in such areas.

The responsibility for the storage, management and use of the fuels supplied by the charterers lies with the owners as does the emission control requirements of Regulations 14 and 18.

(g) Grades and Quantities of Bunkers on Redelivery

Unless agreed otherwise, the Vessel shall be redelivered with the same grades and about the same quantities of bunkers as on delivery; however, the grades and quantities of bunkers on redelivery shall always be appropriate and sufficient to allow the Vessel to reach safely the nearest port at which fuels of the required types are available.

The final provision in the Bunker Clause addresses quantities on redelivery – and, most importantly, an obligation on the charterers to provide sufficient quantities of fuel of the appropriate type so that the ship can get to the nearest bunkering port to replenish stocks with appropriate fuels for the ships' next employment.

**Clause 10 (Rate of Hire; Hold Cleaning; Communications; Victualing and Expenses)**

The Rates of Hire Clause in NYPE '93 covers hire as well as redelivery areas and notices. These latter two provisions have been moved in NYPE 2015 to a new Clause 4 (Redelivery). Provisions relating to hold cleaning (formerly Clause 36



(Cleaning of Holds), communications, victualing (from Clause 14 (Supercargo and Meals) and expenses, have been consolidated into this clause.

- (a) The Charterers shall pay for the use and hire of the said Vessel at the rate of [ ] per day or pro rata for any part of a day, commencing on and from the time of her delivery, as aforesaid, including the overtime of crew; hire to continue until the time of her redelivery to the Owners as per Clause 4 (Redelivery) (unless Vessel lost).

The parties must specify, in addition to the daily rate of hire, the currency in which hire is to be paid. This contrasts with previous editions of NYPE that applied United States dollars by default.

Unless otherwise mutually agreed, the Charterers shall have the option to redeliver the Vessel with unclean/unswept holds against a lumpsum payment of [ ] in lieu of hold cleaning, to the Owners (unless Vessel lost).

Consistent with the final sentence of NYPE '93 Clause 36 (Cleaning of Holds), the charterers can pay to the owners on redelivery a lump sum to cover the cost of cleaning holds after the final discharge. Provision is made for the parties to agree and state a lumpsum figure in the charter party to avoid negotiations at redelivery. The currency should be clearly stated, failing which it should be assumed to be the same currency as the rate of hire.

The Owners shall victual pilots and such other persons as authorized by the Charterers or their agents. While on-hire, the Charterers shall pay the Owners along with the hire payments, [ ] per thirty (30) days or pro rata, to cover all Communications, Victualing and Expenses properly incurred by the Vessel under the Charterers' employment.

The victualing of supercargoes is dealt with separately under Clause 14 (Supercargo). The communications, victualing and expenses (CVE) obligations are to be covered by an agreed lumpsum payment to the owners payable with each instalment of hire.

(b) Hold Cleaning/Residue Disposal

(i) The Charterers may request the Owners to direct the crew to sweep and/or wash and/or clean the holds between voyages and/or between cargoes against payment at the rate of [ ] per hold, provided the crew is able safely to undertake such work and is allowed to do so by local regulations. In connection with any such operation the Owners shall not be responsible if the Vessel's holds are not accepted or passed. Time for cleaning shall be for the Charterers' account.

A detailed intermediate hold cleaning provision forms the second part of Clause 10, replacing Clause 36 (Cleaning of Holds) found in NYPE '93. Sub-clause (i) provides for a rate per hold to be agreed in advance.

(ii) Unless this Charter Party is concluded for a single laden leg, all cleaning agents and additives (including chemicals and detergents) required for cleaning cargo holds shall be supplied and paid for by the Charterers. The Charterers shall provide the Owners with a dated and signed statement identifying cleaning agents and additives that, in accordance with IMO Resolution 219(63) Guidelines for the Implementation of MARPOL Annex V, are not substances harmful to the marine environment and do not contain any component known to be carcinogenic, mutagenic or reprotoxic.

Sub-clause (ii) deals with mandatory obligations in relation to the use of cleaning agents and chemicals that are not harmful to the marine environment that the charterers must comply with when providing such material during the charter period.

(iii) Throughout the currency of this Charter Party and at redelivery, the Charterers shall remain responsible for all costs and time, including deviation, if any, associated with the removal and disposal of cargo related residues and/or hold washing water and/or cleaning agents and detergents and/or waste. Removal and disposal as aforesaid shall always be in accordance with and as defined by MARPOL Annex V, or other applicable rules.

If the charterers opt to redeliver the ship with unclean/unswept holds against an agreed lumpsum payment (see sub-clause (a)), this final part of the Hold Cleaning Clause will only apply in respect of the proper removal of residues, etc. after voyages during the currency of the charter.

## **Clause 11 (Hire Payment)**

(a) Payment

Payment of Hire shall be made without deductions due to Charterers' bank charges so as to be received by the Owners or their designated payee into the bank account as follows: [ ] in the currency stated in Clause 10 (Rate of Hire; Hold Cleaning;



Communications; Victualing and Expenses), in funds available to the Owners on the due date, fifteen (15) days in advance, and for the last fifteen (15) days or part of same the approximate amount of hire, and should the same not cover the actual time, hire shall be paid for the balance day by day as it becomes due, if so required by the Owners. The first payment of hire shall be due on delivery.

Hire is to be paid by the charterers, free of bank charges. To reflect the global use of the NYPE form, the new edition leaves it open to the parties to agree the currency in which hire is to be paid. It should be noted that the payment of hire at the end of the charter period refers to the final fifteen days, which is consistent with the method used in NYPE 1946 and which is still well established in the industry.

(b) Grace Period

Where there is failure to make punctual payment of hire due, the Charterers shall be given by the Owners three (3) Banking Days (as recognized at the agreed place of payment) written notice to rectify the failure, and when so rectified within those three (3) Banking Days (as recognized at the agreed place of payment and the place of currency of the Charter Party) following the Owners' notice, the payment shall stand as punctual.

Sub-clause (b) now forms the "grace period" provision. It is no longer an "anti-technicality" provision in that the failure to make punctual payment of hire need not be due to "*oversight, errors or omissions on the part of the Charterers or their bankers*" as with NYPE 1993. It is now unqualified, meaning that whatever the reason for the charterers failing to make punctual payment of hire they will be in breach of the charter party. The reason for removing the qualification is that it can be a potential source of dispute as it relies on the owners being able to demonstrate that the non-payment is not due to one of the "qualifying" events. They may simply not have such facts at their disposal and risk making an erroneous judgement that could place them in breach of the charter.

(c) Withdrawal

Failure by the Charterers to pay hire due in full within three (3) Banking Days of their receiving a notice from Owners under Sub-clause 11(b) above shall entitle the Owners, without prejudice to any other rights or claims the Owners may have against the Charterers:

- (i) to withdraw the Vessel from the service of the Charterers;
- (ii) to damages, if they withdraw the Vessel, for the loss of the remainder of the Charter Party.

The regular and punctual payment of hire in full by the charterers is fundamental to the operation of the charter party. The consequence, therefore, of the charterers failing to pay hire within the three banking days "grace period" is to entitle the owners to withdraw the ship from the services of the charterers and bring the charter to an end. If the owners suffer a loss as a result of the early termination of the charter party they will be entitled to claim damages from the charterers to cover the remaining period of the contract. This provides a clear means of compensation to the owners should they be exposed to lower market rates than the charter hire rate due to the premature ending of the charter.

The withdrawal of a ship from a time charter has far reaching contractual and commercial consequences and involves procedures that must be carefully followed by the owners to avoid themselves breaching the charter party. It is highly recommended that owners contemplating withdrawing a ship under time charter do so in close consultation with their P&I Club/legal advisers.

(d) Suspension

At any time while hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold the performance of any and all obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, and Charterers hereby indemnify the Owners for all legitimate and justifiable actions taken to secure their interests, and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account.

In many cases the withdrawal of a ship under time charter may not be advantageous to the owners when their main objective is simply to bring commercial pressure to bear on a charterer who is late with hire payments. An effective alternative method, which also provides a means of permitting the charter party to continue, is the suspension or partial suspension of the services of the ship. This can only be done with express wording in the charter party. Sub-clause (d) of NYPE 2015 gives the owners the right to withhold temporarily the performance of the charter party without liability or responsibility for the consequences until such time as the charterers fulfil their obligations in respect of hire payments. It is important to note that the suspension right can be invoked immediately once hire is outstanding, it is not subject to the grace period in sub-clause (b).

(e) Last Hire Payment

Should the Vessel be on her voyage towards port/place of redelivery at the time the last payment(s) of hire is/are due, said payment(s) is/are to be made for such length of time as the estimated time necessary to complete the voyage, including the deduction of estimated disbursements for the Owners' account before redelivery. Should said payments not cover the actual time, hire is to be paid for the balance, day by day, as it becomes due.

Unless Sub-clause 9(a)(ii) or (iii) has been agreed, the Charterers shall have the right to deduct the value of bunkers on redelivery from last sufficient hire payment(s).

When the Vessel has been redelivered, any difference in hire and bunkers is to be refunded by the Owners or paid by the Charterers within five (5) Banking Days, as the case may be.

The owners and the charterers are no longer required to agree upon the estimated time required to complete the final voyage under the charter party as in NYPE '93. In the revised wording the charterers are responsible for estimating the remaining time and to pay hire for that period – with any additional time beyond the estimated period paid on a day-by-day basis. This avoids an “agreement to agree” type provision which could give rise to disputes.

The second paragraph is new and relates to the option in Clause 9 (Bunkers) whereby the charterers do not bunker the ship but simply pay the owners for the bunkers consumed (this is mainly aimed at the trip charter market).

**Clause 12 (Speed and Consumption)**

NYPE 2015 incorporates a new clause dealing with speed and consumption obligations and claims.

- (a) Upon delivery and throughout the duration of this Charter Party the Vessel shall be capable of speed and daily consumption rates as stated in Appendix A in good weather on all sea passages with wind up to and including Force four (4) as per the Beaufort Scale and sea state up to and including Sea State three (3) as per the Douglas Sea Scale (unless otherwise specified in Appendix A). Any period during which the Vessel's speed is deliberately reduced to comply with the Charterers' orders/requirements (unless slow steaming or eco speed warranties have been given in Appendix A) or for reasons of safety or while navigating within narrow or restricted waters or when assisting a vessel in distress or when saving or attempting to save life or property at sea, shall be excluded from performance calculations.

Sub-clause (a) is a continuing warranty by the owners that the ship, as of the date of delivery and throughout the charter period, is capable of performing at the speed and with the fuel consumption set out in Appendix A (Vessel Description). This is new compared to the previous NYPE forms, which had capability warranties (in the Preamble) that applied only on delivery. Because NYPE 2015 contains a slow steaming provision (Clause 38) giving the charterers the right to order the ship to operate at reduced speeds, this clause excludes from performance calculations any periods during which the ship is “slow steaming” under the charterers' orders (unless Appendix A contains specific warranties for speeds and related daily consumptions for reduced speeds).

- (b) The Charterers shall have the option of using their preferred weather routing service. The Master shall comply with the reporting procedure of the Charterers' weather routing service and shall follow routing recommendations from that service provided that the safety of the Vessel and/or cargo is not compromised.

It is common practice in the industry for time charterers to employ the services of a weather routing company and so sub-clause (b) provides that option. Consistent with the “Hill Harmony” judgment, the Master has the right to deviate from the customary or recommended route for reasons of safety of the ship, crew and cargo – but if the weather routing service provides routing advice, the Master is otherwise obliged to follow it.

- (c) The actual route taken by the Vessel shall be used as the basis of any calculation of the Vessel's performance.
- (d) If the speed of the Vessel is reduced and/or fuel oil consumption increased, the Charterers may submit to the Owners a documented claim limited to the estimated time lost and/or the additional fuel consumed, supported by a performance analysis from the weather routing service established in accordance with this Clause. The cost of any time lost shall be off-set against the cost of any fuel saved and vice versa.

Claims by the charterers are expressly limited to compensation for the time lost as a result of the underperformance or the cost of any additional fuel consumed. Credit is given for under-consumption offset against time lost and vice versa.

- (e) In the event that the Owners contest such claim then the Owners shall provide copies of the Vessel's deck logs for the period concerned and the matter shall be referred to an independent expert or alternative weather service selected by mutual agreement, whose report shall take Vessel's log data and the Charterers' weather service data into consideration and whose determination shall be final and binding on the parties. The cost of such expert report shall be shared equally.

If there is a dispute over a performance claim the owners and the charterers can refer it to an independent expert for determination. The expert will take into account the ship's deck logs as evidence and compare it with weather data provided by the routing service. The use

of a mutually agreed expert determination service, whose decision is binding on both parties is intended to help reduce the time and cost involved in performance claims.

### **Clause 13 (Spaces Available)**

- (b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature howsoever caused to the deck cargo which would not have arisen had the deck cargo not been loaded. Bills of Lading shall be issued as per Clause 31(c).

In order to protect the owners from responsibility for any and all deck cargo, Clause 13(b) has been amended to “...of *whatsoever nature howsoever caused to the deck cargo...*” (emphasis added). Note that in this context, loss and/or damage and/or liability refers now to the cargo and not the ship as in the '93 edition.

### **Clause 14 (Supercargo)**

The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and meals same as provided for the Master's table. The Charterers and the supercargo are required to sign the standard letter of waiver and indemnity recommended by the Vessel's Protection and Indemnity Association before the supercargo comes on board the Vessel.

It is common practice in the industry and a requirement of owners' P&I Clubs that supercargoes and other personnel placed on board the ship at the charterers' request sign a standard form of waiver prior to embarking.

### **Clause 15 (Sailing Orders and Logs)**

The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and shall furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.

The Sailing Orders and Logs provision is unchanged from the wording in NYPE '93. The clause covers the obligation on the charterers to provide instructions to the Master in writing and in English. The Master and the chief engineer must keep full deck and engine logs for each voyage and these logs must be made available (“patent”) to the charterers and their agents for inspection on request.

### **Clause 16 (Cargo Exclusions)**

This provision is taken from sub-clause 4(a) (Dangerous Cargo/Cargo Exclusions) of NYPE '93 and lists specified cargoes that are excluded from carriage under the charter party such as livestock, explosives and radioactive material. Additional space is provided for the parties to add further excluded cargoes if they so wish.

### **Clause 17 (Off-Hire)**

In the event of loss of time from deficiency and/or default and/or strike of officers or ratings, or deficiency of stores, fire, breakdown of, or damage to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their sub-charterers, servants, agents or sub-contractors are responsible), or detention by Port State control or other competent authority for Vessel deficiencies, or detention by average accidents to the Vessel or cargo, unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination, cleaning and/or painting of underwater parts and/or repair, or by any other similar cause preventing the full working of the Vessel, the payment of hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in Clause 22 (Liberties) hereunder, the hire to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off-hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. 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 bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire. Bunkers used by the Vessel while off-hire and the cost of replacing same shall be for the Owners' account and therefore deducted from the hire.

The exceptions to the ship being placed off-hire as a result of detention now include events for which sub-charterers of the charterers are responsible, as the ship may be operating under sub-time charters or voyage charters during the time charter period.

Vessel deficiencies discovered as a result of the ship being inspected by Port State control that leads to the ship being detained are now expressly covered in the clause as an event that places the ship off-hire.

Additionally listed events that will place the ship off-hire, if there is a loss of time, include hull, propeller and rudder cleaning and repairs.

A new final sentence addresses the owners' liability for fuel consumed during off-hire periods. If the parties have agreed that bunkers are to be provided on the basis of sub-clause 9(a)(ii) or 9(a)(iii), whereby the owners provide bunkers and the charterers pay for what they have consumed, then any amounts used by the owners during off-hire periods should be taken into account at the final calculation of fuel used. In all other cases the charterers should deduct from hire the cost of bunkers consumed by the owners during periods of off-hire.

#### **Clause 18 (Pollution)**

The Owners shall provide for standard oil pollution coverage equal to the level customarily offered by the International Group of P&I Clubs, together with the appropriate certificates to that effect. (See also Clause 6 (Owners to Provide)).

This new provision is linked to the COFR requirements of Clause 6 (Owners to Provide), setting out the owners' obligation to provide certificates of financial responsibility for oil pollution damage (currently only required for U.S. trade). Clause 18 obliges the owners to have and maintain standard oil pollution coverage equal to the level currently offered by members of the International Group of P&I Clubs (the cover does not necessarily need to be provided by an International Group club).

#### **Clause 19 (Drydocking)**

Except in case of emergency or under Clause 52(b), no drydocking shall take place during the currency of this Charter Party.

Under the main terms of NYPE 2015 dry docking is not permitted other than for reasons of emergency. This is because the duration of the charter party may be too short to allow drydocking without significantly affecting the charterers' commercial use of the ship – particularly in the case of a trip charter agreement. If, however, the minimum period of the charter party exceeds five months then the owners have the option to drydock the ship by prior agreement with the charterers.

#### **Clause 20 (Total Loss)**

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

This clause remains unchanged and simply provides that should the ship be lost, all payments made by charterers but not earned by the owners are to be repaid as of the actual or declared date of the loss.

#### **Clause 21 (Exceptions)**

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and navigation, and errors of navigation throughout this Charter Party, always mutually excepted.

The mutual exceptions provisions of NYPE '93 remain unchanged in the new edition.

#### **Clause 22 (Liberties)**

The Vessel shall have the liberty to sail with or without pilots, to tow and be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

The liberties provision is unchanged from the '93 and '46 editions of NYPE and is a common wording used in many time charter parties. Its application is in the context of the Master's obligation to proceed with due despatch and to comply with the charterers' employment orders.

#### **Clause 23 (Liens)**

The Owners shall have a lien upon all cargoes, sub-hires and sub-freights (including deadfreight and demurrage) belonging or due to the Charterers or any sub-charterers, for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessities or services, including any port expenses and bunkers, on the credit of the Owners.

The lien provision from NYPE '93 has been extended to cover "sub-hires" from sub-time charters – it previously referred only to "sub-freights" which could be construed as voyage charter freight only. Sub-freights now expressly include demurrage and deadfreight components due to the charterers or their sub-charterers, over which the owners can exercise a lien – not possessory but in the form of "intercepting" a payment due to the charterers.

The second part of the clause is effectively a "non-lien" provision designed to prevent suppliers who have a contract with the charterers, such as bunker suppliers, from placing a lien over the ship for non-payment of goods. The effectiveness of this provision may vary from jurisdiction to jurisdiction. Owners may wish to consider additional measures such as requiring the charterers to notify their suppliers that goods are being purchased on their account and not the owners and that a lien cannot be placed on the ship if payment is not made. BIMCO has developed a Bunker Non-Lien Clause that may provide greater protection to owners in such circumstances.

It should be noted that the words "*or in the Owners' time*" in relation to the charterers procuring "*supplies or necessities or services*" that formed the final words of the last sentence of the Lien Clause in the '93 edition have been deleted. It was unclear what the significance of services, etc., being procured in the owners' time added to the provision in terms of a non-lien.

#### **Clause 24 (Salvage)**

All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting the Owners' and the Charterers' expenses and crew's proportion.

This is a standard wording dividing the benefit of any salvage award between the owners and the charterers taking into account the expenses of the parties. Such expenses may include hire paid for time lost while engaged in the salvage operation, bunkers consumed and repairs to damage to the owners' ship.

#### **Clause 25 (General Average)**

General average shall be adjusted according to York-Antwerp Rules 1994 and settled in US dollars in the same place as stipulated in Clause 54 (Law and Arbitration). The Charterers shall procure that all bills of lading issued during the currency of this Charter Party will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1994 and will include the "New Jason Clause" as per Clause 33(c). Time charter hire will not contribute to general average.

The 1994 edition of the York-Antwerp Rules is the most commonly used version relied on by the industry. As the majority of general average claims are settled in US dollars this has been inserted as the default currency. Parties no longer need to elect a place of settlement as the clause provides for settlement in the same place as the chosen arbitration venue (New York, London, Singapore or other named venue).

#### **Clause 26 (Navigation)**

Nothing herein stated is to be construed as a demise of the Vessel to the Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.

This standard charter party provision asserts that the Master and officers remain the servants of the owners in terms of the operation of the ship including navigation. The phrase "*and all other matters*" is not intended to cover responsibility for cargo claims, which are dealt with under Clause 27 (Cargo Claims).

#### **Clause 27 (Cargo Claims)**

Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club NYPE Agreement 1996 (as amended 1 September 2011), or any subsequent modification or replacement thereof.

The latest edition of the Inter-Club Agreement, updated in 2011, is incorporated into NYPE 2015 for the handling of cargo liability claims. The Inter-Club Agreement was first developed in 1970 as a mechanism designed for quickly and fairly apportioning liability for cargo claims between owners and charterers to avoid costly and lengthy litigation. The Agreement has been amended several times since 1970. In 2011 the Agreement was amended to address concerns over the time and cost involved in obtaining security between owners and charterers.

**Clause 28 (Cargo Handling Gear and Lights)**

The Owners shall maintain the cargo handling gear of the Vessel providing lifting capacity as described in Appendix A (Vessel Description). The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any cargo handling gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off-hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' stevedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on-hire, except for actual time lost.

The introduction of a new Appendix A (Vessel Description) means that specific details about any cargo handling gear on the ship no longer need to be set out in the charter party itself. Consequently the reference to "*all derricks or cranes*" has been removed as superfluous.

The final sentence of the provision relating to the owners' obligation to bear the cost of hiring shore cargo handling gear at the charterers' request if the ship's gear is not functioning, has been modified to clarify that the ship will remain on-hire with the exception of the time actually lost to the charterers.

**Clause 29 (Solid Bulk Cargoes/Dangerous Goods)**

This new clause replaces the "dangerous cargo" provision previously found in sub-clause 4(b) (Dangerous Cargo/cargo Exclusion) of NYPE '93.

- (a) The Charterers shall provide appropriate information on the cargo in advance of loading in accordance with the requirements of the IMO International Maritime Solid Bulk Cargoes (IMSBC) Code to enable the precautions which may be necessary for proper stowage and safe carriage to be put into effect. The information shall be accompanied by a cargo declaration summarising the main details and stating that the cargo is fully and accurately described and that, where applicable, the test results and other specifications can be considered as representative for the cargo to be loaded.

The purpose of sub-clause (a) is to oblige the charterers to provide sufficient advance notice to the owners of any solid bulk cargo they intend to load that may be prone to liquefaction and therefore require the Master to take specific safety measures.

- (b) If a cargo listed in the IMO International Maritime Dangerous Goods (IMDG) Code (website: [www.imo.org](http://www.imo.org)) is agreed to be carried, the Charterers shall provide a dangerous goods transport document and, where applicable, a container/vehicle packing certificate in accordance with the IMDG Code requirements. The dangerous goods transport document shall include a certificate or declaration that the goods are fully and accurately described by the Proper Shipping Name, are classified, packaged, marked and labelled/placarded correctly and are in all respects in proper condition for transport according to applicable international and national government regulations.

Sub-clause (b) provides for the procedures to be followed by the charterers in accordance with the IMO International Maritime Dangerous Goods Code. Provided the charterers follow the IMO procedures and give the necessary information about the nature of the cargo and handle it correctly, there is no specific requirement to limit the amount of such cargo carried by the ship as in the '93 edition of NYPE.

- (c) The Master shall be entitled to refuse cargoes or, if already loaded, to unload them at the Charterers' risk and expense if the Charterers fail to fulfil their IMSBC Code or IMDG Code obligations as applicable.

The final sub-clause is of particular significance in respect of solid bulk cargoes that can liquefy and the particular risk to the safety of the ship and crew that can result from the instability of the cargo. The safety of the ship and crew is the Master's prime responsibility and this provision gives the Master the right to refuse to load cargo or to require its removal from the ship if it transpires that the charterers are in breach of their obligations.

**Clause 30 (Hull Fouling)**

- (a) If, in accordance with the Charterers' orders, the Vessel remains at or shifts within a place, anchorage and/or berth for an aggregated period exceeding:

- (i) a period as the parties may agree in writing in a Tropical Zone or Seasonal Tropical Zone\*; or

- (ii) a period as the parties may agree in writing outside such Zones\*

any warranties concerning speed and consumption shall be suspended pending inspection of the Vessel's underwater parts including, but not limited to, the hull, sea chests, rudder and propeller.



*\*If no such periods are agreed the default periods shall be 15 days.*

Under most standard forms of time charter party, including NYPE, it is the owners' obligation to maintain the ship's hull in a "thoroughly efficient state". This obligation means keeping the hull and other underwater parts free of fouling. If hull fouling is permitted to build up to the extent that it affects the performance of the ship, the owners may face a claim from the charterers for underperformance. In some circumstances, however, it may be due to the charterers' employment orders that the ship spends an extended period of time at anchor off a particular port. If fouling occurs under these circumstances and the ship's performance is affected then the Hull Fouling Clause is designed to transfer hull cleaning obligations to the charterers.

The period of time before the clause takes effect may be determined by the particular paint coating used on the ship's hull in terms of its general effectiveness, durability and paint manufacturer's recommendations. Although in some cases parties may negotiate longer periods to apply, 15 days has been chosen as the default period to reflect current commercial practice.

### **Clause 31 (Bills of Lading)**

- (a) The Master shall sign bills of lading or waybills for cargo as presented in conformity with mates' receipts. However, the Charterers or their agents may sign bills of lading or waybills on behalf of the Master, with the Owners'/Master's prior written authority, always in conformity with mates' receipts.

Consistent with Articles 21 and 22 of UCP (Uniform Customs and Practice for Documentary Credits) 600, bills of lading and waybills may be signed on behalf of the Master by the charterers or their agents. Sub-clause (a) has been amended to reflect these signature options. The Bills of Lading Clause is otherwise unchanged from NYPE '93.

### **Clause 32 (Electronic Bills of Lading)**

Bills of lading produced in electronic format are designed to replicate the purposes and processes (such as endorsements or reservations) of their paper equivalent so as to offer "functional equivalence". Electronic bills can, if required by parties in the trading chain, be replaced by paper bills of lading at any point. In practical terms, while electronic bill of lading systems do not entirely eliminate the problem of cargoes arriving at discharge ports before bills of lading, their use should result in a significant reduction in the number, and associated risks, of LOIs issued to owners.

- (a) At the Charterers' option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.

The decision to use bills of lading, waybills and delivery orders in an electronic format is in the charterers' option. Their use will be in the same manner under the charter party as their paper equivalent. The words "issued, signed and transmitted in electronic form" describe the process of paperless trading. The closing phrase "with the same effect as their paper equivalent" establishes the equal status of electronic and paper documents.

NOTE: It is important that charterers, their sub-charterers and others in a charter party chain fully understand the need to sign-up to the chosen system or systems if they want to benefit from paperless trading procedures. They cannot participate without registration.

- (b) For the purpose of Sub-clause (a) the Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by the Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.

If the charterers decide to use electronic bills of lading the owners are obliged to subscribe to and use the charterers' chosen electronic bill of lading "platform" – which must be one approved by the International Group of P&I Clubs. Fees are for the charterers' account – although at present none of the companies providing approved systems make a charge to owners to register and use their respective platforms.

- (c) The Charterers agree to hold the Owners harmless in respect of any additional liability arising from the use of the systems referred to in Sub-clause (b), to the extent that such liability does not arise from Owners' negligence.

The charterers provide the owners with an indemnity for any "additional" liabilities that are not the result of the owners' negligence. P&I Clubs provide the same degree and scope of cover to paper and approved systems of paperless trading. Consequently, these "additional" liabilities are not readily identifiable and use of electronic bills of lading to date has not given rise to any such liabilities.



**Clause 33 (Protective Clauses)**

The Clause Paramount, the Both-to-Blame Collision Clause and the New Jason Clause are by this provision incorporated into all bills of lading and waybills issued under the charter party. The three clauses also apply to the charter party.

*(a) General Clause Paramount*

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bill of lading, (or if no such enactments are mandatorily applicable, the terms of the Hague Rules shall apply) which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

The Clause Paramount provides for the applicable cargo liability regime under bills of lading issued under the charter party. The wording found in NYPE 93 has been maintained save for the addition of the phrase in parentheses “*or if no such enactments are mandatorily applicable, the terms of the Hague Rules shall apply*”. These additional words serve the purpose of making sure that in the absence of compulsorily applicable rules in a particular trade, the Hague Rules will apply by default. Without these words it may give rise to uncertainty as to the applicable liability regime to apply in these (admittedly uncommon) circumstances.

*(b) Both-to-Blame Collision Clause*

This clause is of particular importance when the law of the United States may apply to apportioning liability for a collision between two ships where both ships have acted negligently to cause the casualty. It is a means of restoring the owners' position under the Hague/Hague-Visby Rules whereby the owners are exempted from liability to the cargo owners for loss of or damage to the cargo resulting from “act, neglect or default” in the navigation or management of the ship. The reason for the clause is that the United States has signed but not ratified the Brussels Collision Convention 1910, whereas most other maritime states have ratified the Convention.

*(c) New Jason Clause*

This clause entitles the owners to receive general average contributions from other interests in the “maritime adventure” even if the owners failed to exercise due diligence to make the ship seaworthy, provided the casualty giving rise to the claim in general average was not caused by that unseaworthiness. It is of particular importance when the law of the United States may apply. It is a common requirement of P&I Club cover to have the clause incorporated into all bills of lading. As such, it is not recommended that the wording be in any way amended.

**Clause 34 (War Risks)**

This provision is the latest edition of BIMCO's standard War Risks Clause, CONWARTIME. A significant change to the earlier edition of the Clause arises from the case of the “Triton Lark”<sup>1</sup> and the construction of CONWARTIME in relation to measuring the risk of attack by pirates. The court placed considerable emphasis on the meaning of “may be” and “are likely to be” for determining the existence of the risk of attack by pirates and when owners have the right to refuse to proceed. In order to remove potential uncertainty, the test for determining whether to proceed has been amended and is now based on whether an area is dangerous. The level of danger is likely to be high but a stated reference point removes the need for complex analysis of degree of risk and whether or not it is more or less likely to occur. Sub-clauses (a) and (b) have been amended to reflect the position.

*(a) For the purpose of this Clause, the words:*

(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

The definition of “Piracy” (sub-clause (a)(ii)) has been aligned with the provision in the Piracy Clause to include acts of “violent robbery and/or capture/seizure”. Attacks of this type often occur in territorial waters and, while not technically piracy under international law, are treated as such for insurance purposes.

<sup>1</sup> Pacific Basin Ith Ltd v Bulkhandling Handymax AS (The Triton Lark) (2012)

- (b) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area"), where it appears that the Vessel, cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be exposed to War Risks whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.

The revised edition also clarifies the mechanism triggering the Clause. It had been understood that CONWARTIME took effect if the identified risks arose after a charter party had been concluded and had not, therefore, been contemplated by the parties. This is in contrast with the BIMCO Piracy Clause for Time Charters that expressly applies whether or not the risk in question was known at the time of fixing. However, it was held in the recent case of the "Paiwan Wisdom" that CONWARTIME did not contain a requirement that a war risk must have escalated since the date of the charter party. In order to avoid any doubt about the position and remove the inconsistency with the Piracy Clause (given that CONWARTIME also covers piracy risks), an amendment to sub-clause (b) now provides that the Clause applies "whether such [war] risk existed at the time of entering into this charter party or occurred thereafter".

In line with the approach in the Piracy Clause, sub-clause (b) no longer requires charterers to obtain owners' written consent before ordering the vessel to proceed to or through a war risk area. It is understood that consent is rarely requested in practice. Nevertheless, owners ultimately retain the right to refuse to navigate in an area of danger.

- (d) If the Vessel proceeds to or through an Area exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with War Risks.

The insurance provisions in sub-clause (d) make the charterers liable for any additional premium (i.e. beyond the owners' normal war risk insurance cover) imposed by underwriters as a result of the vessel navigating in an area of enhanced risk. The charterers are also liable for the cost of any additional insurances required by the owners which, where CONWARTIME is used for piracy risks, is likely to include War Loss of Hire and/or maritime Kidnap and Ransom (K&R) cover.

- (g) The Vessel shall have liberty:

(ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s); Insurers have no authority to give orders or instructions about routing or navigation. Insurers might, however, require an assured to comply with reporting arrangements such as UKMTO (United Kingdom Marine Trade Operations) or follow Best Management Practices. This is reflected in sub-clause (g)(ii) which provides that owners have liberty to comply with requirements "*under the terms of the Vessel's insurance(s)*".

- (h) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within forty-eight (48) hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice. All costs, risk and expenses for the alternative discharge shall be for the Charterers' account.

Procedures to be followed in the event that owners invoke their rights to discharge cargo other than at the contractual destination are set out at sub-clause (h). A new final sentence makes clear that charterers are liable for any resulting costs, risk and expenses.

### **Clause 35 (Ice)**

The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having due regard to its size, construction and class, may follow ice-breakers. The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging.

While the wording of the ice clause is largely unchanged from Clause 33 of NYPE '93, a new first sentence makes it clear that the ship is not obliged to force ice (but if the Master decides to do so and the ship is damaged then it will be for the owners' account). The final sentence of the '93 edition, Clause 33, then follows requiring the owners' prior approval to permit the ship to follow ice-breakers.

**Clause 36 (Requisition)**

Should the Vessel be requisitioned by the government of the Vessel's flag or other government to whose laws the Owners are subject during the period of this Charter Party, the Vessel shall be deemed to be off-hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.

Although the requisitioning of merchant ships is nowadays a very rare occurrence, this provision has been maintained. Previously limited to requisition by the ship's flag state, the provision has been broadened to include the possibility of requisition of the ship by the government of the country to whose laws the owners are subject.

If the period of requisition exceeds ninety (90) days, either party shall have the option of cancelling this Charter Party and no consequential claim in respect thereof may be made by either party.

Frustration of the charter party due to requisition over an extended period of time would normally need to be determined by the courts in relation to the period of the charter party. To avoid uncertainty, the provision sets a time limit of 90 days after which either party may terminate the agreement.

**Clause 37 (Stevedore Damage)**

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing within twenty-four (24) hours of the occurrence but in case of hidden damage latest when the damage could have been discovered by the exercise of due diligence. Such notice to describe the damage and to invite Charterers to appoint a surveyor to assess the extent of such damage.

The stevedore damage provision found in NYPE '93 has been modified to bring it in line with contemporary trade practice. The re-worded clause places a strict obligation on the owners/master to report any damage within 24 hours of its occurrence. This is in contrast to the '93 wording that gave the owners 48 hours after "discovery of the damage" to report it to the charterers. The discovery of damage that is hidden (due to cargo) is now subject to due diligence. This means that the reporting time of 24 hours runs from when the hidden damage could have been discovered by the exercise of due diligence.

**Clause 38 (Slow Steaming)**

An important part of the "modernisation" of the NYPE form includes the incorporation of contemporary clauses that reflect changes in trade practice or new issues affecting the industry. One such clause is "Slow Steaming" which provides the charterers with the right to order the ship to proceed at a reduced speed or to adjust speed to arrive at a specified time. Ordinarily, a time charterer does not have such rights. The owners are under a strict obligation to prosecute voyages under a time charter with "due" or "utmost" despatch and this obligation extends not only to the time charterers but also to third parties, such as bill of lading holders. An express provision permitting the ship to slow steam at the charterers' request is important to avoid the risk of owners facing claims from third parties and to deal with the potential technical aspects relating to operating a ship at reduced speeds for prolonged periods.

- (a) The Charterers may at their discretion provide, in writing to the Master, instructions to reduce speed or Revolutions Per Minute (main engine RPM) and/or instructions to adjust the Vessel's speed to meet a specified time of arrival at a particular destination.

(i) \*Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that the engine(s) continue(s) to operate above the cut-out point of the Vessel's engine(s) auxiliary blower(s) and that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

(ii) \*Ultra-Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, regardless of whether this results in the engine(s) operating above or below the cut-out point of the Vessel's engine(s) auxiliary blower(s), the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time. If the manufacturers'/designers' recommendations issued subsequent to the date of this Charter Party require additional physical modifications to the engine or related equipment or require the purchase of additional spares or equipment, the Master shall not be obliged to comply with these instructions.

*\*Sub-clauses (a)(i) and (a)(ii) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative (a)(i) shall apply.*

Sub-clause (a) provides the parties with two alternatives depending on their needs. It is generally accepted that provided a ship's engines operate above the cut-out point for the engine's auxiliary blowers, most owners should be prepared to allow an adjustment of speed within the normal service speed and the cut-out point of the auxiliary blowers. This "zone" reflects normal operating parameters and has been defined as alternative (i) "Slow Steaming". Engine designers have advised that slow steaming above the cut-out point of the auxiliary blowers can be achieved by most ships without requiring any modification of the engine or the installation of additional equipment, provided that the engine has been well maintained.

The second alternative, "Ultra Slow Steaming", provides the full range of slower speeds to the charterers by also permitting the engines to operate below the cut-out point of the auxiliary blowers down to minimal engine loads. For this type of slow steaming operation, engine designers have advised that in most cases engine modification and additional equipment would be required.

It should be noted that alternative (ii) ONLY applies if the parties have expressly agreed to it by deleting alternative (i), which otherwise applies by default.

It has been left for the parties to agree on appropriate speed reductions on a case by case basis, rather than incorporating a particular speed range in the clause. However, it should be noted that such reductions are always subject to what has been agreed regarding 'slow steaming' or 'ultra slow steaming'; the safety of the vessel, crew and cargo and protection of the marine environment; and recommendations from manufacturers'/designers' of the engine(s) and other related equipment.

The Clause does not address whether physical modifications, update of equipment and keeping of extra spares related to 'Ultra Slow Steaming' should be for the owners' or charterers' account. As slow steaming becomes more common, it is expected that those owners who market the capability of their vessel to operate at very slow speeds will already have undertaken any necessary modifications to the engines and equipment.

(b) At all speeds the Owners shall exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, always taking into account and subject to the following:

(i) the Owners' warranties under this Charter Party relating to the Vessel's speed and consumption;

(ii) the Charterers' instructions as to the Vessel's speed and/or RPM and/or specified time of arrival at a particular destination;

(iii) the safety of the Vessel, crew and cargo and the protection of the marine environment; and

(iv) the Owners' obligations under any bills of lading, waybills or other documents evidencing contracts of carriage issued by them or on their behalf.

The warranted consumption relating to a particular speed is not affected by the clause. This means that any speed and consumption warranties that the owners have given under the charter party still apply despite agreeing to slow steam. If, however, the ship proceeds *below* any warranted speed, at the charterers' request, this will fall outside the performance guarantee.

Sub-clause (b)(iii) emphasises that the safety of the ship, crew, cargo and environment are paramount and therefore the speed of the ship can be increased at any time to avoid a particular hazard, at the Master's discretion.

If the bills of lading issued under the charter party are charterers' bills, as is typical in the liner trade, then sub-clause (b)(iv) is not relevant.

(c) For the purposes of Sub-clause (b), the Owners shall exercise due diligence to minimise fuel consumption:

(i) when planning voyages, adjusting the Vessel's trim and operating main engine(s) and auxiliary engine(s);

(ii) by making optimal use of the Vessel's navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimization and performance monitoring systems; and

(iii) by directing the Master to report any data that the Charterers may reasonably request to further improve the energy efficiency of the Vessel.

Slow steaming performance monitoring systems provided by the charterers are intended to be standalone devices to avoid any possible corruption of or interference with the ship's systems.

The owners are only obliged to use equipment/aids provided by the charterers, *if the use of such equipment/aids has been agreed between the parties beforehand*. The intention of this provision is not to place any additional burden on the owners but merely to indicate that if the use of such equipment/aids has been agreed by the parties – in which case the owners are then under an obligation to use them optimally.

- (d) The Owners and the Charterers shall share any findings and best practices that they may have identified on potential improvements to the Vessel's energy efficiency.

Sub-clause (d) requires the owners and the charterers to share findings and best practices that may be of interest to the other party - in particular findings on how the vessel's energy efficiency can be improved. They are not, however, obliged to exchange information and best practices with regards to savings or any other information of a sensitive nature.

- (e) For the avoidance of doubt, where the Vessel proceeds at a reduced speed or with reduced RPM pursuant to Sub-clause (a), then provided that the Master has exercised due diligence to comply with such instructions, this shall constitute compliance with, and there shall be no breach of, any obligation requiring the Vessel to proceed with utmost and/or due despatch (or any other such similar/equivalent expression).

This provision sets out how to deal with the 'due despatch' obligations common to charter parties and contracts of carriage. Where due despatch obligations apply, some mechanism needs to be included in the clause to permit slow steaming without liability for delay. Sub-clause (e) emphasises that compliance with the charterers' instructions in terms of slow steaming will not constitute a breach of any obligation that the owner may have under the charter party or contracts of carriage to proceed with due despatch.

- (f) The Charterers shall procure that this Clause be incorporated into all sub-charters and contracts of carriage issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

The charterers are obliged to incorporate the Slow Steaming clause in any bills of lading issued under the time charter. As it may not necessarily be a realistic proposition to expect the clause to be incorporated into every bill of lading, the charterers are required to indemnify the owners against any consequences and liabilities in relation to issuing bills of lading where the terms of the bills result in the imposition of liabilities greater than those assumed by the owners under the clause.

### **Clause 39 (Piracy)**

The wording of the Piracy Clause is taken from the BIMCO Piracy Clause for Time Charter Parties, which was revised together with BIMCO's CONWARTIME in 2013 to reflect industry experience and legal developments relating to piracy (see note on Clause 34 (War Risks) above).

- (a) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area") which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or may become dangerous, after her entry into it, she shall be at liberty to leave it.

When determining the risk of attack by pirates and whether the owners have the right to refuse to proceed, the key "test" is to judge if it "is dangerous" to the ship to proceed or continue to proceed. The level of danger is likely to be high but a stated reference point removes the need for complex analysis of degree of risk and whether or not it is more or less likely to occur.

- (c) If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
- (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);
  - (ii) to comply with underwriters' requirements under the terms of the Vessel's insurance(s);
  - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
  - (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

and the Charterers shall indemnify the Owners for any claims from holders of Bills of Lading or third parties caused by the Vessel proceeding as aforesaid, save to the extent that such claims are covered by additional insurance as provided in Sub-clause (d)(iii).

Sub-clause (c) sets out the owners' liberties to take appropriate precautions when a vessel proceeds to or through an area exposed to piracy risks. Sub-paragraph (i), covering on-board and navigational preventative measures, includes an express reference to the embarkation/disembarkation of security personal and equipment.

In Sub-clause (c)(ii) insurers may require an assured to comply with reporting arrangements such as UKMTO (United Kingdom Marine Trade Operations) or follow Best Management Practices – but they have no authority to give orders or instructions about the routing or navigation of a ship.

(d) Costs

(i) if the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the Charterers' account. Any time lost waiting for convoys, following recommended routing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers' account and the Vessel shall remain on hire;

(ii) if the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;

(iii) if the Vessel proceeds to or through an Area exposed to the risk of Piracy, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with Piracy risks which may include but not be limited to War Loss of Hire and/or maritime Kidnap and Ransom (K&R); and

(iv) all payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of the Owners' supported invoices or on redelivery, whichever occurs first.

Under the cost-related provisions of sub-clause (d) the charterers are liable for any additional premium (i.e. beyond owners' normal war risk insurance cover) imposed by underwriters as a result of the vessel navigating in an area of enhanced risk. The charterers are also liable for the cost of any additional insurances required by owners with the stated, but non-exhaustive, illustrative examples of War Loss of Hire and/or maritime Kidnap and Ransom (K&R) cover.

(f) If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure until release. The Charterers shall pay hire, or if the Vessel has been redelivered, the equivalent of Charter Party hire, for any time lost in making good any damage and deterioration resulting from the seizure. The Charterers shall not be liable for late redelivery under this Charter Party resulting from the seizure of the Vessel.

Sub-clause (f) deals with the seizure of the ship by pirates and the position on subsequent release. The 90 day cap on charterers' exposure to hire during captivity is maintained - although this does not affect charterers' other contractual obligations which remain in place no matter how long the period of detention. The cap represents a sharing of risk but it is a starting point and parties are free to negotiate a figure that meets their specific needs. In any event, the capping of hire payments should be viewed together with owners' option in sub-clause (d)(iii) to take out War Loss of Hire cover with the costs payable by charterers.

A ship on release is likely to require repairs to make good damage and deterioration arising from the period of detention. The charterers are liable for hire, or if after redelivery the equivalent of charter party hire, for any time lost for repairs.

#### **Clause 40 (Taxes)**

Charterers are to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners). In the event the Owners/Vessel/her flag state are exempt from any taxes, the Owners shall seek such exemption and filing costs for such exemption, if any, shall be for the Charterers' account and no charge for such taxes shall be assessed to the Charterers.

While the charterers are liable for all taxes other than those that are directly attributable to the owners (such as taxes on the ship levied by the flag state), a new final sentence has been added to the clause requiring the owners to seek any entitlements to exemption from taxes so that the charterers may benefit from the exemption.



**Clause 41 (Industrial Action)**

In the event of the Vessel being delayed or rendered inoperative by strikes, labor stoppages or boycotts or any other difficulties arising from the Vessel's ownership, crew or terms of employment of the crew of the chartered Vessel or any other vessel under the same ownership, operation and control, any time lost is to be considered off-hire. The Owners guarantee that on delivery the minimum terms and conditions of employment of the crew of the Vessel are in accordance with the International Labour Organization Maritime Labour Convention (MLC) 2006, and will remain so throughout the duration of this Charter Party.

This new provision addresses the potential consequences of industrial action resulting from the terms and condition of employment of the crew and extends to other ships owned or operated by the owners – effectively placing the ship off-hire in the event of a delay to the ship due to these factors.

**Clause 42 (Stowaways)**

- (a) If stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers or by any other means related to the cargo operation, this shall amount to breach of this Charter Party. The Charterers shall be liable for the consequences of such breach and hold the Owners harmless and keep them indemnified against all claims; costs (including but not limited to victualing costs for stowaways whilst on board and repatriation); losses; and fines or penalties, which may arise and be made against them. The Charterers shall, if required, place the Owners in funds to put up bail or other security. The Vessel shall remain on hire for any time lost as a result of such breach.
- (b) Save for those stowaways referred to in Sub-clause (a), if stowaways have gained access to the Vessel this shall amount to a breach of this Charter Party. The Owners shall be liable for the consequences of such breach and hold the Charterers harmless and keep them indemnified against all claims; costs; losses; and fines or penalties, which may arise and be made against them. The Vessel shall be off-hire for any time lost as a result of such breach.

This Clause allocates responsibility and liability for any costs associated dealing with stowaways. While the means by which stowaways gains access to a ship is not always apparent after the event (and stowaways may not always be too forthcoming about how they got on board), the clause allocates the responsibility to the charterers if it is evident that the stowaway hid themselves in the cargo to get on board, and to the owners if access to the ship was gained by any means other than cargo related.

The presence of stowaways can expose the owners to fines, delays, and repatriation costs. These costs are normally recoverable by the owners from their P&I Club, subject to a deductible. This clause apportions the liability more equally in the case of a time charter where the charterers are issuing orders for employment. The owners still have a duty to search for stowaways and take steps to remove them, but if the stowaways have gained access to the ship via the cargo or cargo related operations then the costs can be recovered from the charterers.

**Clause 43 (Smuggling)**

- (a) In the event of smuggling by the Master, other Officers and/or ratings, this shall amount to a breach of this Charter Party. The Owners shall be liable for the consequences of such breach and hold the Charterers harmless and keep them indemnified against all claims, costs, losses, and fines and penalties which may arise and be made against them. The Vessel shall be off-hire for any time lost as a result of such breach.

Smuggling remains a serious issue in the industry and this new provision for NYPE makes clear that smuggling by the crew is a breach of the charter party. The owners will be responsible for all consequences of the breach, and the ship will be off-hire for any time lost as a consequence of the smuggling activities.

- (b) If unmanifested narcotic drugs and/or any other illegal substances are found secreted in the goods and/or containers or by any other means related to the cargo operation, this shall amount to a breach of this Charter Party. The Charterers shall be liable for the consequences of such breach and hold the Owners, Master, officers and ratings of the Vessel harmless and keep them indemnified against all claims, costs, losses, and fines and penalties which may arise and be made against them individually or jointly. The Charterers shall, if required, place the Owners in funds to put up bail or other security. The Vessel shall remain on hire for any time lost as a result of such breach.

If illegal substances are found in or related to the cargo then it is a breach by the charterers and they will be responsible for the consequences. As the ship and/or crew may be arrested as a result of the discovery of illegal drugs hidden in the cargo, the charterers are required to put up bail or provide other security to secure their release if necessary.

**Clause 44 (International Safety Management (ISM))**

During the duration of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers. Except as otherwise provided in



this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code shall be for the Owners' account.

The ISM provision is a basic statement of the law in that the owners are legally obliged to make sure that the ship and the "Company" comply with the ISM Code during the charter period.

#### **Clause 45 (ISPS/MTSA)**

- (a) (i) The Owners shall comply with the requirements of the ISPS and the relevant amendments to Chapter XI of Safety of Life at Sea (SOLAS) (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the US or passing through US waters, the Owners shall also comply with the requirements of the MTSA relating to the Vessel and the "Owner" (as defined by the MTSA).
- (ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (ISSC) (or the interim ISSC) and the full style contact details of the Company Security Officer (CSO).
- (iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners' account, except as otherwise provided in this Charter Party.

This clause covers the requirements in relation to the owners and the charterers in respect of the ISPS Code (the International Code for the Security of Ships and Port Facilities and amendments to Chapter XI of SOLAS). Similarly, in case of trading to or from the U.S., the owners are required to comply with the MTSA Act (US Maritime Transportation Security Act 2002). This applies not only to ships calling at US ports but also to those passing through US waters en route to other destinations.

Compliance with the ISPS Code and the MTSA is a strict obligation on the owners and they are liable for loss, damages, expenses or delays that may result from their non-compliance.

- (b) (i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Charter Party, the Charterers shall ensure that the contact details of all sub-charterers are likewise provided to the Owners and the Master. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

*"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that contact details of all sub-charterers are likewise provided to the Owners".*

- (ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account, except as otherwise provided in this Charter Party.

Under a time charter the charterers must provide the owners with information, such as contact details, required to ensure the owners' compliance with the ISPS Code/MTSA. If there is a chain of sub-charters under the time charter then the head charterers must make sure that the sub-charters contain a "back-to-back" provision requiring key information to be passed to the head-owners. Delays, etc, arising out of failure by the charterers or sub-charterers to provide the required information will be for the charterers' account.

- (c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew, crew visas, the Vessel's flag or the identity of the Owners' managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

The ISPS/MTSA Clause provides for a division of responsibility for ISPS Code and MTSA related matters – the owners are responsible for all ship-related ISPS/MTSA matters and the charterers are responsible for all port-related ISPS/MTSA matters. Sub-clause (c) provides that delays, costs and expenses in relation to security measures required by the port(s) or relevant authorities are for the charterers' account. If the port authority because of the current security level at the port requires security guards to be posted on the ship, then this cost is for the charterers. If, however, the reason the guards are required is due to negligence by owners/master/crew or known characteristics such as ports recently visited, or the ship's flag or crew, then the cost is for the owners to bear.

**Clause 46 (Sanctions)**

- (a) The Owners shall not be obliged to comply with any orders for the employment of the Vessel in any carriage, trade or on a voyage which, in the reasonable judgement of the Owners, will expose the Vessel, Owners, managers, crew, the Vessel's insurers, or their re-insurers, to any sanction or prohibition imposed by any State, Supranational or International Governmental Organization.

The purpose of the sanctions clause is to provide the owners with a means to assess and act on any voyage order issued by a time charterer that might expose the Vessel to the risk of sanctions. The test is one of "reasonable judgement" by the owners in determining whether the risk of the imposition of sanctions is tangible.

- (b) If the Vessel is already performing an employment to which such sanction or prohibition is subsequently applied, the Owners shall have the right to refuse to proceed with the employment and the Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of the Owners' notification of their refusal to proceed. If the Charterers do not issue such alternative voyage orders the Owners may discharge any cargo already loaded at any safe port (including the port of loading). The Vessel to remain on hire pending completion of the Charterers' alternative voyage orders or delivery of cargo by the Owners and the Charterers to remain responsible for all additional costs and expenses incurred in connection with such orders/delivery of cargo. If in compliance with this Sub-clause (b) anything is done or not done, such shall not be deemed a deviation.

As sanctions are often brought into force within a short period of time, the clause covers the application of sanctions after the Vessel has begun an employment under the charter. Whether the sanctions existed at the time the order of employment was issued or whether they were subsequently applied, the owners will have the right not to comply with such orders or to refuse to proceed. The owners must advise the charterers promptly of their refusal to proceed with the voyage and the charterers must provide alternative voyage orders with 48 hours of being notified by the owners.

Failure by the charterers to issue alternative voyage orders will result in the owners having the right to discharge any cargo on board at a safe port at charterers' cost. In all circumstances the ship will remain on hire and the charterers will be obliged to indemnify the owners against any claims brought by the cargo owners or holders of bills of lading or sub-charterers as a consequence of the change of orders or the owners' discharge of the cargo.

**Clause 47 (Designated Entities)**

- (a) The provisions of this clause shall apply in relation to any sanction, prohibition or restriction imposed on any specified persons, entities or bodies including the designation of specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

The Designated Entities Clause applies in respect of persons or entities (including designated vessels), regardless of where they operate from, whose activities are restricted or prohibited and are identified under United Nations Resolutions, European Union laws and regulations or by the United States of America. It can be seen as a complement to Clause 46 (Sanctions) above which applies to sanctions imposed against certain trades/cargoes.

- (b) The Owners and the Charterers respectively warrant for themselves (and in the case of any sublet, the Charterers further warrant in respect of any sub-charterers, shippers, receivers, or cargo interests) that at the date of this fixture and throughout the duration of this Charter Party they are not subject to any of the sanctions, prohibitions, restrictions or designation referred to in Sub-clause (a) which prohibit or render unlawful any performance under this Charter Party or any sublet or any Bills of Lading. The Owners further warrant that the nominated vessel, or any substitute, is not a designated vessel.

The clause sets out a requirement for the owners and the charterers respectively to warrant that they are not designated entities. The warranty continues throughout the currency of the charter party. Lists of designated persons and entities are liable to be updated and amended at frequent intervals; details are publically available and, as appropriate, can be monitored.

- (c) If at any time during the performance of this Charter Party either party becomes aware that the other party is in breach of warranty as aforesaid, the party not in breach shall comply with the laws and regulations of any Government to which that party or the Vessel is subject, and follow any orders or directions which may be given by any body acting with powers to compel compliance, including where applicable the Owners' flag State. In the absence of any such orders, directions, laws or regulations, the party not in breach may, in its option, terminate the Charter Party forthwith or, if cargo is on board, direct the Vessel to any safe port of that party's choice and there discharge the cargo or part thereof.

In the event that a party is, or becomes, identified as a designated person or entity, or a designated Vessel, the clause provides flexibility for the innocent party to act as necessary in the circumstances. It is assumed that, in most cases, guidance will be requested from regulatory authorities but, where this is not available, the charter party can be terminated forthwith or the vessel redirected for discharge of any offending cargo.

- (d) If, in compliance with the provisions of this Clause, anything is done or is not done, such shall not be deemed a deviation but shall be considered due fulfilment of this Charter Party.
- (e) Notwithstanding anything in this Clause to the contrary, the Owners or the Charterers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

In contrast to international agreement on designated entities, some states apply their own anti-blocking or similar legislation to counter the effects of a boycott or other targeted action affecting their trading interests. The clause therefore includes a provision that parties shall not be required to break their own laws. This is a potentially difficult area and legal advice is likely to be needed in the event of tension between regulatory obligations.

- (f) The Owners or the Charterers shall be liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty as aforesaid.
- (g) The Charterers shall procure that this Clause is incorporated into all sub-charters, contracts of carriage and Bills of Lading issued pursuant to this Charter Party.

Sub-clause (f) contains the customary liberty and indemnity provisions. However, while the owners and the charterers each undertake to indemnify the other for any breach of warranty, this is unlikely to be enforceable where one of the two contracting parties is or becomes designated and, therefore, no longer able to receive or make any payments. Nevertheless, the provision could have effect where, for example, a breach is attributable to the charterers' cargo interests.

#### **Clause 48 (North American Advance Cargo Notification)**

- (a) If the Vessel loads or carries cargo destined for the US or Canada or passing through US or Canadian ports in transit, the Charterers shall comply with the current US Customs regulations (19 CFR 4.7) or the Canada Border Services Agency regulations (Memorandum D3-5-2) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:
  - (i) have in place a Standard Carrier Alpha Code (SCAC)/Canadian Customs Carrier Code;
  - (ii) for US trade, have in place an International Carrier Bond (ICB);
  - (iii) provide the Owners with a timely confirmation of (i) and (ii) above as appropriate; and
  - (iv) submit a cargo declaration by Automated Manifest System (AMS) to the US Customs or by ACI Automated Commercial Information (ACI) to the Canadian customs, and provide the Owners at the same time with a copy thereof.

The customs notification requirements for cargoes imported into or passing through the United States or Canada are provided for in this harmonised clause for North American trades. The clause sets out the charterers' requirements to have in place a carrier code and an International Carrier Bond (for the US only) and to submit a cargo declaration to the customs authorities in advance of the ship's arrival. The charterers assume the role of the carrier only for the purpose of complying with the customs regulations relating to cargo. They assume this role because they are the party that will have arranged the cargo for the ship and will, therefor, have the necessary information to hand to comply with the regulations. It has no bearing on the "carrier" identified under a bill of lading issued under the time charter party.

#### **Clause 49 (U.S. Census Bureau Mandatory Automated Export System (AES))**

The US Census Bureau covers cargo notification requirements for exports from the United States only, but otherwise follows the provisions and procedures of the North American Advance Cargo Notification Clause above.

#### **Clause 50 (EU Advance Cargo Declaration Clause for Time Charter Parties 2012)**

This provision addresses the European Union equivalent of the US customs notification regime for imports and exports, compliance with which is required for cargoes either loaded at a EU port or destined for a EU port or a cargo passing through EU ports. The charterers are the party responsible for complying with the cargo notification requirements in accordance with the EU Regulations.

**Clause 51 (Ballast Water Exchange Regulations)**

If ballast water exchanges are required by any coastal state where the vessel is trading, the Owners/Master shall comply with same at the Charterers' time, risk, and expense.

With increasing focus on controlling the spread of invasive marine species carried in ballast water and the implementation by a number of coastal states of ballast water regulations, this new provision for NYPE allocates the time, risk and expense of obligatory ballast water exchanges for the charterers' account on the basis that they are determining the employment of the ship.

**Clause 52 (Period applicable Clauses)**

NYPE 2015 is designed both for "trip" (single voyage) and "period" (generally multiple voyage) time charter agreements. The majority of clauses in the charter party apply to trip and period charters. In the case of period charters extending over longer periods of time, however, there are a number of special provisions that the parties should take carefully into account.

The point in time in which "period" charter provisions should apply has been set at a minimum period of five months. If the period exceeds this number of months then the four "period applicable" clauses are given effect – namely last voyage; drydocking; addition of off-hire; and charterers' "colors".

Parties should carefully consider when negotiating the charter party and agreeing on durations whether they think a five-month minimum period is appropriate to their business. The figure of five months has been chosen to reflect common industry practice, but it may not be appropriate in every case and so parties may wish to amend it to suit their own needs.

If the minimum period of this Charter Party exceeds five (5) months, the following Sub-clauses shall apply:

- (a) Should the Vessel at the expiry of the described employment period be on a ballast voyage to the place of redelivery or on a laden voyage, reasonably expected to be completed within the employment period when commenced, the Charterers shall have the use of the Vessel on the same conditions and at the same rate or the prevailing market rate, whichever is higher, for any extended time as may be necessary for the completion of the last voyage of the Vessel to the place of redelivery.

Last voyage orders and the risk of the ship over-running the agreed charter period are an issue on which many existing standard forms of time charter are silent. For any period of time that extends beyond the agreed maximum period of the charter party, the charterers must pay a rate of hire for the ship equivalent to the current prevailing market rate. It should be noted that this provision applies only in the case of legitimate last orders given by the charterers that were given in the reasonable expectation that they could be completed within the charter period.

- (b) Drydocking

The Owners shall have the option to place the Vessel in drydock during the currency of this Charter Party at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances. (See also Clause 19 (Drydocking)).

For shorter charter periods and trip charters it is uncommon for charterers to agree to the ship being drydocked for non-emergency work as it would otherwise severely restrict their commercial use of the ship. For longer charter periods where the owners are expected to maintain the condition and efficiency of the ship, provision is made in clause 52(b) giving them the option to drydock the ship for essential maintenance purposes at the convenience of both parties.

- (c) Off-hire

The Charterers to have the option of adding any time the Vessel is off-hire to the Charter period. Such option shall be declared in writing not less than one (1) month before the expected date of redelivery, or latest one (1) week after the event if such event occurs less than one (1) month before the expected date of redelivery.

Off-hire time accumulated during the charter can be added to the charter period if the charterers so wish, provided they notify the owners in advance. The charterers will pay hire at the charter party rate for this added time and the redelivery date will be adjusted accordingly.

- (d) Charterers' Colors

The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.

In common with many standard forms of time charter, NYPE 2015 permits the charterers on longer period charters to have the option of re-painting the ship with their own “house” colours and flying their company flag.

### **Clause 53 (Commissions)**

A commission of [ ] per cent is payable by the Vessel and the Owners to [ ] on hire earned and paid under this Charter Party, and also upon any continuation or extension of this Charter Party.

An address commission of [ ] per cent on the hire earned shall be deducted by the Charterers on payment of the hire earned under this Charter Party.

The provision relating to broker and address commissions is carried over from NYPE '93. It should be noted that address commission has been re-worded to clarify that it is an agreed reduction (rebate) of the hire that is deducted by the charterers on payment of hire earned, including hire earned as a result of an extension of the charter period.

### **Clause 54 (Law and Arbitration)**

It is essential that parties agree from the outset the law that applies to the charter and the manner in which any disputes arising under the time charter party are to be resolved.

NYPE 2015 provides a comprehensive choice of law and arbitration options reflecting the global market in which the form will be used. The three named choices of London, New York and Singapore represent commonly used applicable laws and related arbitration venues across the globe. Further flexibility is provided by an “open” choice where the parties can select an applicable law and arbitration venue other than the three named.

In view of the importance of agreeing law and arbitration at the time of concluding the agreement to avoid this issue itself becoming a future dispute, the clause defaults to US law and New York arbitration if the parties fail to make or clearly indicate a choice.

All three arbitration venues – New York, London and Singapore – offer a small claims procedure. Parties should note that the size of claims or counter-claims refer to a fixed amount not exceeding US\$100,000 in the case of New York and London and US\$150,000 in the case of Singapore. Should the parties wish to agree different amounts, this must be clearly indicated as an amendment.

### **Clause 55 (Notices)**

All notices, requests and other communications required or permitted by any clause of this Charter Party shall be given in writing and shall be sufficiently given or transmitted if delivered by hand, email, express courier service or registered mail and addressed if to the Owners, to or such other address or email address as the Owners may hereafter designate in writing, and if to the Charterers to [ ] or such other address or email address as the Charterers may hereafter designate in writing. Any such communication shall be deemed to have been given on the date of actual receipt by the party to which it is addressed.

This is a general notice provision dealing with how contractual notices should be given and when they should be treated as received. The use of e-mail is referred to expressly in this notice provision as a common means of exchanging notices between the owners and the charterers (provided they have given an e-mail address in their contact details indicating their acceptance of this method of communications). Parties should use the most appropriate method for sending notices and other communications under the charter party. Although e-mail is perfectly acceptable for most general communications, parties may wish to consider other more traditional methods such as courier service or registered mail for more important notices.

### **Clause 56 (Headings)**

The clause headings used in NYPE 2015 are simply labels describing some or all of the content of a particular clause and are not intended to be taken into account in the interpretation of the charter party.

### **Clause 57 (Singular/Plural)**

To make the charter party easier to read the authors have avoided the practice of using singular terms with pluralisation in parentheses after the term – such as “party(ies)”. Whether a term is to be applied in the singular or plural is determined by the actual context of the clause.

**Annex A (Vessel Description)**

An annex has been added to NYPE 2015 in which it is intended that the owners set out the comprehensive details of the ship. The owners should use the standardised “vessel questionnaire” in Annex A to detail ship-related measurements and information required by the charterers. The parties may also agree to use the owners’ own vessel description or a completed charterers’ questionnaire as Annex A.

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