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Logistics, Shipping & Ports

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Ukraine – Russia Crisis: Updates in Shipping, Insurance and Trading

Since the end of February 2022, Ukraine – Russia Conflicts have dominated the news coverage and discussion across the insurance sector.

Though it's yet to see and understand the full extent of influence on the economy and humanity, it is clear that the impacts will extend from the Black Sea to all corners of the world.

The situations are still fast-changing and unpredictable. This topic does not serve as a frontline storm-chaser of the conflicts, but endeavors to provide guideline information on various aspects that may be part of public concern.

Ukraine – Russia Crisis: Updates in Marine War Risks

The potential sanction issues and the mounting violence resulting from Ukraine-Russia fighting have exerted impact on Marine War Risks. According to market resources:-

- **Breach AP.** In February, Joint War Committee designated Russian and Ukrainian waters in the Black Sea and Sea of Azov as listed areas; on 7th March, high-risk area had been widened to waters close to Romania and Georgia:-
 - Some Marine War Risks insurers are declining to quote on calls at Russian ports in areas affected by Ukraine-Russia fighting;
 - Some insurers are asking additional premium (or “breach AP”) ranging from standard 0.25% of hull value to as high as 5%. Breach APs are negotiated on a voyage-by-voyage basis, and can vary widely.
 - Insofar there are at least 5 reported casualties of merchant vessels being hit by missile / fire in that region, which will inevitably harden the rates.
 - Assureds may face the dilemma of being left “high and dry” where they already have a ship in that region; otherwise, they have to pay six- or seven-figure breach AP for every voyage depending on the hull value.
- **Sanctions.** Markets have more concerns of sanctions than cost of insurance:
 - Sanction situations are ever-changing and hard to predict;
 - The sanction checking process becomes much more burdensome for ship operators, some are not going to receive any new bookings for that eastern Black Sea;
 - Scope and severity of sanctions are also challenging to insurers by checking all parties involved in any Russian call. Insurers are amending / incorporating new Russia-related sanctions clauses.
- **Warlike Operations.** The UK-based Warlike Operations Area Committee has declared a Warlike Operations Area with immediate effect for all Ukrainian, Russian and international waters north of 44 N in the Black Sea;
 - Shipowners have been asked to give seafarers the option to disembark before entering the area or to receive increased pay if they agree to serve and to insure their individual risks.



Ukraine – Russia Crisis: Updates in Marine War Risks

Issue of Safety

1. **If the charterparty contains a safe port warranty can orders to Ukrainian ports be refused?**
 - The answer is likely yes. Russian Black Sea Navy blocked northwest Black Sea and prohibited merchant ships navigating near and in Ukrainian waters. Ukrainian ports would not be considered safe for most vessels and in the event of the vessel being ordered to them, they can be refused.
2. **If the charterparty contains a safe port warranty can an order to Russian ports be refused?**
 - Russian ports may be unsafe for Ukrainian crew, but this is fact-specific. It may be incumbent on the owner to change the Ukrainian crew rather than refusing the order.
 - Russian ports are not unsafe for all vessels at the moment, but risks may arise in the future to vessels and crew from NATO countries.
3. **If there is no express safe port warranty in the charterparty, can one be implied?**
 - It can be implied but this is difficult. It is most likely to be implied in a time charter with wide trading limits. Please consult with claim handlers before making assumption.
4. **What if the charter does not include an express or implied safe port warranty?**
 - There may be other clauses that would enable you to refuse calls to Russian or Ukrainian ports, see the commentary below on war risk clauses.
5. **Can the owner ask for revised orders if the port becomes unsafe?**
 - Yes, if it is a time charter. In the case of a time charter the charterer must provide revised orders.
 - No, if it is a voyage charter. In the case of a voyage charter there is no automatic right to re-nomination but the parties usually reach an agreement to cancel the charterparty; in the absence of an agreement the vessel would have to wait outside the port until the charter became frustrated (see next part).

Issue of Frustration

Charterparties may be frustrated if it is impossible to be performed or their principal purpose is radically changed. It is very difficult to prove frustration under English law. If frustration is proved, the losses lie where they fall.

6. **Are the charterparties for vessels trapped in Ukraine frustrated?**
 - For time charters – Unlikely frustration, until they become frustrated by extraordinary delay, which could mean a delay of weeks or months.
 - For voyage charters – more likely to be frustrated, but anyway owners will not be able to claim detention as a result of the delays and their best chance of obtaining payment of freight may simply be to wait it out.
7. **Are charterparties for vessels bound for Ukrainian or Russian ports frustrated?**
 - For voyage charters and time charter trips – for Ukraine are likely to be frustrated since it is impossible to get there, but is less likely to be if the charterparty contains a “or so near thereto as she may safely get” provision in relation to the port.
 - For time charters – will not be frustrated since the owner can call for alternative orders and the charterers are obliged to provide them.
 - Russian ports can still be reached and as things stand, they are not unsafe except potentially for vessels with Ukrainian crew on board (and the crew can be changed). Neither voyage nor time charters are likely to be frustrated at the moment.
8. **Are charterparties for Russian vessels to UK ports frustrated?**
 - For voyage charters and time charter trips – likely frustrated since UK has banned Russian vessels from UK ports.
 - For time charters – unlikely to be frustrated at the moment, but the situation may change if the banning of Russian vessels becomes more widespread within the trading zone for those vessels.

Issue of Contractual Clauses: War Risk, Cancellation etc.

Contractual clauses on allocation of war risk will vary, discussion is confined to below some common clauses.

9. **Can an owner cancel if the charter contains a clause allowing for cancellation in the event of war between the following countries: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China (the so-called Five Powers)?**
 - No – because there is not currently a war between any two of those countries.
10. **Can an owner cancel if Ukraine is included in the list?**
 - Yes – there is war between the Russian Federation and Ukraine.
11. **Can an owner refuse voyage orders given by a time charterer to proceed to a Russian port in the Black Sea by relying upon a CONWARTIME 2013 clause?**
 - The presence of a Ukrainian crew may expose the vessel to war risks as defined within the clause, but this is fact-specific. Furthermore, the clause gives owners the express liberty to call at an alternative port to change the crew where there is concern for their safety.
12. **Who is liable to pay the significantly increased Additional War Risk Premiums (AWRP) in respect of calls to Russian ports in the Black Sea?**
 - If CONWARTIME 2013 is included in the charter, then charterers will be responsible for the AWRP. The same is equally true of the VOYWAR 2013 clause.

Issue of Delay caused by Detention in Ukrainian or Russian Ports

13. **If the vessel is on time charter, does she remain on hire whilst detained?**

Yes. Unless there is an express clause in the charter providing otherwise (e.g. any force majeure provisions in the charter).

14. **If the vessel is on voyage charter, can Owners claim for the loss of time/delay to prosecution of the voyage?**

- During cargo operations laytime and demurrage run as usual unless there are specific laytime or demurrage exceptions clauses which are triggered.
- Once cargo operations have been completed and the vessel's documents have been returned, owners will only be able to claim against charterers for the delay by way of detention where charterers must be in breach of the charter which they would not be if the delay was the fault of neither party.

15. **If cargo operations are delayed does the ASBATANKVOY exceptions clause interrupt the running of laytime or demurrage?**

- No. Unless specifically referred to the general exceptions clause does not apply to the running of laytime and demurrage.

16. **Are owners likely to be liable under any bills of lading issued for any damage to the cargo as a result of the delay to the voyage and the ensuing delayed arrival of the cargo at destination?**

- On the basis that the bills should incorporate the Hague or Hague Visby Rules, owners will most probably be able to rely upon the defences set out in Article IV r 2, such as (e) Act of war or (q) Any other cause arising without the actual fault or privity of the carrier.
- Many standard form bills of lading also qualify the discharge port with the protective wording "or so near thereto as she may safely get" which entitles the shipowners to discharge the cargo at an alternative discharge port where the contractual discharge port is no longer safe. Shipowners should be able to rely on the wording in defence of any claims for late or non-delivery.
- Shipowners should undertake an outturn survey to capture the condition of the cargo upon discharge in case it is subsequently damaged.

Issue of Force Majeure

Under English law, there is no common law concept of 'force majeure', so the application and effect of a Force Majeure Clause will depend entirely on what the clause states.

If there is no such clause, both parties will potentially have to fall back on the English law doctrine of frustration which is notoriously difficult to argue successfully.

17. If the Member has a force majeure clause in the charterparty are owners and charterers obligations suspended?

- It depends on the specific wording of the clause. Taking an example of BIMCO Force Majeure Clause 2022.
- It defines "actual, threatened or reported war, act of war" and "warlike operations" as being among the Force Majeure events. It is therefore likely that events in Ukraine would trigger the application of the clause.
- The formalities of the clause must be followed and applied.
- The clause does not operate to suspend payment obligations.
- The clause will permit termination of the charterparty where the parties have agreed to this option and there is no cargo on board.

Issue of Sanction

18. In the absence of a charterparty provision specifically requiring it, can owners require charterers to provide due diligence information about cargo and shippers and receivers before accepting a voyage and/or loading cargo?

- In the absence of an express term, there is no direct implied term entitling owners to require charterers to provide due diligence information.
- Terms dealing with lawful merchandise or trading range/included/excluded cargoes might include specific wordings, but these can be very particular.

- If there is a sanctions clause in the charterparty, there is a reasonable argument that the charterers must provide information to enable due diligence to be carried out, but this is uncertain.
- If there is a war risk clause in the charterparty, it may be possible to require this information if it is necessary in order to obtain war risk cover but again this is uncertain.

- The best way to deal with this type of issue is to have a strong sanctions clause requiring charterers to provide reasonable due diligence information requested by owners or their underwriters.

19. Are the owners sufficiently protected if charterers provide a warranty that no applicable sanctions will be breached?

- No. Sanctions' legislation requires each party to a transaction to undertake its own due diligence.
- Parties must address the increasing sanctions risk in charterparty negotiation by inserting strong sanctions clauses requiring due diligence information to be provided and this should be duplicated down the charterparty chain.

20. If the owners refuse to perform a charterparty because of reasonable but unfounded sanctions concerns, will they be liable to the charterers?

- Probably yes. In those circumstances owners would likely be in repudiatory breach of contract unless their charterparty contained a sanctions clause allowing the owners to reject orders which in their reasonable judgment would expose them to sanctions.

21. Can a port be unsafe because of sanctions risks?

- Probably not. At least so far sanctions are directed at individuals and entities rather than a state. Of course this has to be kept under review in case there are sanctions or blacklisting affecting ports or other geographical areas in the future.

Ukraine – Russia Crisis: Crew Repatriation FAQs

1. What if it is impractical / unsafe or Owners are unable to repatriate a crewmember to his/her home country or place of engagement due to crisis?

- Owners and crewmembers may mutually agree to an alternative place of repatriation.
- Owners should always seek advice on repatriation problems from their manning agency.
- Subject to applicable law of contract and ship's flag state.

2. In the event a crewmember is repatriated to an alternative place when will Owner's contractual obligation to him/her cease?

- Generally, Owners' obligation under contract of employment ends once repatriation to crewmember's country/place of origin is completed.
- If the intention of both Owner and crewmember is that the crew contract and Owners' obligation to the crew should end once repatriation to an alternative place has been accomplished, then it is recommended that this intention and variation of the original contract of employment is recorded in an addendum.

3. What if a crewmember wishes to terminate his/her contract earlier than the original contract termination date?

- Owners may agree to the request to end the crew contract early and permit the crewmember to be repatriated in view of the present crisis in Ukraine.

4. What if the crewmember wants to be repatriated to a place close to the border of his/her country?

- Owners can arrange so to facilitate crewmember's onward journey, subject to legal / immigration / security requirements.
- Record the change of repatriation destination in addendum of the crew contract, to ensure Owners' obligation to the crew ceases at completion of repatriation.

5. What if Owners are unable to repatriate Russian crewmembers due to sanctions on Russia that may affect travel arrangements?

- Owner may agree to an alternate place of repatriation with the approval of the crewmember or consider sign an addendum to the contract/waiver.

6. In the event it is not possible, practical or safe for crewmember to be repatriated upon completion of his/her contract of employment are Owners entitled to extend the contract of employment?

- Owners should check to ensure that any crew contract extensions do not breach applicable MLC requirements / flag state regulations.
- P&I will cover normal crew risks under any extended contract provided that such an extension was authorized by the appropriate authority.

7. Will Owners still be responsible for any crew illness/ injury during repatriated to an alternative place? Will P&I crew cover remain in place?

- Yes, Owners are responsible for their crew during and up to the completion of the repatriation journey.
- The standard P&I cover remains normal for any crew illness or injury during the repatriation period until termination of the crew contract.
- Standard P&I do not cover illness or injury caused by war risks. Please check war risk insurers for this.
- IG Clubs purchased War Risks P&I Excess cover for members.

8. Should Owner include a 'hold harmless clause' in the waiver?

- While an owner may include a hold harmless clause in the waiver, there is no guarantee that it will be enforceable, and it may discourage a crewmember from signing it. It is advised that owner get legal advice on this matter.

9. In the event a crewmember is repatriated to an alternative place how should this be recorded?

- Please see original resource of this article for IG Club's recommended wording (<https://www.westpandi.com/Publications/News/March-2022/Ukraine-Conflict-Repatriation-of-Crew-FAQs>).
- However, the legitimacy or enforceability of such an addendum or waiver will be determined by the flag state's law and the law applicable to the crew contract.

Russia is the second largest crude oil producer in the world, and it exports 5 million to 6 million barrels per day. U.S. announced on 8th March, 2022 to ban imports of oil, refined petroleum products, natural gas and coal from Russia.

How important is Russia as a US oil supplier?

- For the U.S., Russia is a relatively small oil source, accounting 8% of U.S. imported crude oil and petroleum products in 2021.
- U.S.'s purchases were down to 84,000 barrels per day when the Biden Administration announced the import ban. It will be a minor inconvenience for U.S. refiners to avoid Russian oil.
- And the reverse is also true: U.S. purchases barely register on Russia's massive oil earnings. To be effective, individual country bans must be aggregated across many countries to produce consequences that actually the Russian purse.

What about other countries that buy Russian oil?

- European countries

About half of Russia's exported oil is destined to European countries. The United Kingdom, which is an oil producer, is also banning Russian oil imports. It is hard for other G-7 nations like Germany, Italy and Japan to join the bans; but not impossible if they make plans to find alternative.

- Asia countries

As another large buyer, China imports 1.6 million barrels of Russian crude oil per day. It remains to be seen whether China will take any extra Russian oil (which is likely to be highly discounted) and swap it out to other countries.

Other Asian buyers include India and Thailand. India has already bought Russian crude cargoes at a sharp discount.

Ukraine – Russia Crisis: Updates in Oil Trading

Can European nations get oil from other sources?

- Own national strategic stocks
 - Europe and the U.S. could simultaneously increase crude oil sales from their national strategic stocks to alleviate the impact of banning Russian oil imports.
 - China has also released oil from its national strategic stocks to help ease oil prices.
 - It is unknown how much strategic oil release will be, it may depend on duration of the conflict and whether it could escalate beyond Ukraine.
- Middle East Countries
 - The U.S. and other G-7 members could also ask Middle East countries to relax destination restrictions on their crude oil shipments.
- Asian countries
 - U.S. and other G-7 members may press countries like China and India to redirect oil products back to Europe if and when they increase their purchases from Moscow.
 - Uncertainly but also likely that China and India would cooperate - they are major oil importers and would not want to see higher crude oil prices.

How Will the U.S. Ban on Russian Oil Affect Moscow?

Ukraine – Russia Crisis: Updates in Oil Trading

How are reduced oil purchases from Russia likely to affect world oil prices?

- Markets have anticipated possible energy sanctions on Russia by discounting Russian crude oil. Refiners are shunning spot, or non-contract, cargoes from Russia.
- Sources estimate that roughly 1.6 million barrels per day of Russian oil failing to find buyers now. Such is already boosting prices.
- A few of the largest Middle East producers could surge their output in the short term to make up an extra 1 million barrels per day or more onto the market.
- The Biden administration has been continuing talks with Iran to restart the nuclear deal. If that happens, Iranian oil exports might rise from 800,000 barrels per day now to about 1.5 million barrels per day within three months or so. But the diplomatic progress is slow.
- Saudi Arabia has access to large stores of crude oil in its vast global tank system and its tankers that float at sea. The Saudis have launched price wars that hurt Russia's economy before.
- Given the existing tight balance between supply and demand in today's oil market, price war is not likely, unless the global demand were to contract suddenly because of a recession.

How Will the U.S. Ban on Russian Oil Affect Moscow?



Wakashio Oil Spill In Mauritius - Insights into International Law and Insurance

Wakashio ran aground on a reef in Mauritius on 25th July 2020, and began leaking oil two weeks later. Operations to remove the wreck and all the debris from the Wakashio, off Pointe d'Esny, were concluded on 16 January 2022.

Media discussion for this high-profile case calmed down for a while in 2021, and again it returned to market's spotlight for its potential contribution in the price hikes of P&I renewal for 2022 policy year.

Apart from being a major hit to pool claims, Wakashio has much more to impart.

Wakashio Insight: International Public Law Aspects

International laws applicable to this oil spill incident are prescribed by United Nations Convention on the Law of the Sea (UNCLOS) and IMO Conventions, under which there are public law regulations regarding prevention, reduction and control of marine pollution from vessels.

1) United Nations Convention on the Law of the Sea (UNCLOS)

Known as “Constitution of the Sea”, comprehensively set up various systems relating to sea, such as:

- Classification of territorial sea, EEZ, continental shelves, high seas, etc.;
- Regulations and supervisory obligations for flag states towards registered vessels;
- General principles of marine pollution, prevention and control, remedial measures, etc..

2) International Maritime Organization (IMO) Conventions, such as:

- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC)

3) In “Wakashio” oil spill case, actions of countries in accordance to the international public law are:

- Mauritius declared a state of environmental emergency as a coastal state (victim state).
- At Mauritius government’s request, IMO has deployed experts to assist oil spill response, and several other countries such as Greece provided necessary equipment for pollution combat, according to the provisions and framework in OPRC.
- Panama, the flag state of “Wakashio”, conducted a casualty investigation, as such is mandatory under MARPOL for flag states. The process of casualty investigation is set out in IMO Casualty Investigation Code.

The framework of UNCLOS and IMO Conventions also includes private law sector which sets up the civil liability system for compensation toward damage from pollution.

1) United Nations Convention on the Law of the Sea (UNCLOS)

Based on assumption of civil liability and IMO conventions, the system under UNCLOS regulates that the country that the vessel is registered to or the private entity affiliated with the vessel bears the responsibility for the damage, and state liability and individual liability exist concurrently if on violation of Part XII (Article 235). In the meantime, parties to UNCLOS are obligated to establish and extend domestic and international laws to ensure prompt and adequate compensation for damages.

However, in reality, only very few cases involved flag state to provide compensation for pollution caused by vessel registered to the state. Generally, cases of pollution caused by vessels are not subject to claims between countries; instead, it's the private entities that makes civil compensation for damages based on IMO civil liability conventions.

2) IMO Conventions

- **1969 International Convention on Civil Liability for Oil Pollution Damages (CLC), and 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992), which complements CLC.**

CLC and FUND 1992 applies to oil tankers only. Given "Wakashio" is a bulker carrier, CLC and FUND 1992 does not apply for this oil spill.

- **2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention)**

Under Bunker Convention, Ship Owners, who is mandatorily required to take out liability insurance for this part, is held strict liability for pollution damages from fuel. Victims (Mauritius government and individuals as in this case) can make a direct claim against the insurer (Japan P&I as liability insurer in this case) for compensation.

There is no provision in Bunker Convention in terms of a total maximum liability amount for bunker pollution. Such is dealt by LLMC 1976 or LLMC 1996 to be mentioned below.

- **1976 Convention on Limitation of Liability for Maritime Claims (LLMC 1976) and 1996 Protocol to LLMC 1976.**

LLMC is to set up maximum liability amount for Ship Owners according to the ship's gross tonnage. LLMC 1996 raised the limitation amount dramatically compared to LLMC 1976.

Mauritius is a party of LLMC 1976, which would set the limit of liability for material damage and pollution claims covered in the "Wakashio" case at 13 million SDR. Japan (where the Ship Owner is based) is a party to LLMC Protocol 1996, which sets the limit at 46.5 million SDR.

In November, 2021, "Wakashio" Ship Owner filed a motion before the Supreme Courts of Mauritius, for setting up limit of almost 13 million SDR. However, Ship Owner may also need to set up a limit at 46.5 million SDR if claims are brought in a state that is a party to LLMC 1996, such as Japan.

- **2007 Nairobi International Convention on the Removal of Wrecks**

Under the Convention, ship owners are obligated to remove sea wrecks and bear the costs of removing such wrecks. In the meantime, a certain degree of authority is delegated to coastal states for taking measures corresponding to the dangers posed by the wrecks; in such cases, the incurred removal costs can also be borne by Ship Owners.

At the end of August 2021, Mauritius government took steps to submerge the front part of "Wakashio" into the sea. Such measures seemed to correspond to the Nairobi Convention, but at that time Mauritius was not a party to the Nairobi Convention. It is considered that there are grounds for Mauritius government to claim the costs for the removal of the hull from Ship Owner or Japan P&I as pollution control cost, in accordance to the Bunker Convention.

Wakashio Insight: Insurance and Reinsurance Aspect

For liability claims including oil pollution, the 13 International Group (IG) P&I Clubs, International Group P&I Agreement and global reinsurance formed a multi-tier (re)insurance, which should provide sufficient coverage for the sensational oil spill claim such as in "Wakashio" case:-

- + The first tier is direct liability insurers of the vessel, i.e. Japan P&I in this case. All IG group P&I Clubs maintain Individual Club Retention (ICR) of USD10 million, i.e. they can pay out USD10 million from their individual pockets or their own reinsurance arrangement (if any) for each claim.
- + The second tier is IG Pool. Up to USD100 million is retained in IG Pool for claims payout. The pool claims are shared among the 13 IG P&I Clubs up to the lower pool layer USD30 million, and Hydra (as the Group's captive reinsurance vehicle) reinsures from USD30 million to USD100 million with various percentage.

- + The third tier is a global reinsurance program called annual Group General Excess of Loss (GXL).

For oil pollution only, GXL covers up to USD1 billion. For all other P&I claims, the limit of GXL is USD2.1 billion, and the collective overspill layer provides USD1 billion in excess of USD2.1 billion, i.e. USD3.1 billion in total.

As of end of 2021, claims for approximately 2 billion rupees (USD46.1 million), have been made to the insurer of the "Wakashio" by 4,686 companies, organizations and individuals through the Ministry of Ocean Economy and Fisheries.

- **Crew**

The Ship Master and the First Officer of “Wakashio” had been detained by Mauritius government, denying bail, since August 2020 after the oil spill incident. The two men were sentenced 20 months’ imprisonment by Mauritius court on 27 December 2021.

Ship Master admitted to drinking moderately on his birthday party on board before the grounding occurred. By the time of sentence, the two men had been in police custody for 16 months already. Their return to respective home country is imminent.

- **Wreck removal**

Operations to remove the wreck and all the debris from the “Wakashio”, off Pointe d’Esny, were concluded on 16 January 2022.

- **Environment Rehabilitation**

In June 2021, MOL (charterer of “Wakashio”) created a philanthropic trust in Mauritius, pending the establishment of a Foundation, to support environmental and societal projects. It says it has worked with Nagashiki Shipping and the Mauritian authorities for projects to rehabilitate the mangrove and coral reef on the southeast coast affected by the oil spill. This will be done through a fund of 800 million yen (USD7 million). The initial fund is 300 million yen (USD2.6 million) and the trust will be managed locally by hand-picked professionals.





Guidelines

Policies

In A Nutshell

In A Nutshell – Defence Guide for Early Delivery

1. Categories of Time Charter Period

- A fixed period
 - e.g. a flat period (“1 year”), or a certain date such as “until 15th July”. The precise date agreed for redelivery means “about the date”, i.e. charterers are allowed a reasonable margin before or after the precise date.
- A variable period
 - With built-in tolerance clause (e.g. “6 months, 15 days more or less”), which means parties have agreed a fixed duration, therefore no implied allowance.
 - Without built-in tolerance (e.g. “11 to 14 months”). Whether there is an implied allowance depends on the period of spread:
 - Long spread (e.g. 11 to 14 months) may less likely be allowed an implied allowance;
 - Short spread (e.g. 6 to 6 1/2 months), the law may allow an implied tolerance;
 - No implied tolerance will be allowed if the range is defined by a minimum and/or maximum period (e.g. minimum 6 months, maximum 7 months).

2. “About”

Largely, margin depends on the duration of the charter and specific factual circumstances reflecting parties’ intentions.

If “about” is deleted, judges/arbitrators may take this into account to deny a tolerance margin.

3. Trip time charter on a “without guarantee” duration

- For example, if a trip time charter is for duration of “70/80 days WOG”, there is no minimum or maximum period as long as the estimate is made in good faith.
- If the voyage lasts 150 days due to some unforeseen circumstance, charterer will not be liable for late redelivery but need to pay hire at the agreed rate.

4. Early Redelivery

- When Owners opt to refuse early redelivery
 - Ship remains on hire without Owners having to mitigate their loss;
 - Subject to Owners having “no legitimate interest” in continuing to perform the contract;
 - If the owners’ conduct in continuing with the charter is “wholly unreasonable”, owners may not be able to claim the full hire.
- When Owners opt to accept the redelivery and claim damages.
 - Damages = (C/P rate – Available Market rate) x days redelivered early.
 - The “available market” rate will be determined by reference to the same market as the original charter, i.e. the same geographical area, trade and for a charter period corresponding to the remainder of the original charter.
 - If no “available market”, the calculation will put owners in the same financial position as if the charter had been performed.
 - When an event occurs, after redelivery but before the end of the minimum period, leading to the charterers could have terminated the charter early, owners can only claim damages up to the date of the event.
- An example:

A vessel was chartered for 12 months on the Atlantic trade and redelivered after 7 months

 - The relevant “available market” would be for a 5 months charter in the Atlantic trade.
 - If an event permitting the termination of the charter occurred on the 9th month, owners can only claim damages for a 2-month period instead of 5 months.

In A Nutshell – Anchoring Awareness Revisited

Background

Recent years insurers see an increasing trend of cases relating to anchor losses, anchor dragging and anchor removal ordered by Port Authorities which could be very costly, particular in cases where the dragging anchors could lead to collisions, groundings, etc.

Reasons for extended stay at anchorage

Downturn of economy and COVID lead to vessels spending more time in the anchorage where is more exposed to extreme and sudden environmental conditions.

Hot spots

- Around New Orleans and the wider Mississippi River delta

Local authorities require vessels to have at minimum three means to hold its position once a certain high water level is reached. To achieve this, both anchors need to be used and there is a higher risk of the chains getting crossed, entangled, and damaging the anchor.

- Around Fujairah, UAE.

The water depth at Fujairah anchorage is considered deep waters and varies from 70-130 meters. 'Letting Go' the anchor in such deep water could cause the brake system to burn out and leave the windlass without control, damaging the windlass, bitter end, or in some cases resulting in total loss of the cable and anchor.

Major causes of anchor loss:

Strength of the currents; water depth and holding ground; lack of awareness of the environmental loads for which anchoring equipment is designed

Assumed environmental load conditions (The anchoring Equipment Number (EN) calculations, as found in UR A1)

Through the International Association of Classification Societies (IACS) Class

societies have agreed to a set of unified requirements for anchoring equipment (UR A1) and make reference to this in their Class Rules.

The IACS UR A1 has been revised recently and the revised requirements in UR A1, Rev 7, September 2020 (corrigendum published in September 2021) will apply to ships contracted for construction from 1 January 2022.

Recommendation

Proper maintenance and handling procedures are followed. Ship master can consider following for correct anchoring operation:-

- Set a policy for the conditions requiring leaving the anchorage

If a ship is anchored in an exposed area, it is necessary to have a clear policy as to when to leave. There have been cases where Master was tempted to wait and see due to commercial pressure instead of leaving the port sooner, although bad weather was forecast.

- Respecting the limitations of the anchoring equipment

Masters shall have full knowledge of the design limitation to avoid over-estimating the strength of anchor equipment. In bad weather Masters should more often choose to weigh anchor and go out to sea in time.

- Train and mentor crew

- Owners and managers shall ensure the knowledge of proper planning, properly instructed bridge team and positive on-board management is also imparted to the junior crew.
- Proper anchor watches must be maintained which include the use of navigation equipment in setting up anchor watch alarms and parallel indexing. Extra precautions such as additional cable paid out and having engines on immediate should also be considered.

General Average in a nutshell

Under English law, a General Average (GA) situation arises when an extraordinary sacrifice or expenses is intentionally made or incurred for common safety (i.e. in addition to the ship, there is other interest(s)) in order to preserve the common maritime adventure from perils.

Generally, a common maritime adventure is satisfied when a ship sails with cargo onboard.

What about Ballast Voyage?

- When a ship is on ballast voyage without being under charter, there is no other interest on board at time of casualty.
- When a ship on ballast voyage is under charters, there is common maritime adventure:
 - If under time charter, bunkers owned by charterer is a second interest
 - If under voyage charter, the freight at risk constitutes a second interest

Remedy to ship owners when common maritime adventure does not exist?

- Position under English law

Where a ship sails in a ballast condition and not under charter, GA situation would not arise in a casualty, and shipowners will not be able to recover certain extraordinary expenses such as crew wages & maintenance, bunkers and stores in refuge port.

- Ballast GA Clause as remedy of Hull & Machinery policy
 - Ballast GA clause exists in most Hull & Machinery policy such as Institute Time Clauses – Hulls (1/10/83), the Nordic Plan, the French Hull Clauses and the DTV Clauses.
 - It is to deem the ship as in a GA situation although in fact only the ship is at risk, so shipowners can recover certain GA expenses regardless of ship's charter arrangement.
 - Some GA expenses are excluded by ballast GA clause. E.g. ballast GA clause in Institute Time Clauses – Hulls 1/10/83 excludes commission and interest; and which in the Nordic Plan excludes wages and maintenance during the actual time spent effecting permanent repairs.

In A Nutshell – Loss Prevention in Cargo Hold Bilge System

Sources say there are increasing incidents of wetted cargo claims from water originating from cargo hold bilge systems where:

- Debris clogged the non-return valves fitted in the hold bilge pumping systems and cause water flows back to cargo hold; and
- Manually operated valves in the interconnected bilge, ballast and fire lines are left open following completion of operations.

Preventative Measures

Management

- Major cause of damage is crew's lack of familiarity with the bilge system, including the schematic layout of the bilge system, mimic boards, remote actuators, any cross functionality with such systems as the ballast management system, emergency firefighting system, etc.
- Include inspection of cargo hold bilge system non-return valves in routine pre-loading checks of the holds.
- Include periodical check and maintenance of bilge system valves and pipework as part of the planned maintenance system.
- Enforce rigorous procedures to prevent valves being left open when not in use.

Cleaning of cargo holds in preparation for cargo

- Remove residue cargo from bilge system intake suctions to keep the bilge systems unclogged
- The perforated plate bilge well covers should be cleaned of debris that could prevent water from flowing into the bilge wells.
- Prior to loading dry cargo, plate covers should be covered with burlap and secured with marine tape, which can prevent coarse size particles from entering and blocking the bilge system.

- Bilge well suction pipes should be fitted with removable strainer baskets and/or equipped with a mud box to capture debris. These should be cleaned regularly during the washing period.
- Upon completion of washing cargo holds, remaining water and residual solid materials should be cleared from the bilge well.

Inspection & testing

- Bilge wells should be cleaned and dried for inspection before loading cargo.
- Records should be maintained in the deck log of inspections and tests of the bilge system.
- After cargo holds have been washed and bilges have been cleaned, bilge system sounding pipes should be inspected as they can become filled with cargo residues in bilge wells that dry and solidify resulting in blockage. This can be prevented by hosing the bilge system sounding pipes with water from deck level or by using a pressured airline to prevent blockage by cargo residues.
- All valves in the drain/bilge system should be checked and labelling kept in good order.
- Check and test the non-return valves fitted in the cargo holds' bilge pumping system. The simplest way is to stop the bilge pump for 20 to 30 seconds. If water does not return to the bilge well through the suction pipe, the non-return valve is functioning correctly; otherwise, the non-return valve may be stuck, worn or damaged.
- Confirm bilge alarms are working, if such are fitted.
- Remotely actuated cargo hold bilge suction valves should be routinely checked.
- Any bilge system control mimic boards should be regularly tested.
- Bilge soundings should be taken daily and recorded in the deck log.

In A Nutshell – Charterparty Affirmed Notwithstanding Reservation of Rights

Case Briefing

In late 2016, the parties entered into a 2-year time charter of the vessel C Challenger. On 19 Oct 2017, the charterers ceased providing orders.

Charterers purported:-

- To rescind the c/p on the basis of the alleged misrepresentation of her performance capability; or
- To terminate the c/p for repudiatory breach, relying on their prior reservation of rights.

Owners responded: -

- Purporting to terminate the c/p on the basis that charterers' message was itself a renunciation of the contract; and
- Arguing that charterers had affirmed the c/p by virtue of their conduct and delay and thus lost the right to rescind it.

The Commercial Court Decision

- By Charterer's continuing to perform the charterparty for months after raising the misrepresentation argument (and having knowledge of their right to rescind), the Charterers were taken as having affirmed the charterparty and lost the right to rescind even though they had purported to reserve their rights.
- Where a party delayed significantly in exercising its right to rescind, then after a time it could be taken to have elected to keep the contract going and would lose the right to rescind.
- Charterers were in repudiatory breach of charterparty when they had ceased to perform the contract based on their purported rescission (following their reservation of rights) and redelivered the vessel early. The Owners were accordingly entitled to claim damages.
- The commercial court decision is upheld by the Court of Appeal.

Comments:

- "Reservation of rights", while routinely used in correspondence, cannot always be relied on this wording as a legal basis for treating the contract as rescinded or to sue for repudiatory breach, if claimant's conduct is consistent with the continuation of the contract.
- The party relying on such language may in turn be held to be in repudiatory breach and face a claim for damages should the Court find that all the circumstances, once considered, actually negated a right to rescind.

The graphic features a background of overlapping circles in dark blue, gold, and magenta. A large cyan bracket-like shape frames the text. The text 'Market Snapshot' is centered in white, bold font.

Market Snapshot

Market Snapshot: Merger Plan of The North of England Club and The Standard Club



Background

- North P&I and Standard Club have entered formal discussion for a proposed merger into NorthStandard.
- When merged, the combined total of all insured tonnage of North P&I and the Standard Club amounts to around 400 million GT, which can stand shoulder to shoulder with industry leader Gard.
- The merged mutual will have combined free reserve in excess of USD800 million.
- Paul Jennings and Jeremy Grose, chief executives of North and Standard respectively, will jointly lead NorthStandard in a shared executive structure.

Merger plan being carried out

- The proposal has been approved by the boards of both Clubs and notified to principal regulatory authorities of intention to merge.
- A joint working group of both Clubs has been appointed, which follows a structured methodology, evaluating what will the merge bring to members.
- The legal, transactional, and operational framework for the proposed merger is being finalized now.
- Approval from full mutual membership of both Clubs to be obtained through voting by end of May 2022.
- If approvals are also given by all the appropriate regulatory authorities in related jurisdiction, the merger is expected to complete by 20th Feb, 2023.

Market Voices

- The merger offers fast-track growth without risking members' capital, which makes financial sense, considering a spike in claims led to double-digit premium rise at Feb's renewal, as P&I clubs do not have capital reserves to withstand claims volatility.
- Some Influential shipowners who are on boards of both North P&I and Standard Club, such as AP Moller - Maersk and Dynacom, appear to be backing the deal.
- Some shipowners will not be pleased, who have just demonstrated their loyalty to each club by paying a double-digit increase in premium.
- Many Greek shipowners are said to prefer smaller clubs where they feel they can exert more influence.

Market Snapshot

China Lockdowns A Major Shockwave to Crippled Supply Chain

Suez Canal Authority, Egypt on Tuesday raised transit fees for ships passing through the Suez Canal with increases of up to 10%.

Reason for the increase:

- The significant growth in world trade
- Development and improvement of the transit service

The increase of transit fee for vessels carrying different cargo:

- 10%: Vessels carrying LPG, chemicals and liquid bulk products
- 7%: Vessels carrying LNG, vehicles, general cargo and multipurpose vessels
- 5%: Oil tankers, dry bulkers

These increases could be revised or cancelled at a later date, depending on developments in global shipping, said by Suez Canal Authority

Prevention of future blockage

- Suez Canal Authority has been working to widen and deepen the southern part of the waterway, where "Ever Given" ran aground and caused 6-day blockage of the canal. The blockage disrupted global shipments.

Suez Canal and world trade

- About 10% of world trade, including 7% of oil, passes through the Suez Canal.
- Authorities said 20,649 ships passed through the canal in 2021, a 10% increase on the 18,830 ships in 2020. The canal's annual revenue reached \$6.3 billion in 2021, the highest figure in its history.

Lockdowns had been announced in most Chinese provinces, affecting domestic logistic industry by:

- Curbing transportation and warehousing: shipping hubs such as Shenzhen, Zhejiang, Shanghai, Jilin, Suzhou, Guangzhou and Beijing are under lockdown
- Downturn of manufacture industry: factories in major manufacturing centers such as Shenzhen, Dongguan, Changchun and Shanghai had been shut down.

Specific influence on shipping – now and forecast

- Ocean capacity will be more strained under combined effect of Asia-Europe railway closure due to Ukraine- Russia War, as well as reduced shipping capacity of China under lockdowns.
- A surge may be expected in already inflated shipping prices
- More inbound than outbound containers in China, causing container congestion.
- Sources reported container prices in China dropped by 8% - 15% in March 2022.
- While containers are piling up in China, containers are also in massive shortage in other region of the world.
- Market observers say China's lockdown is nothing less than a major shockwave to an already crippled supply chain, and this shockwave will be felt by America and everywhere in the world.

Market Snapshot

Egypt Raises Transit Fee for Ships Passing Through Suez Canal



Market Snapshot: Dalian Port Opened Direct Route to Key Australian Ports

Dalian Port, the port in the Liaoning Province of China, has opened a direct route to Sydney, Melbourne, Brisbane, and other key Australian ports on 2 Mar 2022.

In Jan 2022, a total 340,000 TEU passed through Dalian Port, a year-on-year increase of 36%.

Despite summer lockdowns due to the Delta variant of Covid-19, ports across Australia remained open.

What Is Expected...

Transportation time required from Dalian to Sydney will be cut from previous 35-40 days down to about 20 days.

Australian goods can be imported to Chinese market at a lower cost and higher efficiency as they can reach China directly, which used to be transhipped to Dalian through the Republic of Korea.

The ports of Long Beach and Los Angeles will begin collecting the Clean Truck Fund (CTF) fee from 1 Apr 2022 to 31 Dec 2034, which will be collected by Private Company PortCheck.

The CTF fee is to be charged at the rate of \$10 per TEU on loaded import and export cargo containers hauled by drayage trucks entering or leaving terminals.

Loaded containers by on-dock rail, Zero-emission trucks and low-nitrogen oxide-emitting (low-NOx) trucks will be exempt from the fee.

Trucks remain the ports' largest source of greenhouse gas emissions and the second highest source of nitrogen oxides, contributing to regional smog formation.

CTF is to help the ports reach goals of eliminating all emissions from trucks at the ports by 2035, expected to deliver approx. USD90 million to the two ports in first year

Market Snapshot: Ports of Long Beach and LA to Collect Clean Truck Fund Fee

A Few More Words at the End

For this new launched CMH Spotlight, thanks be to CM Houlder's whole Marine team members. With respectable professionalism in their service and eagle eye to this industry, they have provided a diversity of market resources to make this report possible.

Special thanks to Mr. Ken Chan of our placing team, and Miss Michelle Li, a member of claim team, for their amazing diligence and brilliance contributed herein.

Lastly and most importantly, thank YOU very much for your attention to go through our report, and we will be even more grateful if you can share your comments with us.

Welcome to drop a line at summerhao@cmhoulder.com. We hope CMH Spotlight can bring us closer, and progress together.

Yours sincerely,

Summer Hao
Intelligence Team

Happy reading, and see you again in April!

Disclaimer:

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Acknowledgement

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