



NORTH RESIDENTIAL TRAINING COURSE 2019

Charterparties and the Inter-Club Agreement

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1

CHARTERPARTIES



2

TYPES OF CHARTERPARTY

1. Demise charter/ bareboat
2. Non-demise charter
 - Voyage charter
 - Time charter

3



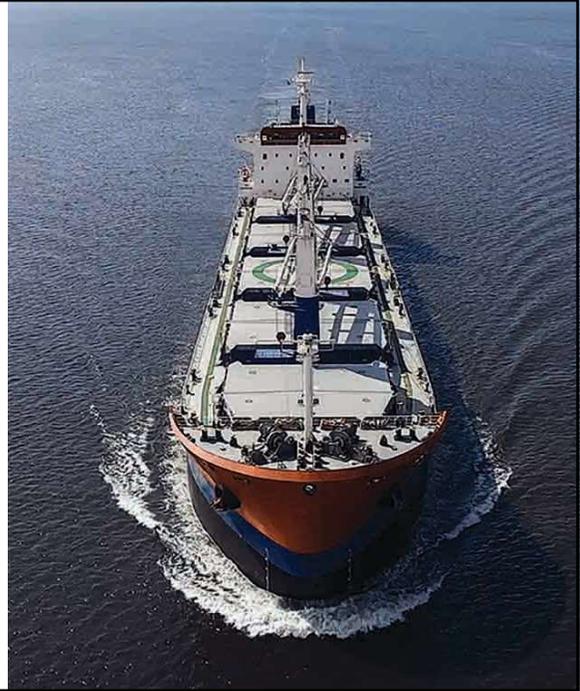
DEMISE CHARTER

- 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

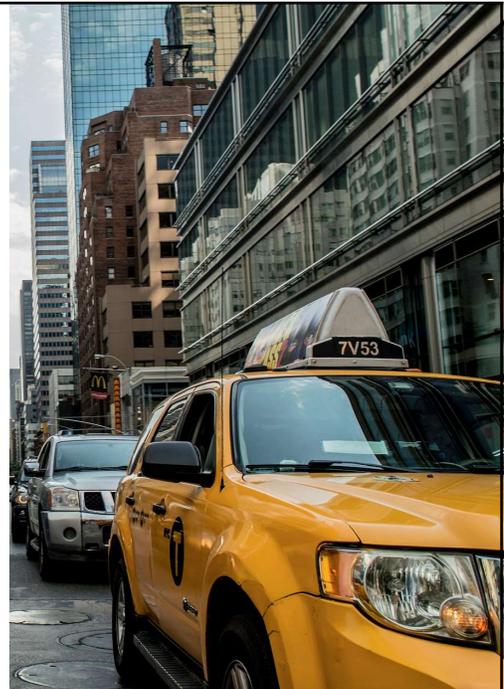
- Voyage charter
 - One voyage from port a to port b
 - Charterer pays freight to his owner (or disponent owner)
- Time charter
 - Charter is a period of time (e.g. 11-13 months)
 - Charterer pays hire – normally every 15 days in advance



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

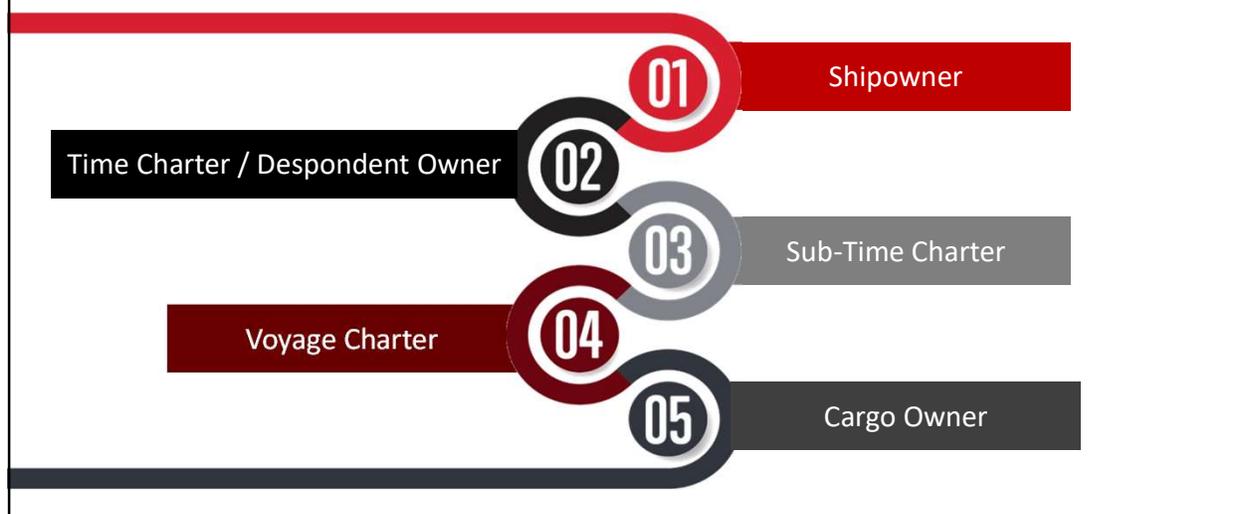
TIME CHARTER

- 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



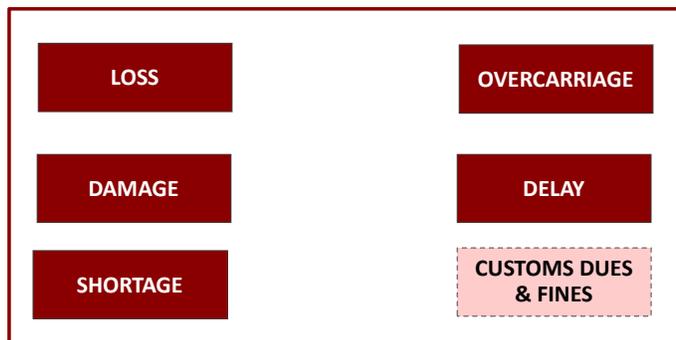
WHAT IS PROPER SETTLEMENT?

- 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

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

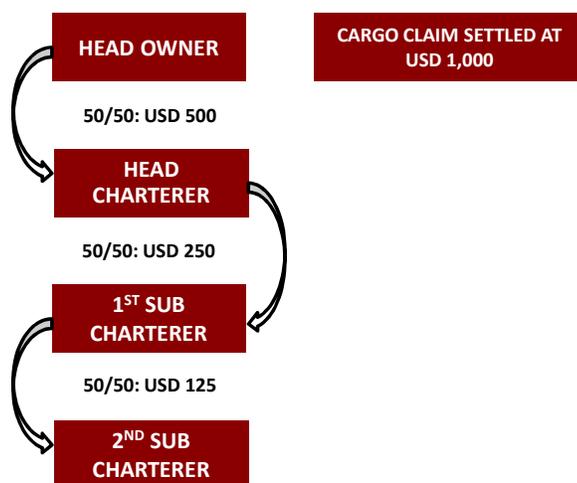
APPORTIONMENT

- 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

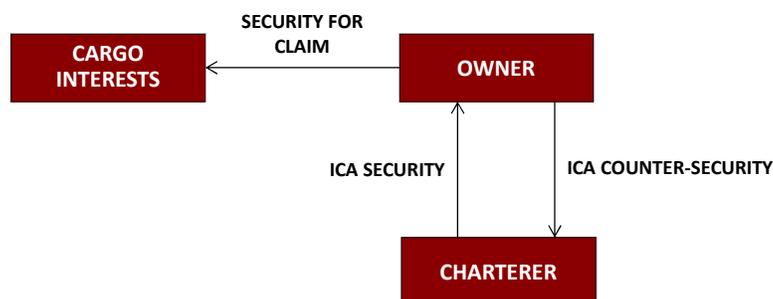
NOTICES AND TIMEBARS

- 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

