

Trading in ice ports: potential exposure

Prokopios Krikris, Feb 17 2022

Trading in ice ports can potentially expose the parties to liabilities. Therefore, owners and operators provide detailed instructions to the master before calling a non-ice free port to reduce exposure. Similarly, the parties incorporate specific clauses, called 'ice clauses' or 'frozen ballast tank clauses', into the charter party to deal with the risks and liabilities involved in that trading. These clauses have been evolved to reflect changes in trading practices.

Twenty years ago, this newsletter published an article, 'The ice cometh' (2001), containing the time charter party considerations when trading in the higher latitudes during the winter. In addition, that helpful article discussed contractual restrictions and vessel's structural or hull damages issues. The present article shortly adds some practical matters through the day to day involvement with charter party disputes and some London maritime arbitration decisions on the factual matrix of the case.

The issues

The parties put forward various claims or counter-claims alleging separate breaches of contract or contended that there was insufficient factual evidence or opinion to support or refute alleged breaches.

In particular:

Time charter party (NYPE)

- 1) The express or implied 'ice-free'- safe port warranty, the vessel not to required to enter any ice-bound port or follow ice breakers;
- 2) Clause 15- the 'off-hire provision' triggered due to defect or breakdown of machinery or equipment;
- 3) Lines 22-24- the vessel to remain tight, staunch, strong, and in every way fitted for the service- whether owners complied with their obligation;
- 4) Clause 1- maintenance obligations; was it a latent or a patent defect?;
- 5) Clause 8- the duty to perform the voyage with utmost despatch- including the obligation to load/discharge the cargo, and offer customary assistance etc.;
- 6) Implied duty of co-operation- the parties' reasonable conduct, i.e. master was not following the charterers' orders or delayed to follow the orders while evaluating the situation and owners obtained advice;
- 7) Clause 4 – redeliver the vessel in like good order and condition, i.e. propeller damage or other structural & machinery damages;
- 8) Clause 7- the whole reach of the vessel's holds at the charterers' disposal- short loading cargo;
- 9) Claim for damages- dead freight claim and delays at discharge port.

- 10) Clause 11- the master failed to follow the charterers' instructions to prevent ballast tanks from freezing or other operational instructions.
- 11) Implied Indemnity for machinery or equipment damages or shortage claims(sign Bills of lading for cargo as presented) etc.;
- 12) Cargo shortage claims- unseaworthiness- ICA apportionment- Hague/Hague Visby Rules;
- 13) Additional premium- 'INL clause' and crew bonus for their extra-contractual services' quantum meruit';
- 14) Clause 26- owners are responsible for the navigation of the ship;
- 15) Clause 22- owners shall maintain the gear of the ship as fitted;
- 16) Deductions from hire and remedies (suspension, lien, etc.)

Voyage charter party

- 1) Freight payment based on cargo quantity loaded or discharged;
- 2) Whether the ship was an arrived ship upon tendering NOR;
- 3) Delay prior berthing- who will shoulder the lost time?
- 4) The ice clause was or was not a complete code dealing with the laytime for some matters- specific terms over general terms to prevail;
- 5) Delay for waiting for the ice-breakers- who bears the risk for the delay;

- 6) Subsequent delay after the ice-breakers arrived- who takes the risk;
- 7) Delay in opening the vessel's hatches due to ice on the top or mechanical issues- the statement of facts ("SOF") offered no assistance;
- 8) Delay after the vessel's departure due to ice- potential damage to the propeller, etc.;
- 9) Delay while conducting draft surveys- the readings were affected by frozen ballast ;
- 10) Delay concerning the final determination of the cargo loaded;
- 11) Dead-freight issues since the vessel loaded less contractual quantity- charterers counter-claimed that was owner's fault;
- 12) Cargo claims at disport related to the improper measurement of the cargo loaded;
- 13) Delay during loading or discharging due to ice conditions- whether 'normal winter conditions' not to stop the laytime;
- 14) The SOF recorded periods of snow whilst waiting for berthing, but the SOF from another vessel showed that discharging continued during the said periods- time counted;
- 15) Damages for detention- breach of the safe port warranty;

16) Whether master's fault (or culpable fault) caused the delay and time not to count- on the evidence, charterers failed to prove fault and time counted;

17) Additional port expenses; who's responsibility?

18) Indemnity- recover damages in mitigation.

Decisions

Some issues that referred to maritime arbitration for determination in the last years were as follows:

(i) The nominated loading port was ice-bound (15 cm tight ice). Owners requested charterers to nominate an alternative port, as per the GENCON general ice clause incorporated into the charter party. The parties entered into a discussion, and no agreement was reached. Instead, the parties put forward various claims and counter-claims based on termination/ repudiation, which exposed each party to its costs.

(ii) The vessel arrived and was ordered to wait for permission to enter the port and allocated to a convoy led by an ice-breaking tug. The Owners argued that the vessel was an arrived ship whilst waiting and claimed damages independently for detention on the ground of breach of 'always accessible' provision. The Owners had no claim for detention.

(iii) The vessel was delayed getting into the loading port due to ice. Owners contended that the NOR was valid. The parties referred to the ice clause and modified the usual conditions to tender NOR. Delay occurred in the waiting ice-breaker assistance once the initial convoy had got underway. As the ice clause was silent, the delay fell on the Owners, being part of the approaching voyage.

(iv) The master stopped loading when the ship appeared to be down to her marks, and some ballast water had frozen. Loading resumed a few hours later, and about 500 mt more cargo was loaded. Charterers argued that time should not count on this period that loading stopped. However, there was no explicit provision that allowed this deduction from laytime. Nor any proof of fault that led to the frozen ballast.

Charter chain- back to back claims

The head owners usually charter out their vessel on a time charter party form, and the disponent owners charter out the ship on the voyage charter party form.

However, some charter forms stipulate that '*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 the fulfilment of this Charter Party*' (NYPE 1946).

Then, a usual problem arises when the parties cannot pass the claims up and down the charter chain because the parties have not 'fixed' on similar terms. In

essence, the contractual base on which some particular claim is founded may differ substantially from the contractual base upon which another similar claim is founded. Again, however, that was a commercial decision made at the party's own risk.

Practical Example- Frozen ballast

The vessel was fixed on time charter terms and sub chartered on voyage terms. At the time of completion of loading, the master issued a letter of protest explaining that the vessel reached the maximum allowable sailing draft with a quantity of water ballast on board that could not be pumped out due to very low temperatures. The shipper's inspection company also issued a letter of protest.

At the time of the final draft survey, the sounding pipes of some ballast tanks were found blocked by ice, thus preventing the calculation of the ballast water quantity and weight for cargo calculation. For some reason, the water could not be pumped out. So, it was not possible to calculate the loaded cargo parcel weight, which may cause the cargo weight to vary between load and discharge port, as calculated. The sub charterers protested and kept the vessel's master responsible for short loading of cargo against the pre stowage plan and for any losses that may arise due to this fact.

The head Charterers passed on the sub charterer's claim up the charter chain as an indemnity, alleging separate breaches of the charter party: the master failed to follow the local agent's advice on the measures to be followed to avoid the freezing of the ballast water, the frozen ballast prevented from loading a full cargo which she ordinarily would have been able to stow and carry (clause 7

NYPE), the master ignored the charterer's instructions to prevent freezing of the ballast tanks(clause 11 NYPE), and the master failed to ensure the ballast water lines and valves did not freeze by not maintaining the equipment onboard- albeit owners knew of the potential adverse weather conditions at this port of call.

Conclusion

Undoubtedly, the vessels trading in ice ports can potentially result in an exposure.

The above analysis and decisions illustrate the problems of the imprecise wording in the charter party or the unclear additional agreements reached during the performance of the charter party. Notably, the parties should adequately consider the language used to allocate their rights, liabilities, and obligations.

Further, the compliance with prudent shipping practices or directions may reduce risks and counter-claims based on 'fault' or separate breaches of contract that expose the parties to high costs in defending the claims.

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