«Charterer's Liability Insurance: An Evaluation of the Charterer's Insurance Options and Recommendations»

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Declaration/Statements page

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Abstract

The charterer's liability insurance as an insurance product is relatively new in practice, with the academic bibliography referring to it being considerably limited. Therefore, the primary aim of this work is to shed some light on the way this concept works and ascertain whether charterers are adeptly protected and represented within the insurance world, given their established liability exposure under time and voyage charters.

In order for this aim to be achieved, firstly the charterer's liabilities are identified and divided among those arising under time and voyage charters, either in contract, tort or statute. It follows an examination of the concept of charterer's liability insurance protection and an evaluation of the three types of charterer's insurance providers (i.e shipowners' P&I Clubs, commercial mutual and fixed premium insurers). Also, a comparative analysis is carried out among twenty three different charterer's liability covers and their scope is presented in-depth with practical examples of application provided through interviews by some charterers and their insurance representatives.

The research finally concludes with the belief that charterers are sufficiently represented in the insurance world by the existing insurance providers, with a particular preference being shown over fixed premium insurers. It further establishes that even though the scope of charterer's liability cover seems to protect charterers against the majority of risks they are exposed to, it does not suffice itself to answer to their overall liability, as it does not take into account certain main areas of their exposure. So, it is argued that charterer's liability insurance can only work effectively when combined with additional layers of protection. Last, the evaluation of charterer's cover concludes highlighting that the efficacy of charterer's cover will be certainly challenged when new liabilities emerge in near future referring particularly to bunkers, cyber-security and "smart shipping".

Table of Contents

Acknowledgments

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"Patience is bitter, but its fruit is sweet." - Aristotle

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Limitation Act 1980
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Sale of Goods Act 1979
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Directive 75/442/EEC on waste

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Convention on Limitation of Liability for Maritime Claims 1976 (amended by with the Protocol 1996)

Hazardous and Noxious Substances Convention 1996 (amended in 2010)

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Maritime Labour Convention 2006 (amended in 2014)

Nairobi International Convention on the Removal of Wrecks 2007

York Antwerp Rules (1974, 1994, 2004 and 2016)

List of Abbreviations

CLC	International Convention on Civil Liability for Oil Pollution Damage
CLI	Charterer's Liability Insurance
CMI	Comité Maritime International
DTH	Damage to Hull
ECA	Emission Control Area
FD&D	Freight, Demurrage and Defence
FIO	Free In and Out
FIOS	Free In Out and Stowed
FIOST	Free In and Out, Stowed and Trimmed
GT	Gross tonnage
H&M	Hull & Machinery
HR	Hague Rules
HVR	Hague Visby Rules
ICA	Inter Club Agreement
IG	International Group
IGA	International Group Agreement
IMO	International Maritime Organisation
IOPC	International Oil Pollution Compensation Funds
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Security Code
KFK	Knock for Knock
LLMC	Convention on Limitation of Liability for Maritime Claims
LOU	Letter of Undertaking
MARPOL	International Convention for the Prevention of Pollution from Ships
MGA	Managing General Agents
MIA	Marine Insurance Act
MSA	Merchant Shipping Act

OPA	Oil Pollution Act
P&I	Protection & Indemnity
PSC	Port State Control
SMS	Safety Management System
UKSTC	UK Standard Towage Conditions
YAR	York Antwerp Rules

I. INTRODUCTION

1. Overview of the research background and research aims

It is often not appreciated that those who charter ships are often traders and they enter into charterparty contracts with the view to perform the transport element of the international sale contracts which they are party to. That being the case, in this thesis I shall consider how the liabilities of such traders from the perspective of the transport arrangements they have with their carriers can affect the scope of liability insurance they purchase.

A charterer is often exposed to a wide range of liabilities whose number and type will often depend on various factors. These may be the way liabilities arise (e.g in contract or tort), the prevailing commercial circumstances (e.g cargo values, freight rates, high demand) as well as the appetite of regulators for a legal change following the economical, socio-political, technological and environmental trends. Therefore, although charterer's liability exposure might not seem at first glance as straightforward as the shipowner's, it does not, in fact, differ from the latter, as both face similar liabilities whose level of seriousness may simply vary in certain cases.

The charterers' increased liability has recently attracted considerable degree of attention as a result of their growing concern regarding the liability exposure they face in the light of the regulatory and commercial changes that the shipping industry is experiencing in the past few years. That concern triggered in its turn charterers' willingness to seek for insurance protection that could safeguard them against their exposure to these increased risks. Subsequently, the insurance industry came eventually to the realisation that charterers constitute a significant part of their targeted market and, therefore, in order to attract more and more of them into their business, they started developing different insurance products in an effort to respond to the charterers' increasing needs. Finally, the development of the insurance market as far as charterers are concerned resulted in a plurality of options for the assured charterer which could reasonably lead someone to the conclusion that the charterer's representation within the insurance world is noticeable and impactful when it comes to his overall liability exposure.

However, there is still a strong hypothesis that a significant number of charterers still remains uninsured taking into account the size of the cargo traded worldwide in comparison with the estimated number of the insured charterers. If this hypothesis is proved to be accurate, it is justifiable to wonder whether the reason that lies behind this fact is the response of charterer's insurance market towards this reality. In other words, could it be perhaps the form that the charterers' insurers have taken and the scope of the cover they offer the underlying reason that explains the unwillingness of these charterers to acquire liability insurance? Therefore, based on the above hypothesis, the aim of this research work is to evaluate the current system of charterer's liability insurance and the way such insurance is provided, in order to ascertain whether charterers are sufficiently represented within the insurance market and whether they are offered adequate insurance protection. If so, then these factors could be excluded from the list of reasons that could justify the rationale behind the thinking of the charterers who opt to remain uninsured.

2. Research questions

The main aim of this research work is to ascertain whether charterers are currently sufficiently protected under the standard liability cover offered to them by their liability insurers and whether they are adequately represented within the insurance market. These objectives will be addressed through five main research questions that will be answered in the following order throughout this work:

1) What are the charterer's liabilities under a time and a voyage charter?
2) How and to what extent are charterers protected against these liabilities?
3) Who in the insurance sector is providing this protection?
4) Could these forms of charterer's insurers represent all charterers?
5) Is this type of insurance protection offered by them sufficient?

An analysis of the content that each of the above questions covers is presented below in the "Structure of the Thesis" section, whilst the methods followed in order for the research findings to be drawn is explained at the last part of this chapter which refers to the methodology used.

3. Contribution to academic understanding and knowledge

Even though the role of charterers in the transport chain and the importance of their contribution to the shipping industry are generally well-known and established, a huge majority of academic writing focuses on the liability and insurance concerning shipowners. For instance, the academic sources referring to the shipowner's liabilities are abundant, whilst there are many independent researches referring to the shipowners' liability insurance and specifically the role and practice of P&I Clubs as shipowners' liability insurers. On the contrary, when it comes to charterers, the existing bibliography that is concentrated exclusively on them is very limited and many times any reference made to them is incidental to a relevant analysis for shipowners. Also, it has been noted that retrieving information from academic literature regarding charterer's liability insurance is a difficult exercise as the sources in their majority were fragmented, providing a hindsight only for certain aspects of charterer's insurance. Furthermore, the information available is often basic and not followed by an in-depth analysis. It has also been discovered as part of my research that many of the sources which are relevant to this topic and provide details on the matter lack of academic characteristics, as they refer more to practitioners rather than an academic audience. Therefore, they mostly focus on commercial matters and do not develop the critical legal aspects of the matter under discussion.

In light of this obvious gap in the academic literature, this research work purports to approach this topic from a completely different angle, by combining two distinct areas of maritime law (i.e charterparties and marine insurance law), instead of focusing on one, like most other academic sources have done. Thus, it starts first of all with the examination of the charterer's liabilities by following an alternative method and distinguishing them between operational and non-operational liabilities. It then continues with a unique analysis of how these liabilities are covered in terms of insurance and by whom. It explains in detail the way charterer's insurance market operates and ingeniously provides a comparative analysis among the different charterer's insurance providers. Also, the thorough analysis of the scope of charterer's standard liability insurance cover and the innovative comparison of different liability covers with the provision of practical examples provides to the reader a good understanding of the limits of charterer's liability insurance protection and sheds some light on the interpretation of such risks as they are being applied in charterer's case. Put differently, the significance and contribution of this research lies on the fact that it commences its analysis from the moment the charterer's liability is created and continues with an explanation of when

and to what extent this claim for liability will be finally satisfied by his liability insurer. So, in a sense, it brings together all the different pieces that the concept of charterer's liability insurance is consisted of and presents it with clarity under one comprehensive academic work that includes a legal analysis of this concept which is enhanced with the use of some practical examples as well.

4. Structure of the Thesis

The way this work has approached and addressed the above research questions is by dividing them into three main parts, each of which deals with a particular theme. More specifically, the first part of the thesis is concentrated on the first research question which refers overall to charterer's liabilities. This part is further divided into two separate chapters which purport to present charterer's liabilities under the two main forms of charterparties, the time and voyage charters (Chapters 2 and 3 respectively). It is noteworthy to point out that liabilities arising for the charterer under a bareboat or demise charter have been intentionally excluded from the scope of this work, because they are not associated with the concept of charterer's liability insurance. A bareboat charterer seems to act as a *de facto* owner of the vessel, therefore his liability insurance will be the same with the one provided to shipowners and not the charterers. Also, contrary to the majority of academic books which present generally charterer's contractual liabilities as a continuation of their analysis of shipowner's liabilities, this work refers exclusively on the charterer's obligations that could give rise to a third party liability, including the owner of the vessel, the cargo interests or any other third party involved generally in the maritime adventure. In fact, the below analysis takes into account any liability, either it arises contractually, or statutorily, or in tort and examines their application by distinguishing them between liabilities relating to operational and non-operational matters, depending on whether the charterer's obligation is associated with an activity on which the performance of the chartered voyage depends.

As regards the second part of this work, it addresses the following two research questions, as described above, that refer to the insurance aspect of charterer's liability. Thus, after all the liabilities of a time and voyage charterer have been identified, this parts examines the way the former are reflected in terms of insurance protection for the charterer and under what form. Similarly to part A, this part is divided into two main chapters and includes also a

supplementary one. The first chapter in this part (Chapter 4) introduces firstly the concept of charterer's liability insurance as it has been developed following the principles of general liability insurance. It then moves on with an analysis of the different charterer's insurance providers and the form under which they appear nowadays. It also explains the differences between the above insurance providers by presenting their advantages and disadvantages in relation to each other and provides some data and thoughts on the charterers' preference over a particular type of insurer. The second chapter in this part (Chapter 5) analyses the terms under which charterer's liability insurance is offered by each type of these charterer's insurers and focuses on their insurance's scope and its included and excluded risks. Last, the supplementary chapter (Chapter 6) follows essentially the theme of the previous chapter and presents briefly the additional covers that are available to charterers in practice and the terms of their application. As the main aim of this research project is to ascertain whether charterer's liability insurance protection is sufficient in the form it was described in the previous chapter in relation to the spectrum of liabilities identified in the first part of this work, this chapter mainly purports to complete the picture of charterer's overall insurance protection, as it allows the author to reach a safer conclusion when the efficiency of this system is being later evaluated.

The third and last part of this work (Chapter 7) aims to answer the last two research questions by gathering and combining the research findings from the previous two parts. Hence, it first examines whether the form upon which charterer's liability insurance market is structured is effective, in the sense that it represents sufficiently the charterers. Also, it identifies some issues regarding the scope of charterer's liability insurance protection which seem to leave charterers exposed to certain risks and tries to provide some recommendations for their improvement. Last, the evaluation continues by drawing the reader's attention to some potential new liabilities that might emerge for the charterer the forthcoming years due to the regulatory and technological changes taking place within the shipping industry. It puts, therefore, the charterer's liability insurance cover into perspective and examines how such changes could affect the current form of this concept, whether it will suffice and how these issues (if any) could be perhaps overcome.

5. Methodology

In order for the above research questions to be analysed and presented adequately and for the findings to be as accurate as possible, a mixture of different methods was followed which combined legal with commercial knowledge. As a result, it is believed that this methodological approach assisted the development of research conclusions which are not only legally logical, but commercially feasible as well.

Starting with the first part of the thesis, the analysis of charterer's liabilities under a time and voyage charter was based on a thorough review of the existing case law and literature in the field until the 31st of March 2020. Also, in order for the majority of liabilities to be identified, the research expanded in the examination of various standard voyage and time charter forms that are frequently used in practice and the ways the parties usually develop in order to shift these liabilities towards each other. Further, as the applicable legal principles with respect to the issues falling under this part are to a great extent clear and established, the focus was mainly on the most recent case law and whether it confirms or overrides the older precedents with the introduction of new principles.

Regarding the methodology that was adopted for the examination of charterer's liability insurance concept in the second part of the thesis, it ranged from academic literature review to the performance of interviews. Specifically, the research elaborated on the understanding of the charterer's insurance market by reviewing the various Terms and Conditions applicable to different charterer's insurance providers. Also, the International Group Agreement (IGA) and the Pooling Agreement were examined in relation to the structure and operation of the IG Clubs and the rules subject to which their insurance is offered. In addition, several information was collected from the insurers' and brokers' annual review reports which provided data regarding the number of charterers insured with them and the trends being followed within the insurance world. The scope of charterer's liability insurance and the analysis of the included and excluded risks was accomplished through the collection, in-depth study and comparative analysis of twenty three different charterer's liability insurance covers and Rules, provided by both mutual and fixed premium commercial insurers, either operating within or outside the IG Clubs, or acting as Managing General Agents on behalf of another insurer, or constituting specialist charterer's underwriters.[1] It should be noted here that the Rules and covers examined refer to

[1] These include the following P&I Clubs: the American Club, Britannia, Gard, the London Club, the North of England Club, the UK Club, Skuld, the Steamship Club, the Standard Club, the Swedish Club, the Shipowners' Club and the West of England Club. They also include the following commercial insurers: the Charterers P&I Club, RaetsMarine (currently MS Amlin), British Marine, Navigators, Charterama, Carina P&I, Lodestar Marine,

the copy of their latest active version during the policy years 2018 and 2019 and before the renewal period of February 2020. Further, it should be clarified that during the last year of this research, some of the insurance companies under examination, underwent structural changes or merged with each other, or updated their websites. As a result, certain electronic material used was no longer available online and could not be accessed in 2020. Therefore, their reference in the thesis is based on the latest date where access to them could be confirmed.

Also, the better understanding of the insurance market's operation and the application of charterer's liability insurance cover was achieved through interviews that were carried out during this research with marine insurance brokers, charterers as well as claims handlers and underwriters working for IG Clubs or specialist charterer's insurers. It is interesting to note here that I was attending for one week on a daily basis the Charterers' P&I Club office in London where I had the chance to complete part of my interviews and get a glimpse of how charterers' insurance works in action. Thanks to the above interviews and the input provided by the interviewees, the research was also enhanced with practical examples where charterer's liability arose and charterer's insurers responded under their cover. The interviews provided also a better understanding of the commercial reasons that lie behind the charterers' preference over a particular type of insurer and the pragmatic approach that is followed when it comes to the risks they insure against, the application of the insurance cover and the limits of their insurance. It was made clear, for instance, that although it is understood that charterer's exposure to certain risks is existent, no liability cover could in reality respond to them on the basis that these risks are too difficult to be predicted and valued accordingly. Also, it was realised from the examples provided by the interviewees that often charterer's liability insurers might be more flexible with the interpretation of their cover and respond to risks that would not otherwise fall within their insurance in an effort to maintain good business relationship with their assured charterers, or compete more aggressively the other insurers by offering insurance on better terms. In addition, focus was given on the existing academic literature and case law on the matter. However, it was found that the available literature was quite limited with many of the sources being in fact outdated. As regards the relevant case law, its reference in this part is limited, on the basis that most disputes regarding the application and interpretation of charterer's liability insurance cover are resolved internally, with the information most of the times remaining confidential.

Hydor AS, the Hanseatic Underwriters, Amica International, the Charterersliability.com (part of Dutch P&I), and the Norwegian Hull Club.

Lastly, regarding the final evaluation, the findings from the previous parts were taken into account which also pointed out the gap and issues that arise in relation to the concept of charterer's liability insurance. Also, an overall analysis was conducted as to how these findings affect each other not only in relation to the form of charterer's insurance market, but to the scope of charterer's standard liability cover as well. For the evaluation of the charterer's insurance providers and their cover, general commercial parameters were further considered, requiring the study of shipping market's trends as they were analysed by shipping consultants and as expressed by the interviewees and the personal experience of the author from practice. Additionally, concerning the challenges described in this part referring to the future application of charterer's liability insurance cover, the conclusions were drawn through the examination of various views expressed in the existing academic literature sources, the interpretation of official regulatory bodies and legal circulars discussing the same matters.

PART A

II. THE CHARTERER'S LIABILITIES UNDER A TIME CHARTER

1. Introduction

In the contemporary shipping trade, the transportation of cargoes is invariably regulated through different types of contracts of carriage, where the charterparty happens to be one of them. As the focus of this work is placed upon charterers, in this part it will be examined the scope and nature of their liability exposure under the two main types of charterparties (the time[2] and voyage charters), so to be ascertained later in the second part how this liability exposure is reflected into their insurance.

Starting, hence, with time charters, they constitute contracts of hire and services[3] provided to the charterer for a definite period and trading limits in exchange of an indemnity. These contracts are either subject to standard terms used widely in practice,[4] or are freely negotiated by the parties, or a combination of both, and purport to discern the parties' duties as they find appropriate and commercially necessary based on the freedom of contract principle. Apart from the main contractual duties that a time charterer has under these charters, he might also undertake further responsibilities under other contracts in which he is party during the vessel's operation, such as sub-charters, bills of lading or seaway bills, stevedoring, towage and bunkers' supply contracts, as well as agency and port authority agreements. However, the time

[2] Commercial practice has resulted through time to the creation of further sub-categories of time charters, which appear to have a hybrid form. For example, we can distinguish depending on the place of delivery/redelivery and the length of the charter period among *period charters* which provide that the ship is chartered for a period of time defined in the abstract to be short or long, fixed or variable; *trip charters* which define their duration, but also confine that the services undertaken should be performed during a particular voyage (or series of voyages) or 'trip'; and *time chartered round voyage* where delivery and redelivery take place in approximately the same area. See respectively in Terence Coghlin. John D. Kimball and others, Time charters, (7th edn, Informa Law from Routledge 2014), p. 4-5 and 113. In any case, though, parties can adopt any kind of contractual structure they desire, adapting themselves to the constantly changing demands of the market. See also, *Chiswell Shipping Ltd. And Liberian Jaguar Transports Inc. v. National Iranian Tanker Co. ('The World Symphony' and 'World Renown')* [1991] 2 Lloyd's Rep. 251 (QB); [1992] 2 Lloyd's Rep. 115 (CA).

[3] *Scandinavian Trading Tanker Co. A.B v. Flota Petrolera Ecuatoriana ('The Scaptrade')* [1983] 2 A.C. 694; [1983] 2 Lloyd's Rep. 253 (HL).

[4] The standard terms vary depending on the type of cargo, trade or activity at stake. For example, the NYPE form is used in dry cargo vessels, whereas the BOXTIME form for containers, the Shelltime for tankers (oil), the Supplytime for offshore activities, the Towhire and Wreckhire for towage and wreck removal services respectively.

charterer's liability exposure is not limited to the contractual obligations he undertakes. It is further influenced by the applicable legal regime or jurisdiction under which all these contracts' disputes will fall. Therefore, his liability may arise in contract (expressly, impliedly or by way of indemnity), in tort or, by statute, and will extend not only to those entities that are contractually related with him, but also to any third party that could affected by his activity. Thus, in this chapter, we will present all the time charterer's liabilities that arise nowadays under the non-performance of his obligations, whilst taking into consideration his position under all the possible contracts in which he might be traditionally involved.

2. The Liabilities of a Time-Charterer

For a better understanding of the nature of time charterer's liabilities, these will be divided and presented into two categories based on whether they relate to an operational or non-operational matter. Thus, in the first category, we will analyse liabilities that emanate from the vessel's operation and its usual running activities, such as bunkering procedures, cargo operations and vessel's berthing; whereas, in the second category we will refer to any other liabilities that have a more commercial, rather technical, nature and are not directly connected with the vessel's usual activity.[5]

2.1 Liabilities relating to the vessel's operation

2.1.1 Liability arising from the charterer's employment orders

Undoubtedly, the quintessence of a time-charter lies in the charterer's right to exploit the vessel commercially at his sole discretion by giving orders directly, or through agents,[6] to the master, whist the latter remains responsible for plain navigational matters strictly related to the vessel.[7]

[5] This division is presumed based on the definition given in Peter's Brodie, Dictionary of shipping terms, (5th edn, Informa 2007), p. 173 describing the term "operating a ship'' and the distinction made between the technical and commercial operation of the vessel.

[6] When the vessel is sub-chartered, that right is strictly provided only to the head-charterer / disponent owner with whom the owner has concluded the contract. In practice, thereafter, the head-charterer may give to the other sub-charterers down the chain the right to give such orders. So, owner's compliance with sub-charterer's orders, without head-charterer's consent might constitute breach of contract.

[7] *Whistler International Ltd. V. Kawasaki Kisen Kaisha Ltd. ("The Hill Harmony'')* [2001] 1 Lloyd's Rep. 147 (HL), at p. 156; *London & Overseas Freighters Ltd v. Timber Shipping Co SA ("The London Explorer'')* [1972] A.C. 1; [1971] 1 Lloyd's Rep. 523 (HL), at p. 526.

This right is expressly included in the majority of the standard time-charter forms[8] which distinguish between the orders that a charterer can give and the owner must obey,[9] and on the other hand, orders that remain under owner's control. Thus, orders that could fall within the former type usually entail an economic aspect or the strategy that needs to be followed in the sense of exploitation of the vessel's earnings[10] and include for example, the choice of vessel's route,[11] the port nomination[12] as well as the inspection and cleaning of holds prior to loading.[13] Conversely, orders related to seamanship, navigation tactics,[14] safety of ship, cargo and crew remain under master's control.[15] Any order extended to such matters given by the charterer constitutes an abuse of his right and must be rejected by the master; whereas, master's compliance with the above order shifts the liability back to the owner and any losses will be recovered by him.[16] A breach on charterer's part on public policy grounds will also be an order requiring the master to proceed to a wilful misstatement (fraud) or an illegal action[17].

The importance of distinguishing between these orders is self-evident, since they might expose the owner to various disputes as well as liabilities, ranging from vessel or cargo damages to personal injuries, or even pollution, for all of which he will seek compensation from the charterer. The basis of this compensation will be either the charterer's breach of contract or will arise by way of an indemnity clause, express or implied.

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[8] For example, Clause 9, Lines 121-123 Baltime 1939, Clause 8(a) NYPE 1993 and Clause 8(a) Lines 130-136 NYPE 2015.

[9] Non-compliance in this case equates with breach of contract on shipowner's behalf. However, immediate compliance is not required either, especially if the distinction between employment and navigational orders is not straightforward. See *Kuwait Petroleum Corporation v. I &D Oil Carriers Ltd ("The Houda")* [1994] 2 Lloyd's Rep. 541 (CA). Therefore, reasonable delay by shipowner does not indicate refusal to comply. The master's duty to obey does not transform him into charterer's agent; the owner is always liable for master's actions. See *Actis Co Ltd. v. The Sanko Steamship Co. Ltd ("The Aquacharm")* [1982] 1 Lloyd's Rep. 7 (CA).

[10] *Supra*, fn. 7, "*The Hill Harmony''*.

[11] *Ibid.* Contrary to the earlier decision of Court of Appeal ([1999] 2 Lloyd's Rep. 209) which was heavily in shipowners' favour. Similar to the House of Lords position also expressed by Donald Davies in "Rights to routes: case and comment – The Hill Harmony'' (1999) L.M.C.L.Q. 461, at p. 463.

[12] *New A Line v. Erechthion Shipping Co. S.A. ("The Erechthion")* [1987] 2 Lloyd's Rep. 180, 185 (QB). On the contrary, it is a matter of navigation asking a pilot as to where in the anchorage the anchor should be dropped.

[13] *Seagate Shipping Ltd v. Glencore International AG ("The Silver Constellation")* [2008] EWHC 1904 (Comm); [2008] 2 Lloyd's Rep. 440, at p. 454 and 455 (QB).

[14] See, for instance, *Alize 1954 and Another v. Allianz Elementar Versicherungs AG and Others ("The CMA CGM Libra")* [2019] EWHC 481 (Admlty), paras. 79 to 87, where it was held that the passage planning was an aspect of seaworthiness falling with owners duties.

[15] *Supra*, fn. 10.

[16] *Naviera Mogor S.A. v. Société Metalurgique De Normandie ("The Nogar Marin")* [1988]1 Lloyd's Rep. 412 (CA). *Motor Oil Hellas (Corinth) v. Shipping Corporation of India ("The Kanchenjunga")* [1989] 1 Lloyd's Rep.354 (CA).

[17] With the justification that a contract to indemnify someone against the consequences of what is known to both parties to be an illegal act is itself an illegal contract and unenforceable. See in Rhidian T. Thomas (ed.), Legal issues relating to time charterparties, (Informa Law 2008), p. 101 and 169.

Regarding the owner's right for an implied indemnity, it arises by implication of law,[18] while the crucial time for its ascertainment is when the relevant loss or liability has been ascertained,[19] rather the day when the order was given.[20] The rationale behind this concept emanates from the idea that since the shipowner has put his vessel at charterer's disposal by obeying to his orders, it is reasonable as much as necessary for the contract's business efficacy for the charterer to bear the consequences of his choices, and subsequently the losses arising therefrom.[21]

Exactly because of the flexibility of the concept of implied indemnity, the Court treats its scope widely by giving invariably sufficient compensation for the loss in question. Thus, although every case will be judged on its own merits and any underlying contractual relationships, the only requirement for the width of such indemnity is that it extends only to the order's direct consequences, excluding losses arising due to owner's fault.[22] Therefore, even lawful orders could be eligible to such indemnity, as long as the causation criteria described in "*Hadley v. Baxendale''*[23] are being fulfilled and the loss resulted directly from this order.[24]

However, losses incurred in the ordinary course of navigation, or "*usual perils of the voyage in respect of which the owner must be taken to have accepted the risk''* under the charter's construction do not fall within this indemnity.[25] For instance, in the "*The Kitsa''*, the

[18] The concept of implied indemnity was first explained in *Dugdale v. Lovering* (1875) 10 CP 196 which held that "*when an act has been done by the plaintiff under the express directions of the defendant which occasions an injury to the rights of third persons, yet if such an act is not apparently illegal in itself, but is done honestly and bona fide in compliance with the defendant's directions, he shall be bound to indemnify the plaintiff against the consequences thereof*". See also, *Sig Bergesen D.Y. & Co. And Others v. Mobil Shipping And Transportation Co. ("The Berge Sund'')* [1992] 1 Lloyd's Rep.460, p. 467 (QB); [1993] 2 Lloyd's Rep. 453, at p. 462 (CA).

[19] *Telfair Shipping Corporation v. Inersea Carriers S.A. ("The Caroline P'')* [1984] 2 Lloyd's Rep. 466.

[20] The latter was supported in *supra*, fn. 17, at p. 105. Through this way, it is claimed, that it could be also easy to limit the scope of the implied indemnity. This conclusion emanates, according to the author, from the same principles that apply under common law to claim for damages for breach of contract, where the issue of foreseeability is tested at the time of contract's conclusion, not at the time of the breach.

[21] *The George Chr. Lemos* [1991] 2 Lloyd's Rep. 107, where it was held among others that *"when deciding who has to bear the consequences of any choice, it is reasonable to assume that the consequences should fall upon the person who made the choice, in this case the charterer..''.*

[22] *Larrinaga Steamship Company Ltd. v. The Crown (''The Ramon De Larrinaga'')* (1944/45) 78 Ll.Rep. 167 (HL); *Triad Shipping Co. v. Stellar Chartering & Brokerage Inc. (''The Island Archon'')* [1994] 2 Lloyd's Rep. 227 (CA).

[23] (1854) 9 Ex.341.

[24] In the recent case of *ST Shipping and Transport Pte Ltd v. Space Shipping Ltd (The "CV Stealth") (No.2)* [2017] EWHC 2808 (Comm), the Court held that the correct test of causation was whether the charterer's employment order was the effective cause of the vessel's detention, resulting in additional hire and other costs. See also, *Ullises Shipping Corporation v. Fal Shipping Co Ltd ("The Greek Fighter'')* [2006] EWHC 1729 (Comm); T*he* "*Athanasia Comninos'' and "Georges Chr. Lemos''* [1990] 1 Lloyd's Rep. 277 (QB).

[25] (E.g. the costs of transhipment or ballasting). See also, *Imperator I Maritime Co v. Bunge SA ("The Coral Seas")* [2016] EWHC 1505 (Comm); [2016] 2 Lloyd's Rep. 293, at para. [15], p. 296. Global *Marine Investments*

Court rejected the owner's claim against charterer for compensation for the expenses incurred for cleaning the hull fouling created due to the vessel's inactiveness for days at a port nominated by the latter. It was found that there was no breach on charterer's part when he gave this order and since the loss suffered was foreseeable to both sides at the time the charter was concluded, it followed that the owner has agreed to accept such risk. So, these expenses constituted ordinary expenses of trading for him.[26] The same principle was also confirmed in the earlier case of "*The Coral Seas"*[27] where the vessel's underperformance due to hull fouling was examined.

In an effort to circumvent the disadvantage of generality of the implied indemnity,[28] the parties nowadays use unambiguous and express clauses providing for owner's compensation for losses suffered by complying with charterer's orders.[29] These clauses are always welcomed in practice, as they allocate clearly the responsibilities under the charter by merely stating what would be otherwise implied. This means that even when an express indemnity is vaguely worded, without clarifying whether particular liabilities and losses of the owner should be recovered, they will be probably included in the implied indemnity's scope.[30] However, the opposite does not apply, as it is believed that an express straightforward clause does not leave any margin to the Court to imply any further indemnity. Otherwise, the idea of prevalence of parties' freedom of contract would be negated.

The scope of the express indemnity also depends on the interpretation of the wording in each case and is provided to the owner only if he did not agree to bear these expenses and his

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Ltd v. STX Pan Ocean Co Ltd v. Navios International Inc v. Sangamon Transportation Group (*"The Dimitris L (No.2)'')* [2012] EWHC 2339 (Comm) per Christopher Clarke J., at para. [55]; *Actis Co Ltd. v. The Sanko Steamship Co. Ltd ("The Aquacharm'')* [1982] 1 Lloyd's Rep. 7, p. 244 (CA).

[26] *Action Navigation Inc. v. Bottigliere Di Navigazione S.p.A. ("The Kitsa'')* [2005] EWHC 177 (Comm); [2005] 1 Lloyd's Rep. 432. [paras. 23- 29], at p. 339-340. Same in *Triad Shipping Co. v. Stellar Chartering & Brokerage Inc. ("The Island Archon'')* [1994] 2 Lloyd's Rep. 227. It has been suggested that one rare case where the owner can recover such expenses is when there is an unforeseen increase in congestion at the port in question taking place between the charter's date and the date of charterer's order. See in Simon Baughen and Natalie Campbell, "Hull fouling- charterparty issues: case and comment – The Kitsa'' (2006) L.M.C.L.Q 129, p. 134.

[27] *Supra*, fn. 25, *"The Coral Seas".*

[28] Some thoughts about the advantages and disadvantages the implied indemnity might create can be found in Simon Baughen, "Shipowner's implied indemnity for cargo claims: case and comment – The Island Archon'' (1996) L.M.C.L.Q. 15). See also the approach supported by Roger Halson, in "Indemnity clauses, remoteness and causation: case and comment -The Eurus'' (1996) L.M.C.L.Q. 438, at p. 440 where it is highlighted that the disadvantage of the implied indemnity is its blur scope which allows the Court to decide every time for the appropriate ambit of recovery under its application.

[29] For example, Clause 9 Baltime 1939, Clause 13(a) Shelltime 4, as opposed to NYPE which does not include any such provision.

[30] *Supra*, fn.17, p. 95.

loss is not too remote.[31] But the matter is more complicated when an order is given and the parties are not aware of the risk. It has been argued that in this case, charterers should not bear the cost of shipowner's compliance;[32] yet, it is difficult to agree with this statement. A time charter in its own nature aims to provide charterers with a wide freedom to use freely the vessel, balance their interests and so, give proper orders. This means, though, that they have already considered all the likelihoods and have identified any potential risks; if not, they should bear the costs and compensate the shipowner. If we accept the opposite, it would not be commercially fair to allow charterers to command the master, without also allowing them to bear its onerous outcome.

In relation to the sub-charterer's employment orders when the vessel is sub-chartered, if the owner complies without the head-charterer's consent, the losses will most likely be economical rather physical. Even so, the head-charterer will not accept any liability for implied indemnity; so, the owner can recover his losses from the sub-charterer in tort, since there is no contractual relationship between them that could excuse an indemnity right,[33] unless both charters include the same back to back terms, as it is usually preferred in practice.

Despite the general principles that apply in respect of charterers' employment orders, it is interesting to note that there are particular orders that tend to lead to further liabilities and disputes on charterers' part and therefore they will be examined separately below.

A) Orders related to the vessel's speed

The charterer is entitled to instruct the master about the vessel's speed and her fuel consumption, as the charter's timely completion and his payment are heavily based on the performance of parties' obligations. This is also justified on the grounds that under time charters, the charterer provides and pays for bunkers. Therefore, it is vital for him to control the vessel's speed, so to estimate his costs, decide on the best voyage route and adjust the speed according to his other contractual obligations or financial condition. For instance, charterers might want to increase the vessel's speed so the vessel arrives at their destination at a specified

[31] For example, *L.D. Seals N.V. v. Mitsui Osk Lines Litd ("The Darya Tara")* [1997] 1 Lloyd's Rep. 42 (QB), where it was held that the owner was not entitled to an indemnity since his loss was caused by heavy weather and not the charterer's order.
[32] Johan Schelin (ed.), IX Hässelby Colloquium 2001 – Modern law of charterparties, (9th edn., Axel Ax:son Johnson Institute of Maritime and Transport Law, University of Stockholm 2003), p.27.
[33] *Ibid*, p. 34.

time;[34] or, when the market is depressed or oil prices are high, they may ask for low fuel consumption.

In any case, though, such orders, increase charterers' liabilities and expose them to higher risks. In fact, it is expected that these liabilities will increase in the near future after the implementation of the new regulations for the use of low sulphur fuel. However, as this matter is extensively discussed at the seventh chapter of this work,[35] here we will be focusing only on the regular liabilities arising as a result of a speed or fuel consumption order for which the shipowner might hold the charterer liable and seek compensation for any losses suffered. Thus, for example, if the owner complies with the charterer's speed order due to which the goods' delivery delays, he might be found liable to cargo owners for not proceeding with utmost dispatch under their bill of lading.[36] Or, if due to the advised fuel consumption, the vessel's engines operate below the cut-out-point, the vessel's engine might break down. As a consequence, the shipowner will request indemnity from the charterer for complying with his order, as it is usually expressly agreed in the charter. [37] Similarly also applies under the sub-clauses (e) and (f) of BIMCO's Slow Steaming Clause for Time-Charter Parties, according to which charterers shall indemnify the owner against any liabilities and consequences arising out of the owner's bill of ladings, when this Clause imposes on them higher liabilities than the bill.[38] But, even if express indemnity clauses are not incorporated into the charter, they could still be implied and justified, as long as the principles mentioned above[39] are also fulfilled.

[34] "BIMCO's explanatory notes NYPE 2015, on Clause 38 (Slow Steaming)", available <https://www.bimco.org/contracts-and-clauses/bimco-contracts/nype-2015>, accessed 12 March 2020.
[35] See Chapter VII in 3.6 "The charterer's bunkers liability and the introduction of lower sulphur limits", at p. 268.
[36] *Fyffes Group Ltd and Caribbean Gold Ltd v. Reefer Express lines Pty Ltd. and Reefkrit Shipping Inc., ("The Kriti Rex")* [1996] 2 Lloyd's Rep. 171.
[37] See for example Clause 38 NYPE 2015 which includes an express provision permitting the vessel to slow steam at charterer's request, probably as a response to the current lean economic times. Similarly also in *Regulus Ship Services Pte Ltd v. Lundin Services BV and Another* [2016] EWHC 2674 (Comm), paras.102-105. See *supra*, fn.34.
[38] For more information see in "BIMCO Slow Steaming Clause for Time Charter Parties" *(*Special Circular, No. 7, 23 December 2011), available < ttps://www.bimco.org/~/media/Chartering/Special_Circulars/SC2011_07.ashx>, accessed 12 March 2020, at p. 4.
[39] See respectively at p. 12 -13.

B) Orders related to vessel's trading limits

Albeit the House of Lords in "*The Hill Harmony"*[40] held that charterer is entitled to define the vessel's route, this right is not limitless,[41] as all charters include the trading limits within which charterers can exercise their liberty to employ the vessel.[42] Consequently, when the charterer "abuses'' this liberty by ordering the Master to sail outside these limits, he is in breach and the owner can reject the order, if it is extraordinary or contradicts with previous ones.[43] However, compliance with it will not amount to waiver[44] and the charterer remains liable for any damages suffered by the owner due to his compliance. Again, the indemnity will be usually express, as the parties tend to agree that charterers will provide owners with additional compensation upon acceptance of such orders, because it can result in loss of their P&I cover, if the order conflicts with its terms. An implied indemnity is also recognised, if appropriate.[45] Charterer's liability can further arise if the owner complies with his order, yet under protest, and the damages' amount will equate with the hire's market rate at the time of performance of the voyage outside the trading limits, if charter rate is lower.[46] However, this outcome could be very onerous for the charterer who has to bear the costs of any rate rises or any premiums required for such services. Older cases attempted to limit the effect of this outcome by suggesting that this measure will apply only when owner's protest is well founded.[47] Recent authorities, though, supported that by the time the owner accepted to perform a voyage outside the agreed limits, he should also be indemnified accordingly; that is to say similarly to what the charterer would have paid for such voyage in the market.[48] Despite this view's severity, it seems to be reasonable and justified on the basis that if the charterer wanted to trade in this area complying with other orders (e.g. given by sub-charterers or cargo interests), he would have chosen to find an alternative fixture, for which he would have paid the prevailing at that

[40] *Whistler International Ltd. V. Kawasaki Kisen Kaisha Ltd. ("The Hill Harmony'')* [2001] 1 Lloyd's Rep. 147 (HL).
[41] *SBT Star Bulk & Tankers (Germany) GMBH & Co. KG v. Cosmotrade SA ("The Wehr Trave'')* [2016] EWHC 583 (Comm.); [2016] 2 Lloyd's Rep. 170.
[42] For example, NYPE 2015 Lines 19-20, NYPE 1993 Lines 24-28, Baltime 1939 Line 32.
[43] *Grace (G.W.) & Co Ltd. v. general Steam Navigation Co. Ltd ("The Sussex Oak'')* (1949) 83 Ll.L.Rep. 297, at p. 307.
[44] *Supra*, fn. 16, *"The Kanchenjunga''* (CA) where it was held that a waiver of owner's right to refuse the order is distinct from waiver of his right to damages should loss occur.
[45] See p. 12-13.
[46] *Rederi Sverre Hansen v. Van Ommeren* (1921) 6 Ll.L. Rep. 193 (CA) where although the arbitrators held for the owners awarding damages for the balance between the (higher) market and charter rate, the Court of Appeal upheld their decision, accepting the owner's monetary award, but not on the basis of damages.
[47] *The Olanda* [1919] 2 K.B. 728 (HL).
[48] *Lansat Shipping Co Ltd v. Glencore Grain BV ("The Paragon'')* [2009] EWHC 551 (Comm); [2009] 2 Lloyd's Rep. 688 (CA), at para [55].

point market rate. Otherwise, charterers would take advantage of the charter by concluding initially on trading limits in exchange of low hire rates and amending them later with new, hoping that the owner will accept them, even under protest. Besides, the same approach is followed under an express indemnity provision, which often adopts the same measure of damages as above. So, at the end, it seems that with or without the owner's protest, the charterer's liability will not differentiate significantly.

The position is different, though, when the owner rejects the charterer's order and the latter insists. Here, charterer's conduct is repudiatory and allows the charter's termination and a claim in damages for early termination on owner's part.[49] The charterer will also have to bear any other expenses incurred due to the voyage's delay or non-performance for which the owner will claim compensation by way of a recovery claim. Similar claims can be further brought against the charterer by the cargo interests due to breach of bill of lading, if the bill was signed on charterer's behalf.

Another issue which is relevant to the charter's trading limits is the inclusion of war clauses in it[50] which forbid the charterer to order the vessel to sail in an area where there is at least a serious possibility of her becoming exposed to dangers included in War risks provision,[51] unless he covers any extra insurance premiums required and any additional wages for employment of the crew.[52] This is similar to the express provisions used when charterers ask to exceed the charter's trading limits. However, under these clauses the owner may leave from such areas at any time and discharge the cargo in another safe place, while hire continuous to run so long as the vessel sails within such zone, irrespectively of what happens throughout this period. Therefore, any delay due to vessel's detention will be borne by the charterer.[53] Clearly, these obligations apply only when the owner has consented to sail in these areas. Otherwise, if the charterer insisted on sailing within this zone, despite the owner's protest, he will be in breach of contract and owner's compensation will be wider.[54]

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[49] *Abu Dhabi National Tanker Co. v. Product Star Shipping Ltd. ("The Product Star'' (No.2))* [1993] 1 Lloyd's Rep. 397 (CA).
[50] The parties usually include the CONWARTIME 2013; See for example Clause 20 Baltime 1939, Clause 31 (e) NYPE 1993, and Clause 34 NYPE 2015.
[51] *Pacific Basin Inx Ltd v. Bulkhandling Handymax AS ("The Triton Lark'')* [2012] EWHC 70 (Comm); [2012] 1 Lloyd's Rep. 457, paras. [11] and [12]; *Taokas Navigation SA v. Komrowski Bulk Shipping KG (GMBH & Co) ("The Paiwan Wisdom'')* [2012] EWHC 1888 (Comm); [2012] 2 Lloyd's Rep. 416.
[52] E.g Clause 34 sub-cl. (f) of NYPE 2015 and clause (d) of CONWARTIME 2013.
[53] See, for example, clauses (h) to (i) of the CONWARTIME 2013.
[54] See respectively at p. 16 above and also *Ocean Tramp Tankers Corporation v. V/O Sovfracht ("The Eugenia'')* [1963] 2 Lloyd's Rep. 381.

C) Orders related to port nomination

Moving on, another extension of charterer's duty to give employment orders is his obligation to order the ship to sail only within safe ports, whereas failure to do so, might result in significant liabilities on his part, ranging from damages to the ship or loss of cargo, personal injuries, or even pollution. The charterer's duty to nominate safe ports is an absolute warranty,[55] rather than one of due diligence, unless otherwise agreed,[56] and it can be either express (e.g when the charter includes a named port and the express word "safe",[57] or implied, especially if there is no other term as to safety.[58]

What port is considered "safe'' has been well established since the case of *"The Eastern City"* [59] where it was held that a place is safe when the vessel "*can reach it, remain and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship"*.[60] The same definition remains still in force, as recently confirmed in the Supreme Court decision "*The Ocean Victory"*.[61] Furthermore, in "*The Polyglory"* [62] the Court clarified that "*a port must be safe if a vessel will only be exposed to danger through negligence",*[63] meaning inversely that mere exposure of the vessel to danger due to charterer's negligence suffices.

However, the charterer's obligation to nominate safe ports is not unlimited, as his warranty is not continuing so to start from when the order is given until the vessel's arrival to the port. On the contrary, what matters is the port being prospectively safe for the ship in question[64]

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[55] It is noteworthy that under the American law, the responsibility for providing safe ports and berths is still not settled. However, in March 2020, in the case of *Citgo Asphalt Co et Al. v. Frescati Shipping Co Ltd et al.*, 886 F. 3d 291 (3rd Cir. 2020), the Supreme Court decided that such duty is an absolute obligation.

[56] For example Clause 4 (c), Lines 125-126 Shelltime 4. Here, the charterer will be in breach only if he has failed to exercise his duty with reasonable care and skill. Respectively, in "*The Greek Fighter"* [2006] EWHC 1729 (Comm) and K*/S Penta Shipping A/S v. Ethiopian Shipping Lines Corporation ("The Saga Cob'')* [1992] 2 Lloyd's Law Rep. 545 at p. 551 (CA).

[57] *AIC Ltd. v. Marine Pilot Ltd ("The Archimidis'')* [2007] 2 Lloyd's Rep. 101 approved on appeal [2008] EWCA Civ 175. Here, the phrase included in the charter and the one in question was "*safe port Ventspils''*.

[58] V*ardinoyannis v. The Egyptian General Petroleum Corporation ("The Evaggelos Th'')* [1971] 2 Lloyd's Rep. 200 (QB); Similarly in Robert Gay, "Safe port undertakings: named ports, agreed areas and avoiding obvious dangers – The Archimidis'' (2010) L.M.C.L.Q. 119, p. 121.

[59] *The Eastern City* [1958] 2 Lloyd's Rep. 127.

[60]*Ibid*, at page 131. Similarly in *Compania Naviera Maropan SA v. Bowaters Lloyd Pulp and Paper Mills Ltd ("The Stork'')* [1955] 2 QB 68 (CA).

[61] *Gard Marine & Energy Ltd v. China National Chartering Co. Ltd. v. Daiichi Chuo Kisen Kaisha ("The Ocean Victory'')* [2017] UKSC 35. Similarly also in the Court of Appeal decision [2015] EWCA Civ 16; [2015] 1 Lloyd's Rep. 381 (CA) at para. [51], p. 399.

[62] *Kristiandsands Tankrederi A/S and Others v. Standard Tankers (Bahamas) Ltd ("The Polyglory'')* [1977] 2 Lloyd's Rep. 353(QB).

[63] *Ibid*, per Parker J, at p. 365.

[64] *Supra*, fn. 57, approved on appeal [2008] EWCA Civ 175.

when its relevant employment begins and when the order is given.[65] Because, at that ultimate time it is considered that the charterer believed and, hence, promised that when in the future the vessel approaches that port, it will be safe to reach, use and return from it. If the prospectively safe port becomes subsequently unsafe, a distinction should be drawn. When the port is unsafe while the ship is still sailing, the charterer has a secondary obligation to "*cancel his original order, and assuming that he wishes to continue to trade the ship, to order her to go to another port, which at the time when such fresh order is given, is prospectively safe for her"*.[66] Otherwise, if the port becomes unsafe after the vessel has already entered and it is impossible for the ship to leave without putting herself in danger, the charterer has no secondary obligation as above. If, however, the ship can leave and avoid the danger, he has to give a fresh order and nominate another safe port. The rationale behind charterer's secondary obligation is based on the idea that he has to do all that he can to protect the ship from new dangers in the port to which the vessel was sailing because of his orders. Charterer's persistence on his initial order again could be considered repudiation and could lead to charter's termination by the owner.

Though, assuming that the charterer sends the ship into an unsafe port with the master having reasonably obeyed to his orders and the vessel gets damaged, the charterer will be in breach, whereas the owner will be entitled to compensation.[67] This compensation is subject to the principles of remoteness and causation and covers only the owner's direct or consequential losses,[68] such as hull and cargo damages, costs of repairs, or even pilot, tugs[69] and wreck removal expenses.[70] It will also include losses caused due to delay arising from charterer's port nomination or in his effort to avoid a danger while sailing at the port,[71] but only if they are unusual and not such that the owner would have probably accepted.[72] An example of such loss could be any quarantine expenses consequent on the outbreak of infectious or contagious

[65] *Supra*, fn. *61, "The Ocean Victory"* [2017] UKSC 35, para. 13. Also, K*odros Shipping Corporation v. Empresa Cubana De Fletes ("The Evia (No.2)'') [1982] 2 Lloyd's Rep. 307 (HL)*, per Lord Roskill J, at p. 317: "*that passage of the judgement…in The Eastern City is no authority for construing those eight or other similar words as giving rise to an absolute continuing promise of safety by the charterers (…)''*. Similarly per Lord Diplock, at p. 310 and per Lord Roskill at p. 315

[66] *Ibid*, per Lord Roskill at p. 320; similarly in "*The Ocean Victory''*, at p. 399-400.

[67] *Reardon Smith Line Ltd v. Australian Wheat Board ("The Houston City'') [*1956] 1 Lloyd's Rep. 1 (P.C).

[68] "*The Kanchenjunga''* [1989] 1 Lloyd's Rep.354, p. 397.

[69] *Supra*, fn. 58, in Robert Gay, p. 138.

[70] *Supra*, fn. 61, "*The Ocean Victory"* Court of Appeal decision.

[71] *Ibid*, at p. 17-18 and 21.Also, in "*The Hermine"* [1979] 1 Lloyd's Rep. 212 (CA);

[72] *Supra*, fn. 69.

diseases upon the entered vessel to the nominated port.[73]Also, it is noteworthy that for as long as these operations last, hire continues to run and be due on charterer's part. Although the owner's mitigation actions for his losses are taken into account when his compensation is assessed,[74] if he has obeyed under protest, his compensation will be wider, as described above.[75]

Conversely, when a charterer orders the vessel to sail into an unsafe port of whose unsafety the master is aware, he has to refuse the order, as he might lose his right to claim recovery due to his compliance being considered as a break in the causation chain,[76] if his damages are proved to have resulted from the port's unsafety.[77] However, there is no causal break when the owner delays sailing towards an unsafe port for a reasonable period of time,[78] on the grounds that he is in the "horns of a dilemma'', whilst he is considering his next move. Besides, since the charterer nominated the port in question at first place, he is expected to have better knowledge of its dangers. So, he should bear the cost of any consequences arising from a port's particular aspects which the owner could not predict.[79] Also, the charterer remains liable for breaching his duty, even if he paid any additional premium requested by the owner,[80] unless the latter is covered for such losses under these premiums,[81] so it would be unjust for the charterer to pay twice for his decision.

Although the interpretation of a port's safety ranges depending on the facts of each case, in fact, the term's broadness, along with the high standards for charterers' compliance with this duty set owners' demands quite high and therefore, make it easy for a charterer to be found in breach of this duty. The fact also that there is a whole range of liabilities that could arise due to the nomination of an unsafe port explains why owners tend to claim often breach of such duty against charterers, in order to be compensated for any losses or damages suffered. This

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[73] "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017,at p.6.
[74] *Brostrom v. Dreyfus* (1932) 44 Ll.L Rep. 136.
[75] *Supra*, fn. 54.
[76] *Supra*, fn. 68.
[77] In the sense that the unsafety was too obvious to both of them and owner's compliance was the one which finally led to the damage. See Charles G.C.H. Baker, "The safe port/berth obligation and employment and indemnity clauses'' [1988] L.M.C.L.Q. 43, at p. 50.
[78] *The Ocean Victory* [2013] EWHC 2199 (Comm.).
[79] Same approach supported in Paul Todd in "Safe port issues: case and comment – The Ocean Victory'' (2015) L.M.C.L.Q. 265, p. 270.
[80] *D/S A/S IDHAO v. Colossus Maritime S.A. ("The Concordia Fjord'')* [1984] 1 Lloyd's Rep. 385 (QB); *ST. Vincent Shipping Co. Ltd v. Bock, Godeffroy & Co ("The Helen Miller'')* [1980] 2 Lloyd's Rep. 95, per Mustill J. (QB). Same approach was also supported in *ibid*, p. 268.
[81] *Supra*, fn. 65, "*The Ocean Victory*".

attitude is further facilitated by the Courts' readiness to imply an indemnity[82] for the owner, when his claim in damages for breach fails, as a return for giving the charterer a wide power of selection.[83]

D) Orders related to bills of lading

Another aspect of charterer's employment orders is the one referring to the issuance of bills of lading. The exercise of that order by the charterer, though, is not unfettered, as it is usually influenced by the involvement of a third party (cargo owner) which participates in the contractual relationships developed in the course of carriage of goods. For that reason, when the shipowner is also the contractual carrier under the bill, then invariably the charter includes a provision describing the way such bills should be issued. This provision not only indicates whether the master or charterer are allowed to sign bills that bind the owner, but also provides for owner's compensation when the liabilities arising from bills issued by the charterer are more burdensome for the shipowner than the risks he initially accepted to bear under the charter, on the basis that the bills should be signed "*as presented''*,[84] imposing a consistent to the charter liability regime.[85]

However, the owner's compensatory right and so, the charterer's liability are subject to the nature of the order given. Thus, when the charterer's order for the issuance of bills exceeds his authority under the charter, by requiring, for example, the introduction of extraordinary or inconsistent to the charter clauses into the bill, the charterer is in breach. Whereas the owner has merely a right to comply[86] with such order without his indemnity right being jeopardised,[87] if he suffers damages or exposes himself to higher liabilities under the bill as a result of it.[88] The basis of this compensation is often express when it is agreed in the charter that the charterer will hold harmless the owner in respect of any liability, loss or damage arising as a result of

[82] For example, *The Erechthion* [1987] 2 Lloyd's Rep. 180; *Uni-Ocean Lines PTE. Ltd. v. C-Trade S.A. ("The Lucille'')* [1983] 1 Lloyd's Rep. 387 per Bingham J., at p. 395 and 397 (CA).
[83] *Supra*, fn. 77, p. 44 and 51.
[84] Coghlin T., John D. Kimball and others, Time charters, (7th edn., Informa Law from Routledge 2014), p.398.
[85] For example, Clause 30, Lines 307-314 NYPE 1993, Clause 31, Lines 503-511NYPE 2015, Clause 13 Lines 225- 234, Shelltime 4.
[86] *Orinoco Navigation Ltd v. Ecotrades S.A. ("The Ikariada'')* [1999] 2 Lloyd's Rep. 365 (QB); *The Berkshire* [1974] 1 Lloyd's Rep. 185 (QB); *Kruger v. Moel Tryvan Ship Company* [1907] A.C 272.
[87] Similarly to the charterer's orders for the vessel to sail beyond the agreed trading limits, see respectively at p. 16 and 17 above.
[88] *The Island Archon* [1994] 2 Lloyd's Rep. 227.

charterer's request.[89] But, an implied indemnity is not excluded either.[90] The same also applies when the master is ordered to sign bills in a different from the prescribed form,[91] or include into them a lien or demise clause,[92] or deliver the cargo without production of bills.[93]

Conversely, in cases where the charterer orders the master to sign ante-dated bills,[94] or bills for under-deck cargo which was in fact shipped on-deck,[95] or "claused'' bills notwithstanding that cargo's condition is not good, the master is obliged to reject the order, otherwise he cannot claim damages for any losses incurred,[96] whereas the charterer has no liability for the reasons mentioned earlier.[97] This applies also irrespective of parties' agreement on owner's express indemnity, especially if the Court finds that parties have colluded with each other purporting to fraud the bill holder.[98] However, it was held in "*Brown Jenkinson v. Percy Dalton''*[99] that when the master signs such bills in good faith, because he was reassured by charterer that he was mistaken about their "flaws", the owner is still entitled to an indemnity.[100]

In parallel with the owner's right to seek compensation from the charterer for liabilities he incurs due to his compliance with charterer's bill order under the charter, charterer's liability might arise also in tort, if the bill holder decides to bring a claim directly against him for any losses suffered under the bill of lading.

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[89] For example, Clause 31 (b) NYPE 2015 and Clause 13 (a)(i) Shelltime. See also *Great Eastern Shipping Co Ltd v. Far East Chartering Ltd and Another (The "Jag Ravi'')* [2010] EWCA Civ 180.

[90] See, for instance, *Strathlorne Steamship Co Ltd v. Andrew Weir & Co*. (1934) 49 Ll.L.Rep. 306; (1934) 50 Ll.L.Rep. 185, where the Court implied an indemnity to the owner for losses incurred due to the delivery of the cargo without the production of bill of lading, complying with his charterer's orders.

[91] *Garbis Maritime Coproration v. Philippine National Oil CO. ("The Garbis'')* [1982] 2 Lloyd's Rep. 283 (QB).

[92] *Gulf Steel Co Ltd. v. Al Khalifa Shipping Co. Ltd ("The Anwar Al Sabar'')* [1980] 2 Lloyd's Rep. 261 (QB).

[93] *The Houda, supra*, fn. 11, at p. 350 where it was mentioned that delivery of goods without production of bill of lading is primarily allowed, justified on the grounds of business efficacy. Similarly also accepted in *Songa Chemicals AS v. Navig8 Chemicals Pool Inc, Navig* Chemicals Pool Inc v. Glencore Agriculture BV (The "Songa Winds'')* [2018] EWHC 397 (Comm), at para. 32. Respectively in *Miskin Manor Shipping Company Ltd v. Herbert Clarke & Sons (Erith) Ltd* (1927) 29 Ll.L.Rep. 282, at p. 285 where it was held that based on case's facts, delivery of cargo without production of bills of lading was not tortious.

[94] *Margaronis v. Peabody* [1965] 2 QB 430; *The Almak* [1985] 1 Lloyd's Rep. 557, where the Court held that charterer's was in breach for misdating the bills which the master signed without noticing, though, his mistake.

[95] *The Nea Tyhi* [1982] 1 Lloyd's Rep. 606 (QB); See also respectively, NYPE 2015 Clause 31 (c).

[96] *The Nogar Marin* [1988] 1 Lloyd's Rep. 412.

[97] See respectively at p. 14.

[98] For example, when the master illegally delivers the cargo without production of bills of lading and it is clear that this will result in a fraud against the original holder of the bill (cargo owner). See, *supra* fn.32, p. 43.

[99] (1957) 2 Lloyd's Rep. 1.

[100] Similarly in *Boukadoura Maritime Corporation v. Societe Anonyme Marocaine De L'industrie et du raffinage ("The Boukadoura'')* [1989] 1 Lloyd's Rep. 393 (QB) where the Court held that whilst the master was entitled to refuse to sign the bills as clean due to the fact that they contained wrong figures, his compliance with such order deprived the owner from claiming damages, because of the break in the causation chain.

E) Orders related to the nature of the loaded cargo

Customarily, time charters include a provision which allows the charterer to order the vessel to be loaded with any cargoes he wishes, as long as they are not excluded as "dangerous'' either impliedly[101] or under the charter's dangerous cargo clauses,[102] and they can be regarded as lawful merchandise. For the latter to happen, they should comply with the ship's flag state and charter's governing law, while cargoes' loading and discharging at the nominated ports should not contravene ports' local laws.[103] However, when it comes to the satisfaction of the first condition this is not always straightforward, since it is affected by the interpretation of the term 'dangerous'.

Trying to categorise all dangerous cargoes seems like looking for a needle in a haystack, as all cargoes carried at sea include risks and in their majority are to a certain extent dangerous. Generally, though, the definition "dangerous" is broad and dependent upon the charter form used or the applicable rules.[104] Thus, for example, a particular cargo might be inherently dangerous or when it is seen in combination with the particular characteristics of the ship or other cargo aboard;[105] or when it endangers other goods, but not the ship. Also, cargo is "dangerous'' under the Hague and Hague-Visby Rules[106] when it causes actually physical damage or poses a threat of such damage to some object other than itself. Whereas under common law it is when triggers legal obstacles which cause either vessel's delay or cargo's detention[107] or any other physical or economic loss, even if it is not physically threatening.[108] There is further cargo that is classified as such under safety regulations.[109] Because of the

[101] Based on Art. IV r. 6 of Hague or Hague-Visby Rules, if the parties also include in their charter a Clause Paramount.
[102] See NYPE 2015 Clause 16, NYPE 1993 Clause 4(a) and Baltime 1939 Clause 2 Line 33. On the contrary NYPE 1946 makes no reference to the shipment of dangerous cargo.
[103] As happened in the *ST Shipping and Transport Pte Ltd v. Space Shipping LTd (The "CV Stealth")* [2016] EWHC 880 (Comm) where the charterer order the vessel to proceed to a Venezuelan port in order to load cargo that was not supposed to load. The loading of this particular cargo was based on a forged document and result in the vessel's detention by the Venezuelan Port Authorities. Also, see, for example, Baltime 1939 Clause 2, NYPE 1993 Clause 4(a), NYPE 2015 Clause 16, Shelltime 4 Clause 4(a).
[104] *Effort Shipping Co. Ltd. v. Linden Management S.A. and Another ("The Giannis NK'')* [1998] 1 Lloyd's Rep. 337 (HL).
[105] Respectively, in *American Overseas Marine Corporation v. Golar Commodities Ltd ("The LNG Gemini'')* [2014] EWHC 1347 (Comm); The Athanasia Comninos [1990] 1 Lloyd's Rep. 277 (QB).
[106] Art. IV r. 6.
[107] With regards the vessel's detention, cargo will be considered dangerous only if such detention was not caused by commercial factors. Respectively, it has been decided in *Bunge SA v. ADM Brasil LTDA and Others ("The Darya Radhe'')* [2009] EWHC 845 (Comm).
[108] F.D Rose, "Cargo Risks: 'Dangerous' Goods'' (1996) 55 Cambridge L.J. 601, p. 602.
[109]For example, The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990, the IMO Codes, the International Maritime Dangerous Goods (IMDG) Code. See also s. 87(5) of Merchant shipping Act 1995.

term's wide scope, an appropriate test for the identification of cargo's dangerousness has been supported by Mustill J. in "*The Athanasia Comninos''*[110], according to which we need to "*read the contract and the facts together, and ask whether, on true construction of the contract, the risks involved in this particular shipment were risks that the [owners] contracted to bear"*. Although charterer's liability for loading dangerous (or unlawful) cargo can depend on the facts of each case, his duty is irrespectively absolute.[111] Therefore, charterer's ignorance of cargo's nature is irrelevant and will not negate his liability.[112] This approach, albeit harsh, is fair on the basis that no one knows better the loaded cargo than the charterer, so he also needs to bear the responsibility, even if he could bring later a recourse action against the cargo owner disputing his liability.

In addition to charterer's duty not to load dangerous cargo on board, he is in breach, as he exceeds his charter authority, when loading cargo that owner has not agreed to carry. At this point, though, a distinction should be made with regards the owner's response to that breach, depending on whether the cargo loaded was unlawful, or merely excluded. Thus, in case of unlawful cargo, similarly to the illegal orders,[113] the owner should reject it and claim simultaneously damages[114] on the basis of an implied[115] or express indemnity (depending on the charter terms) for the losses suffered, if such cargo is finally loaded but he is unaware. Otherwise, his compliance would have been considered as intervening act, shifting the liability against him.[116] Conversely, in case of excluded cargo, the master merely has a right to decline compliance with the order[117] and either terminate the contract, by treating charterer's conduct as repudiation, if the latter insists, or accept it and claim compensation in case the vessel or

[110] [1990] 1 Lloyd's Rep. 277.
[111] By analogous application of *The Athanasia Comninos*, *ibid*, which held that it was the "*shipper's"* absolute duty not to load dangerous cargo. Similarly under the Art. IV r. 6 of Hague and Hague-Visby Rules and their *travaux preparatoires* (See in F.D Rose, "Liability for dangerous goods: The Giannis NK'' (2016) L.M.C.L.Q 480, p. 484). Opposite view has been expressed in the older case of *Brass v. Maitland &Ewing* (1856) 6 El. & Bl. 470, per Crompton J. at p. 491 who supported that *"it is very difficult to hold the charterer liable for not communicating what he does not know*''.
[112] In "*The Giannis NK"*, *supra*, fn. 104, the House of Lords upholding the decision made in "*The Fiona"*, mentioned that the strict liability imposed on the shipper under Art. IV r. 6 was not modified by Art. VI r. 3, so as to require proof of fault or neglect on his part, whereas in "*The Athanasia Comninos"* that issue was left open, since Mustill J. hesitated to answer.
[113] See respectively at p. 12 above.
[114] "*The Greek Fighter"* [2006] EWHC 1729 (Comm).
[115] Such claim succeeded for example in "*The Athanasia Comninos"* in relation to the cargo carried on "*The George Chr. Lemos"* [1990] 1 Lloyd's Rep. 277, p. 296.
[116] *Supra*, fn.134.
[117] *The Sussex Oak* (1949) 83 Ll.L.Rep. 297, per Delin J, at p. 307, "*the employment clause should not to be construed as to compel the owner to obey orders which the charterer has no power to give*''.

cargo is lost or damaged, subject to the principle of contributory negligence.[118] However, acceptance of loading excluded cargo either under master's protest or in ignorance of cargo's nature, entitle the owner to a wider remuneration based on the current market rate for the carriage of the excluded cargo.[119]

Charterer's liability is further assessed based on common law principles or the Hague or Hague-Visby Rules, when a Clause Paramount is incorporated into the charterparty.[120] Thus, under the common law approach, if the charter does not expressly provide for such duty, it may be implied[121] to such an extent that charter's cargo limits allow and to which the owner has consented, as long as he has obtained sufficient information from the charterer earlier.[122] The rationale behind this implication is clearly to give the owner the opportunity to refuse to carry certain cargoes, or take the necessary precautions to protect his ship and other cargo aboard. With regards the charterer's duty to compensate shipowner for any damages suffered, it will most likely arise from the concept of implied indemnity.[123] On the other hand, charterer's liability under the Hague and Hague-Visby Rules is regulated under art. IV rule 6 which treats differently charterer's liabilities depending on whether the loading of such cargoes took place with or without the carrier's/owner's knowledge. Loading of cargo without the shipowner's knowledge renders charterers liable for *"all damages and expenses directly or indirectly arising out of or resulting from such shipment"*. This means that the scope of damages is still limited to losses arising based on the principle of foreseeability, as the words "*directly or indirectly''* are referring to causation, showing that the clause's application "*(goes) wider than cases where the shipment in question was the proximate cause of the damage suffered"*.[124] Conversely, when dangerous cargo is loaded with the owner's consent, charterer has no liability

[118] In order for the charterer to be released from his liability, it needs to be proved that the owner's breach was the 'effective cause' of the damage or loss caused. Respectively in *Northern Shipping Co. v. Deutsche Seereederei G.m.b.H And Others ("The Kapitan Sakharov")* [2000] 2 Lloyd's Rep. 255 (CA); also *The Fiona* [1994] 2 Lloyd's Rep. 506 (CA), where the Court held for the charterer on the basis that the loss claimed by the owner was caused not only by charterer's breach not to load dangerous cargo (explosive oil) but also by owner's breach to make the ship seaworthy (failure to wash away oil residues) under the Art. III r. 1 of Hague and Hague-Visby Rules.
[119] *Supra*, fn. 54.
[120] When it comes to the applicability of these regimes, it has been suggested in *The Fiona* that when Hague or Hague-Visby Rules apply, there is no room for the common law regime. On the contrary, in the more recent case of *"Giannis NK'', supra*, fn.104, it was supported that common law will apply in such cases in order to cover cases not included in the Rules. Therefore, it was concluded that Hague and Hague-Visby Rules do not create an exhaustive code.
[121] *The Atlantik Duchess* [1957] 2 Lloyd's Rep. 55.
[122] *The Athanasia Comninos* [1990] 1 Lloyd's Rep. 277, per Mustill J.
[123] The possibility of the owner bringing a claim against him in tort is not excluded, yet it is not very usual, mostly because of the advantages of the implied indemnity.
[124] *The Fiona* [1994] 2 Lloyd's Rep. 506 (CA), at p. p. 508,516, 518, 519 and 522. In cases for example that shipowner claims compensation, albeit his was at fault too, as in this case.

for the owner's expenses incurred to make the cargo harmless, and each party has to contribute in general average to losses or expenditure incurred by the other party.

Concerning the type of damages for which charterers are liable due to the loading of dangerous cargo, these typically include hull[125] and cargo[126] damages, detention and seizure losses, or losses that arise due to delay such as loss of earnings[127] or hire,[128] repair costs or fumigation and bunker expenses[129] as well as wreck removal expenses or damages for third party liabilities, such as injuries.

From the above, it is self-evident that charterer's liability exposure arising from the nature of cargo carried on board is significantly high. The absence of any particular clarification of the term 'dangerous', its broad interpretation by Courts and the duty's absolute character, along with the constantly expanding range of dangerous goods carried at sea nowadays create an area of uncertainty against charterers. Their exposure is also influenced by the type of trade they are involved in. For example, charterers' exposure in the container trade tends to be greater on the grounds that they cannot usually be aware of the exact nature of cargo carried in them. While, the matter becomes even more complicated when the charterer cannot bring a recourse action against the shipper of goods, if the latter has become insolvent. As a consequence, it seems that charterers cannot predict not only their potential liability in relation to the loaded cargo, but also their ability to be compensated in case the above liability arises due to a third party's fault.

2.1.2 Liability arising from cargo operations

Under common law, in the absence of any express provision, the time charterer has no duty related to cargo operations, such as loading, stowing and discharging, as that obligation lies primarily on the owner. However, frequently the parties agree to shift this obligation towards the charterer by incorporating relevant clauses.[130] These clauses differ from those which merely provide that charterers undertake to bear the cost of such operations[131] and which

[125] *Compania Sud America De Vapores SA v. Sinochem Tianjin Import and Export Corporation ("The Aconcagua")* [2009] EWHC 1880 (Comm); [2010] 1 Lloyd's Rep. 1.
[126] *Ibid.*
[127] *Supra*, fn. 122.
[128] *The Giannis NK*, supra, fn. 104; *Leolga v. Glynn* [1953] 2 Lloyd's Rep. 47.
[129] *Ibid*, "*The Giannis NK"*.
[130] For example, Clause 8, Lines133-136 NYPE 2015, Clause 8, Lines 103-105 NYPE 1993 and Baltime 1939 Lines 177-182. This is also allowed under Hague and Hague-Visby Rules which generally impose on the carrier liability for loading, stowing and discharging the cargo.
[131] For example, Clause 4, Lines 58-60 Baltime 1939 and Boxtime 2004 Clause 7.

are not sufficient to shift the responsibility against them,[132] unless the language used to describe this undertaking is clear enough and suggests otherwise.[133] Thus, for example, charterer's responsibility to perform cargo operations arises when the charter provides that they will be performed '*under the supervision of the master'*,[134] as it was held in the House of Lords decision "*Court Line v. Canadian Transport"*.[135] Here, the master's supervision was found to imply solely a limitation of charterer's rights to control the stowage and did not affect the vessel's seaworthiness.[136] Therefore, charterer's responsibility for such operations is restricted only to that corresponding degree[137] and any damage to cargo or ship, or any personal injury, financial loss or expense resulting from the above operations will be borne by the charterer, even if they were executed by independent contractors working as his agents.[138] On the contrary, charterer's liability is transferred to the owner when the phrase *"and responsibility of the Captain''* is included in the charter and refers to the mechanical process of handling the ship's gear and cargo as well as matters of charterer's agents' negligence in the operations' strategic planning.[139] Of course, the above ways of allocating liability are always subject to the principles of causation and contributory negligence of the parties.[140] However, the application of the aforesaid principles is not always straightforward, as there might be more than one

[132] This view is repeatedly supported under the American Courts which applied the case of *Munson S.S. Line v. Glasgow Navigation Co*. 235 F.64 (2d Cir. 1916) which held that under NYPE 46 and Baltime 1939 forms, charterer has only liability to provide and pay for cargo operations, whilst the cargo liability should be borne by the shipowner, since the charterer agreed only to bear the financial cost of them. On the contrary, it was held by *Court Line v. Canadian Transport* [1940] 67 Ll.L.Rep. 161 (HL), p. 943 that the words "*at charterer's expense"* necessarily imply that the charterer has undertaken the liability for cargo operations.

[133] *C.V. Scheepvaartonderneming Flintermar v. Sea Malta Company Limited ("The Flintermar'')* [2005] EWCA Civ 17; *Jindal Iron and Steel Co. Ltd. and Others v. Islamic Solidarity Shipping Co. Jordan Inc* ("*The Jordan II'') [*2003] EWCA Civ. 144; the issue of shifting responsibilities was not appealed to the House of Lords [2004] UKHL 49.

[134] NYPE 2015 Clause 8.

[135] (1940) 67 Ll.L.Rep. 161 (HL).

[136] Confirmed also by *Onego Shipping & Chartering BV v. JSC Arcadia Shipping ("The Socol 3'')* [2010] EWHC 777 (Comm);[2010] 2 Lloyd's Rep. 221, para. [41], p. 229. The issue of whether a cargo damage was the result of improper stowage or the vessel's unseaworthiness was also examined in *Yuzhny Zavod Metall Profil LLC v. EEMS Beheerder BV (The MV "EEMS Solar'')* 2 Lloyd's Rep. [2013] 487, at para. 102 (QB).

[137] *Transocean Liners Reederei G.m.b.H v. Euxine Shipping Co. Ltd. ("The Imvros'')* [1999] 1 Lloyd's Rep. 848 (QB). Opposite view was supported under the American case *Barnevo v. Munson Steamship Line, et al*, 239 N.Y 486, 147 NE 75 (1925).

[138] *Great Elephant Corporation v. Trafigura Beheer BV ("The Crudesky'')* [2013] EWCA Civ. 905;[2014] 1 Lloyd's Rep. 1 at para. [30], p. 10.

[139] Evi Plomaritou, "A review of shipowner's & charterer's obligations in various types of charter'' (2014) 4 Journal of Shipping and Ocean Engineering 307-321, p. 316.

[140] For example, in *Compania Sud American Vapores v. MS ER Hamburg* [2006] EWHC 483 (Comm), it was held that when the master actually supervises the cargo operations and loss is attributable to his supervision, the liability shifts against the owner. The same also applies when the damage is attributable to the want of care in matters pertaining to the ship of which the master is (or should be) aware but the charterer is not, such as the stability characteristics of the ship. Reversely, charterer will be responsible if the master's wrongful action resulted due to a misrepresentation of the cargo characteristics during his communication with the owner who gave wrongful instructions to the master. See *The Ciechocinek [*1976] 1 Lloyd's Rep. 489.

actions involved rendering impossible to ascertain whether the damage was caused only due to the vessel's unseaworthiness or bad stowage. Similarly happened in "*The Imvros"* case,[141] where the Court in an effort to ascertain which side has to bear the consequences of a damage caused by the vessel's instability due to bad stowage, held that responsibility should remain on charterers, because an opposite interpretation would be too onerous for owners. It was argued that charterers' relief from any responsibility when the loading was so badly carried out, making the vessel unseaworthy would mean that the worse the loading is, the better for the charterer would be.[142] Thus, charterers could benefit from their own breach, whereas no owner could entrust the stowage operations to charterers;[143] therefore, the charter's clause would be meaningless. As a result, it was justified that owner's liability exists only if bad stowage arose from master's instructions during the operations' supervision.[144]

However, cargo operations are almost never performed directly by charterers or shipowners. On the contrary, they are invariably carried out by either stevedores, or in case of tankers, by terminal owners who are independent contractors[145]. Consequently, an issue arises as to which party should bear the consequences of the former's actions. The general rule seems to be that the party in charge of cargo operations should also bear any liabilities emanating from stevedore's negligence, unless otherwise agreed.[146] Yet, charterers' mere undertaking to provide and pay for stevedores does not automatically transform them into their servants.[147] Considering, though, that under a time charter, charterers are traditionally responsible for the

[141] *Supra*, fn. 137, *"The Imvros''*.
[142] *Ibid*, p. 851. This was also accepted in *Compania Sud American Vapores v. MS ER Hamburg* [2006] EWHC 483 (Comm);[2006] 2 Lloyd's Rep. 66, para.[48], at p. 80. Similar view was also expressed in the American case *Oxford Paper Co. v. The Nidarholm*, 282 U.S. 681 (1931). Opposite view was adopted in *The Panaghia Tinnou* [1986] 2 Lloyd's Rep. 586, at p. 591. A similar issue appeared in *Clearlake Shipping Pte Ltd v. Privocean Shipping Ltd (The "Privocean")* [2018] EWHC 2460 (Comm) where the Court had to ascertain whether negligence in relation to stowage plan was negligence in management of the ship or in management of the cargo, finding in favour of the former.
[143] *Ibid*, in *Compania Sud American Vapores v. MS ER Hamburg*.
[144] This interpretation is also in compliance with the obligations imposed with the Article III r. 1 of Hague and Hague-Visby Rules. But, opposite in *Clearlake Shipping Pte Ltd v. Privocean Shipping Ltd (The "Privocean')* [2018] EWHC 2460 (Comm) paras. 61 to 76, where the Court held that costs of strapping during stowage were for owners' account on the basis that they were referring to an activity related to the ship management in sense of stability.
[145] *Court Line v. Canadian Transport* [1940] 67 Ll.L.Rep. 161 (HL), per Lord Wright, p. 168 and 943.
[146] For example, Boxtime 2004 Clause 16(h) provides for charterer's liability as well as Clause 4 in Baltime form 1939, which was held that albeit its wording imposes on the charterer merely the duty to arrange and pay for cargo operations, is sufficient to transfer to him liability for such operations as well as stevedore's negligence. See *Filikos Shipping Corporation of Monrovia v. Shipmair B.V. ("The Filikos'')* [1983] 1 Lloyd's Rep. 9 (CA); *The Flintermar, supra*, fn.133.
[147] As established in *Fraser v. Bee* (1900) 17 T.L.R 101.The same view was expressed by Lord Esher M.R. in *Harris v. Best, Ryley & Co* (1983) 68 T.L. 76, as found in *Macieo Shipping Ltd. v. Clipper Shipping Lines Ltd.* ("*The Clipper Sao Luis*") [2000] 1 Lloyd's Rep. 645, at p. 649.

cargo operations, any stevedores used will be treated as "the charterers' hands" and so, the latter will carry the burden of their liability.[148] But even when the owner is responsible for cargo operations, charterers can still be found liable for stevedores' actions on the grounds that they breached their absolute obligation to appoint competent ones.[149] Interestingly, modern charters try to constrain charterer's liability through express terms that limit their liability in relation to ship damages caused by stevedores by requiring the master to have notified him immediately[150] after damage occurred.[151] As the above limitation is still not broadly used, charterer's liability exposure due to stevedores' actions remains the general rule. To make matters worse, their liability is further expanded when a "Hold Harmless clause'' is incorporated in the charter, disallowing charterers to recourse against owners for any liability the former might suffer due to stevedores' actions.

In respect of deck cargo, it is usually agreed to be at charterer's risk,[152] except when its damage is caused by crew negligence,[153] unless the clause includes also the phrase "*howsoever caused"*.[154] If however the owner agrees with the carriage of cargo on-deck, he has no right of indemnity against the charterer for any losses resulting from it.[155]

In any case, when cargo operations' liability lies on charterers, they have to compensate all the involved parties which have suffered losses or damage. The most common consequence arising from these operations is cargo damage for which the charterer can be found directly liable either to cargo owner in contract and tort depending on the existing relationship between them, or to the shipowner (or head-charterer) mainly in contract.

Starting with charterer's liability towards cargo owners in tort, it arises when parties have no contractual relationship, especially when the contract of carriage was not concluded between them.[156] Such claim will be successful only if the conditions of remoteness and foreseeability

[148] Similarly in *supra*, fn. 136, *The MV "EEMS Solar''* at para. 102 and in *Merit Shipping Co. Inc. v. T.K. Boesen A.S ("The Goodpal'')* [2000] 1 Lloyd's Rep. 638 (QB).
[149] *"The Clipper Sao Luis'', supra,* fn. 147; *Overseas Transportation Company v. Mineralimportexport ("The Sinoe'')* [1972] 1 Lloyd's Rep. 201 (CA); *The Argonaut* [1985] 2 Lloyd's Rep. 216.
[150] *Ibid.*
[151] For example, NYPE 2015 Clause 37, NYPE 1993 Clause 35. On the contrary Shelltime 4 distinguishes between cargo damage caused by stevedore (Clause 16) for which owner is liable and ship damage by stevedore for which the charterer might be liable.
[152] NYPE 2015 Clause 13(b) and Clause 31(c), NYPE 1993 Clause 13(b).
[153] *Supra*, fn. 136, "*The Socol 3*" which examined a time-charter on NYPE 1993 form. Also, *Exercise Shipping Co. Ltd. v. Bay Maritime Lines Ltd. (''The Fantasy'')* [1992] 2 Lloyd's Rep. 235 (CA).
[154] For example, NYPE 2015 Clause 13(b), as opposed to NYPE 1993 Clause 13(b).
[155] *The Darya Tara* [1997] 1 Lloyd's Rep. 42, at p. 46.
[156] Johan Schelin (ed.), IX Hässelby Colloquium 2001 – Modern law of charterparties, (9th edn., Axel Ax:son Johnson Institute of Maritime and Transport Law, University of Stockholm 2003), p. 46.

are fulfilled.[157] However, the charterer rarely encounters claims in tort, because cargo owners turn usually against their counterpart contractually, so to avoid the adverse burden of proof coming along with tortious claims and benefit from any security they can put on the counterpart's assets. An example where a tortious claim might be preferred is when the other party is unsecured and cargo owners' prospects of recovery are uncertain,[158] particularly if the former is insolvent facing also claims by other third parties. On the other hand, charterer's contractual liability to cargo owners is incurred when he is considered the cargo's legal "carrier''[159] under the contractual terms, applicable laws,[160] jurisdiction[161] and characteristics of each case.[162] However, even if he is not the "carrier'', he often handles the claims like he was, especially if he is a large operator, using his own bill of lading forms in traffic, purporting to maintain good relations with cargo owners.[163] Either way, because of the difficulties usually arising with respect to the carrier's identification in combination with the time pressure imposed by the short limitation period under the Hague and Hague-Visby Rules,[164] cargo owners often decide to sue finally both owners and charterers in contract, claiming recovery for their damaged cargo and leave the Court to decide who is the actual carrier. Consequently, charterer's direct liability is very likely, until it is proved otherwise.

Charterer's liability for cargo damage towards the shipowner exists when the latter is also the "carrier'' under the bill, whilst the charterer remains liable for cargo operations under the charter. In this case, the charterer shall indemnify the owner *inter se* on the basis of breach of contract, if the shipowner has already been found liable towards cargo owners. This claim will include the owner's recovery for liability incurred under the bill, any expenses made for

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[157] See for more details on foreseeability and remoteness in Donoghue v. Stevenson [1932] AC 562 (HL) and in Anns v. Merton London Borough Council [1971] AC 728 (HL).

[158] Dr. Chao Wu, "What are the key charterers' risks?'' (UK P&I Club, June 2014) <http://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest_Publications/Newsletters/Charterers.pdf >, accessed 12 March 2020, p. 1.

[159] See for example, *Sunrise Maritime Inc. v. Uvisco Ltd. ("The Hector'')* [1998] 2 Lloyd's Rep. 287 (QB) and *Homburg Houtimport B.V. Agrosin Private Ltd. and Others ("The Starsin'')* [2003] UKHL 12, where it was held that when charterer's name appears in the front of the bill of lading, he will be regarded as carrier. See also, *The Rewia* [1991] 2 Lloyd's Rep. 325, per Leggatt L.J, at p. 333 where it was supported that bills are the charterer's only when he holds himself out to the public as carrier and it is with him that the shippers made the contract.

[160] For example, most liner services carriers under US COGSA are vessels' charterers. See in "Charterer's Risks and Liabilities'', available <http://www.westpandi.com/globalassets/about-us/underwriting/underwriting-guides/underwriting-guide---charterers-risks--liabilities.pdf>, accessed at 6 October 2016, p.1.

[161] Valentins Abasins and Max Korndoerfer, *"Liability in time and voyage charterparty''*, <http://www.beo-pandi.com/assets/documents/pdfs/actual-circulars/2013-17-Liability-in-Time-and-Voyage.pdf>, accessed 12 March 2020, p. 3.

[162] *"The Starsin"*, *supra*, fn. 159.

[163] Lars Gorton, Patrick Hillenius and others, Shipbroking and chartering practice, (6th edn., Informa 2004), p. 289.

[164] Article III Rule 6.

reasonably settling the previous claim,[165] or incurred due to charterer's fault during cargo operations.[166]

Because of the difficulties that lie in cargo claims' settlement between the involved parties, they nowadays tend to incorporate a charter clause[167] which allocates their liability for such claims according to the Inter-Club Agreement rules,[168] whereas any other opposite term in the charter is overridden.[169] These rules are limited only to cargo claims brought by a third party-cargo claimant[170] and cover legal and defence costs as well as interest,[171] similarly to the scope of damages or indemnity mentioned above. The general requirement for their application is that the claim should be made under a contract of carriage[172] and that "*the cargo responsibility clauses not to be materially amended"*, so parties' liability allocation can be clear.[173] It is also provided that a prerequisite for the application of these rules is the earlier settlement and payment of the claim.[174] The most important provision, though, is the one which deals with apportionment of liabilities[175] which are allocated in a very reasonable and mechanical manner to the party in control of the particular operation each time. It also suggests equally shared liabilities between parties for liabilities that cannot be identified as falling solely within one party's control.

Thus, the owner is fully liable for cargo damages caused due to unseaworthiness or faulty navigation, unless the latter was caused by charterer's default during cargo operations, so the liability will be shared. Whereas charterer is fully liable for cargo damages caused during cargo operations, unless "*and responsibility"* is added, so liability will be shared.[176] Or, if the

[165] Coghlin T., John D. Kimball and others, Time charters, (7th edn., Informa Law from Routledge 2014), p. 357.
[166] For example, if the cargo had to be discharged in a different than the nominated port, because the first port was unsafe, the costs of such operations will be covered by the charterer as well. The case would be different if the discharge was necessary due to the course of the voyage and not because of charterer's breach or because of owner's compliance with his orders; here, the owner would be the only liable. *Ibid*, p.353.
[167] For example, NYPE 2015 Clause 27 and NYPE 1993 Clause 27.
[168] They do not apply compulsorily to all charter-parties; however, the Clubs advise their members to do so.
[169] Inter-Club Agreement 1996 (as amended in 2011) Clause 2.
[170] Subsequently, for example, claims brought by the charterer as cargo owner against the owner fall out of Agreement's scope.
[171] Inter-Club Agreement 1996 (as amended in 2011) Clause 3.
[172] Therefore claims in tort or in bailment are not including in the Agreement. For more details regarding the interpretation of the phrase "authorised under a charter-party'' included in Clause 4 of ICA, see *Transpacific Discovery S.A. v. Cargill International S.A.* ("*The Elpa'')* [2001] 2 Lloyd's Rep. 596 (QB).
[173] Inter-Club Agreement 1996 (as amended in 2011) Clause 4 (a) and (b). It is noted that inclusion of phrases such as "*and responsibility''* are not regarded as material change. Conversely, inclusion of the phrase "*and direction of the Captain''* will be regarded as material amendment, so the Inter-Club agreement will not apply. See *The Labrador* [1998] 2 Lloyd's Rep. 387.
[174] Inter-Club Agreement 1996 (as amended in 2011) Clause 4(c).
[175] Inter-Club Agreement 1996 (as amended in 2011) Clause 7 and 8.
[176] See *Agile Holdings Corporation v. Essar Shipping Ltd (The "Maria")* [2018] EWHC 1055 (Comm).

operations' underperformance was caused by owner's interference, the liability is completely shifted back to shipowner. Any other claim whatsoever is shared between the parties, unless it emanated only from one party's action.[177] The amount of the cargo claim to be apportioned shall be the one that in fact has been borne by the owner or charterer seeking the apportionment, regardless of whether the cargo claim itself has already been apportioned or will be apportioned by application of the Agreement under another charterparty. This allows for the Agreement to be used where cargo claims have arisen and have been determined under a sub-charter and passed up the chain from time charterers to owners.[178]

However, apart from cargo losses or damages, cargo operations can also result in hull damage necessitating its repair which might delay the shipowner's arrangements. In this case, the charterer shall immediately arrange for the damage's repair at his own expense[179] during which his obligation to pay hire continues only to the extent that the repairs exceeded the time needed for the shipowner's work,[180] on the basis of breach of contract, if the latter provides that he manages these operations. Regarding owner's consequential losses, their reimbursement will depend on the charter's wording. For example, in "*The Clipper Sao Luis",*[181] the Court held that the wording intended to cover only physical damages; therefore, if the owner wished otherwise, he should have made it express. On the contrary, in "*The White Rose",*[182] it was mentioned that the scope of "*loss"* in Line 177 of Baltime form 1939 is wide enough to cover physical and financial losses. Also, if the loading and discharging operations result in a third party property damage, the charterer will have to indemnify the third party for the losses suffered under the principles of third party liability, as they are described elsewhere.[183] Particularly with regards stevedores' injuries, though, charterer's liability will arise only if they got injured while performing their duties during operations for which he was responsible on the basis of breach of contract, as they will be considered his agents.[184] Last,

[177] It is interesting that in the case of *Transgrain Shipping (Singapore) Pte Ltd v. Yangtze Navigation (Hong Kong) Co Ltd (MV "Yangtze Xing Hua")* [2017] EWCA Civ 2017, in paras. 26-28 the Court of Appeal affirmed the first instance decision [2016] EWHC 3132 (Comm) and found that charterers were liable 100% for a cargo claim based on Cl.8(b), even if there was no fault or breach on their behalf, on the basis that damage arose from their instructions or decisions or their failure to act. It was the Court's opinion that the word "act" in the context of ICA connotes its natural meaning and does not purport to confine it to "culpable act".
[178] Stephen J. Hazelwood, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 280.
[179] Damage not covered by previous point shall again be repaired by charterers, but they may take advantage of the owner's dry docking time.
[180] *Supra*, fn. 156, p. 68.
[181] [2000] 1 Lloyd's Rep. 645.
[182] *The White Rose* [1969] 2 Lloyd's Rep. 52. Also, *supra*, fn. 165, p. 359.
[183] See in 2.2.1 "Charterers' liability to third parties", p. 42.
[184] Similar approach seems that is impliedly followed in *The Flintermar* [2005] EWCA Civ 17 where the Court examined the potential liability of shipowner or charterer for the injury of the ship's chief officer due to a

faulty stowage in combination with the loading of dangerous cargo might sometimes constitute a reason for pollution, expanding charterer's liability (contractual or not) even further.

In sum, it should be remembered that charterer's exposure to liabilities related to cargo operations is generally increased, as he does not usually undertake simply their financial support under the charter. Also the margin of avoiding his liability for cargo damage is tight, while cases where the issue of unseaworthiness is involved complicate the allocation of liabilities, since the exact identification of damage's cause cannot always be ascertained. Besides, even if charterers have a complete indemnity right for such damage against the shipowner, they still remain exposed if they cannot turn against the other party due to its insolvency. However, the application of Inter-Club Agreement seems to be effective, as it provides charterers with a considerable certainty regarding their cargo liabilities. It also assists them in maintaining a good relationship with the owner and cargo interests and allows them to settle their claims faster, avoiding time and money consuming litigations.[185]

2.1.3 Liability arising from the use of bunkers

Customarily, under time charters, the charterer takes over and pays for the fuel remaining in the vessel's bunkers at port of delivery, whilst he also purchases any additional fuel required until the completion of the voyage.[186] Yet, charterers are not entitled to purchase bunkers binding the owner to pay their suppliers for bunkers ordered for the ship.[187] This principle is justified on the basis that the charterer uses freely the vessel by exploiting her commercially and determining her speed and days at sea. Nonetheless, this obligation lately has given rise to

stevedore's negligence in handling a crane during loading operations. Thus, the Court mentioned that "*prima facie, and subject to contrary agreement, what occurred on board ship was the owner's responsibility: as long as, however, as cargo was still ashore, it was the charterer's or cargo owner's responsibility*" [para. 31] and continued [para. 32] by stating that "*since cargo might well be handled on both sides* (meaning aboard and ashore) *of that line by the same stevedores, agreements were made as to the parties' responsibilities for those stevedores"* (p. 417). Therefore, based on this quote, it is believed that since the same stevedores can be used by both the owner and the charterer, accordingly they can be agents of both depending on the situation.

[185] On the contrary, Inter-Club Agreement 2011 has been heavily criticized by John Weale, "Cargo Liabilities under NYPE Time Charter and the Inter-Club Agreement", in Soyer B. and Tettenborn A., *Charterparties: law, practice and emerging legal issues*, (Informa Law from Routledge 2017) where he supported that "*it is disappointing that such a loosely drafted rule-book should come so strongly recommended, especially in an area which is not well understood at the commercial end of the business''*, p. 130.

[186] For example, NYPE 2015 Clause 7(a) Line 114, Baltime 1939 Clause 5, NYPE 1993 Clauses 3 and 7, Line 84 and Clause 6 of Linertime.

[187] *The Yuta Bondarovskaya* [1998] 2 Lloyd's Rep. 357. Similarly under clause b(i) of BIMCO's Bunker Non-Lien Clause for Time Charter Parties 2014, if incorporated into the charter.

many disputes, exposing charterers to further liabilities and for that reason, it will be examined extensively below.

Primarily, when dealing with the issue of bunkers' ownership, it is clear that since charterers provide and pay for them, then the bunkers so purchased become subsequently their property, along with any fuel supplied by them during the charter's duration. So, owners retain their possession until vessel's redelivery only as bailees, unless the parties clearly and unequivocally agreed that the property shall be vested into the latter.[188] However, this is not always the case.

There are times, for example, that charterers buy fuel from bunker suppliers by agreeing that ownership over the bunkers remains with the suppliers, until their costs are repaid by the former. If so, charterers cannot transfer their title to the owner at the time of redelivery, unless the conditions of s. 25(1) of Sales of Goods Act 1979 apply.[189] Therefore, if the debt remains unpaid until redelivery, the suppliers can either bring a claim against the charterer for breach of their supply contract, or exercise a lien over the vessel as a means of pressure on both parties, since they no longer have physical control over their bunkers.[190] This means, though, that the suppliers can proceed and arrest the vessel, demanding payment, despite the bunkers being ordered by the charterer for his own account. In any case charterer's liability is increased; firstly because under English law, the vessel's arrest under these circumstances is not allowed to the supplier; secondly, because even if a lien is exercised, the charterer will be again liable towards the owner for breach, usually through the incorporation of a bunker non-lien clause into the charter providing that the charterer promises that he "*will not suffer, nor permit to be continued,*

[188] *The Span Terza* [1984] 1 Lloyd's Rep. 119 (HL), where the House of Lords held that "*under the terms of the charter the bunkers while aboard Span Terza at all material times were the property of the charterers; the owners had possession of them as bailees of the charterers*". Similarly in *The Saint Anna* [1980] 1 Lloyd's Rep. 180.

[189] Under this provision, when a person (buyer-charterer) who obtains only possession of the goods with the consent of their owner (seller), after having signed to buy these goods, transfers them to another person (e.g. ship-owner) who receives them in good faith and without notice of any lien or other right of the original seller, then this transaction has the same effect as if the person making the transfer was acting as a mercantile agent in possession of the goods with the consent of their owner, so the bona fide buyer can acquire the title of the goods. However, in the controversial case of *PST Energy 7 Shipping LLC and Another v. O.W. Bunker Malta Ltd and Another ("The Res Cogitans")* [2016] UKSC 23, the Supreme Court held that a contract for the purchase of bunkers whose title is retained by the supplier is considered as a *sui generis* transaction and not a contact of sale, so the aforementioned cannot accordingly apply.

[190] Unless a clause is incorporated into the charter disallowing any liens being exercised on the vessel for bunker disputes, such as BIMCO's Bunker Non-Lien Clause for Time Charter Parties 2014. The situation is different, though, if the owner decides to use the remaining bunkers. In that case, he will be liable to suppliers in conversion, as held in *Forsythe International (UK) Ltd v. Silver Shipping Co Ltd and Petroglobe International Ltd ('The Saetta')* [1993] 2 Lloyd's Rep. 268. See also the unusual case of *Oceanconncet UK Ltd. and Another v. Angara Maritime Ltd* ('*Fesco Angara')* [2011] EWCA Civ 1050, according to which the Court found that the owners acquired property of the bunkers, since by the time the latter were delivered to them, they were acting in good faith and therefore, they could not be liable in conversion.

any lien, any encumbrance or any rights of any kind whatsoever over the vessel in respect of the supply of bunkers".[191]

To make matters more complicated, the provision of bunkers usually operates within a string of bunker traders where the final supplier is the one who contracts with the charterer. Here, if the head-supplier turns against the owner, claiming that he has never received a payment, albeit the charterer has actually paid the last supplier, he might be exposed to a further liability. The same will also happen under a similar scenario where the bunker trader claims against the owner for unpaid bunkers, after the bankruptcy of its physical supplier and despite their value was paid to the latter.[192] In these cases, presumably the owner will be entitled to claim compensation against the charterer for complying with his orders, as the latter would have probably ordered him earlier to accept the loading of such bunkers. Besides, since the charterer pays and provides for bunkers, he has also the discretion to choose the way of trading with his suppliers, meaning either directly with the head-supplier or indirectly with a bunker trader. Therefore, any danger arising from his decision should be borne solely by him. As there is no reported case so far dealing with this issue, it remains to be seen how the practice will cope with it, if need be. However, it is self-evident that the charterer being in the middle of the contractual chain will inevitably remain exposed to some liabilities.

A subsequent duty arising from the charterer's general duty to provide and pay for bunkers is his absolute obligation to supply the vessel with a specific quantity of fuel. This duty is very important, especially when considered in combination with the fuel prices. For example, it was mentioned that bunkers' ownership is transferred to the owner at vessel's redelivery. Hence, when the charter provides for the same market prices[193] on delivery and redelivery, the quantity agreed can be crucial, since the actual price paid by the charterer on delivery can be much higher than the one covered by the owner on redelivery, or vice versa. Therefore, in order for the parties to avoid any misunderstandings regarding the fuel quantity, the general principle requires charterers to take on only such bunkers that are necessary for the performance of the charter service. Respectively, it was held by the Court of Appeal in "*Captain Diamantis",*[194]

[191] For example, BIMCO's Bunker Non-Lien Clause for Time Charter Parties and similarly in Clause 18 of NYPE 1946.
[192] See for example the known case of O.W. bankruptcy mentioned in *supra*, fn. 189.
[193] Usually, when the charter contains no provision for the price paid for bunkers on delivery or redelivery, the price will be the market price then prevailing in the delivery or redelivery area, without regard to the price actually paid by the party who purchased it originally. *The Good Helmsman* [1981] 1 Lloyd's Rep. 377, p. 419 (CA).
[194] *Mammoth Bulk Carriers Ltd. v. Holland Bulk transport B.V* ("*The Captain Diamantis")* [1978] 1 Lloyd's Rep. 346 (CA). In this case, charterers in an effort to make profit from the bunkers' low market prices, ordered the vessel to be fuelled up to her capacity prior to redelivery, so to sell to the owners a much larger quantity than the

where it was supported that the charter did not confer upon charterers any right to take on board fuel which was unnecessary for charterparty purposes and facilitated them only in making profit.[195] Therefore, clearly if charterers decide to supply the vessel with extra fuel, they also have to bear any extra costs. However, the charterer escapes from such liability, if the owner had to inform him about the vessel's needs or characteristics, making the charterer reasonably rely upon him, but failed.[196]

The bunkers provided should be not only of a specific quantity, but also of a particular, reasonable quality, suitable for the type of vessel's engines.[197] Nowadays, it is commonplace for the new charter forms to describe expressly the fuel's type and grade to be supplied.[198] However, older time charter forms did not contain any express provision dealing with this issue,[199] as there were only additional clauses implying this duty by adding a description or detailed specification of the type of bunkers required.[200] But even if such clause was absent, it was likely that the English courts would have implied this duty, if necessary.[201]

Consequently, charterers should stick to the fuel's specifications, because purchase and use of wrong fuel can damage the vessel's engines or auxiliaries for whose repair costs they will be liable to the owner due to their contract's breach.[202] Also, the charterer cannot claim that the vessel is off-hire if the above damage creates delays and so, his responsibility to pay hire continues.[203] If the fuel's quality is poor, the shipowner is further entitled to compensation for covering any losses suffered from slow speeding, such as indemnities paid to cargo owners

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one they had paid on delivery. The owners, though, refused to follow charterers' orders and so, charterers sued them for breach of contract, claiming the profit they would have made had the owners acted according to their instructions.

[195] *Ibid*, p. 348-349.

[196] *Anastassia v. Ugle-Export* (1934) 49 Ll.L.Rep. 1. See also, *supra*, fn. 194 and *MacIver v. Tate* (1903) 8 Com. Cas. 124 (CA).

[197] An opposite view has also been expressed, according to which the obligation of the charterer to provide good quality fuel on a time chartered vessel is an obligation to exercise with due diligence. See, Harvey Williams, Chartering documents, (4th edn., LLP 1999), p. 68.

[198] Such as NYPE 2015 in Lines 182-183.

[199] Such as NYPE 1946.

[200] See for example, clause 9(c) to (g) of NYPE 2015, BIMCO's Bunker Fuel Sulphur Content Clause for the Time Charter-Parties 2005 and Annex VI of MARPOL.

[201] Johan Schelin (ed.), IX Hässelby Colloquium 2001 – Modern law of charterparties, (9th edn., Axel Ax:son Johnson Institute of Maritime and Transport Law, University of Stockholm 2003), p. 77.

[202] NYPE 1993 Lines 117 to 124. For the history, the older standard forms did not use to deal with the issue of liability damage caused to the ship's engines by the use of defective fuel. That triggered the commercial world's attention, when the oil prices started to rise, resulting to the use of the cheapest fuel on charterers' part which subsequently led to the engines' damage. *Supra*, fn. 201, p. 76.

[203] *James Nourse Ltd. V. Elder Dempster &Co Ltd* (1922) 13 Ll.L.Rep. 197 where, it was mentioned at p. 198 that "*it would be an absurd result if it were held that hire was to cease when something for which the owner is not responsible causes the loss of time".*

under the bill of lading due to his own breach of duty to proceed with utmost despatch.[204] Moreover, there is a pollution risk caused due to the combustion of the wrong fuel which charterers supplied the vessel with. In this case, charterers will be liable towards the owner for any relevant losses (e.g fines) arising from this breach as well as towards the injured third parties in tort.[205] In addition, the charterer will have to pay for the cleaning and bunker disposal costs.

In fact, the above liability arises even if the unsuitable fuel was provided due to the supplier's mistake, on the basis of the absolute character that this obligation has. Besides, it could be argued that shipowners will normally find it easier to claim against charterers on the grounds of a contract breach, rather than turning against suppliers in tort. As a consequence, shipowners can not only evade proving that their damage resulted due to suppliers' negligence, but also escape from the protective clauses normally incorporated in the standard trading conditions of most bunker suppliers. So, charterers are left with the difficult task of seeking later recovery from their suppliers.

Though, charterer's liability is not unfettered, as there are mitigating parameters used frequently in commercial practice which need to be taken into parties' consideration when allocating liability. For instance, although shipowners could provide the charterer with the necessary information regarding their vessel's machinery features, charterers will not be in breach, if the owner's damage resulted due to any unusual requirements of the vessel's engines or due to special characteristics which were not communicated to him. Furthermore, parties are usually advised to use a segregation program, on board testing or even a lab analysis of fuel quality, purporting to ensure that the fuel provided is suitable.[206] This trend is further reflected into modern standard charter forms, such as NYPE 2015,[207] which contain clauses for sampling analysis and retention of samples for minimum periods for the avoidance of bunkers' disputes between the parties.

Despite these preventive measures, charterers' liability for bunkers is still not completely vanished. It needs to be remembered that charterers simply purchase fuel in good faith and usually know little about its quality or its complicated sampling methods. Consequently, it is still usual for them to be found liable for machinery damages, as the current system does not

[204] For more details regarding the charterer's liability in relation to slow steaming clauses, see at "*orders related to the vessel's speed"*, p. 14- 15
[205] The charterer's pollution liability is extensively discussed below, at p. 44.
[206] See for example BIMCO's Bunker Quality Control Clause for Time Chartering.
[207] NYPE 2015, Clause (c) and (e).

seem to protect them effectively. A potential solution to the above risk could be, for instance, if charterers could agree with the shipowners and their physical suppliers on a joint sampling on an agreed location and by agreed methods, so the quality of the fuel could not be challenged further in the future of the adventure. [208]

Another incident where charterer's liability might arise in relation to bunkers is when damage is caused to vessel's hull due to the unsafety of the bunkering port assigned by the charterer or his agents. So, an extension of the charterer's duty to employ the ship only within safe ports[209] is also the allocation of bunkering locations that are safe for the chartered vessel. This issue was discussed in "*Mediolanum",*[210] when the vessel following the directions of the bunker supplier, sailed to a different than the agreed port due to its congestion and eventually ran aground. Here, the owner's claim for repair costs and hire for the time lost during the repair period, along with the extra cost of bunkers brought against the charterer were rejected by the Court of Appeal on the basis that suppliers' obligations when operating as charterer's agents did not extend to ports' nomination, so the charterer could not be blamed.[211]

2.1.4 The charterer's most common expenses

Charters often include a provision which requires charterers to cover specific expenses from the moment the vessel is delivered to them and throughout the charter's period,[212] while the vessel is on-hire, unless otherwise expressly agreed.[213] Although it is not possible to enumerate all costs a charterer incurs under a charter, the general rule seems to be that costs which are compulsory in a port are for charterer's account as the direct consequence of his power to direct the vessel to the port and the owner's obligation to obey.[214]

Thus, for example, these expenses include port charges referring to all the necessary fees that a ship pays as a consequence of staying at or entering the port, such as harbour, dock and

[208] Stephen J. Findlay, "*The anomalies of bunker sampling*'', The Charterers' P&I Club Newsletter (January 2017) <https://www.themecogroup.co.uk/charterers-liability-insurance/wp-content/uploads/sites/2/2017/01/The-Charterer-January-2017.pdf>, accessed 12 March 2020, at p. 8.
[209] See respectively at p. 18-21 above.
[210] *Mediolanum Shipping Co. v. Japan Lines Ltd ("The Mediolanum")* [1984] 1 Lloyd's Rep. 136 (CA).
[211] *Ibid*, p. 140-141.
[212] For example, NYPE 1993 Lines 83-98, NYPE 2015 Lines 113-128, Baltime 1939 Lines 48-71, Shelltime 3 Lines 54-60, Shelltime 4 Lines 160-174, Linertime Clause 5.
[213] For example, NYPE 2015 Line 114, NYPE 1993 Line 84.
[214] Lars Gorton, Patrick Hillenius and others, Shipbroking and chartering practice, (6th edn., Informa 2004), p. 287-288.

light dues or fumigation expenses.[215] It is interesting also to note that in Arbitration 1/04, the Arbitrator found that the term 'port charges' includes further costs incurred in relation to the security guards employed on board of the vessel, therefore they should fall on charterer's account. The Arbitrator accepted the shipowner's argument for an implied indemnity right on the basis that although he had complied with the charterer's orders, he had not agreed to such risk, so he was entitled to compensation.[216] However, this is the only case providing for such principle to date and seems generally to contravene with the spirit of later arbitration awards[217] as well as BIMCO's Guardcon's contract which provides that the owners are responsible for the employment and payment of security guards on board of the vessel.[218]

Charterers cover also pilotage expenses, yet it is not clear whether this obligation refers only to cases where pilots are compulsory under local regulations, or extends to events that are considered useful for ensuring the ship's safety. The general and unclear wording used in most charters does not help this issue to be solved either. So far, both views have been expressed, with charterers supporting for obvious reasons the former.[219] Sometimes, charterers not only pay for the pilot expenses, but they also need to ensure their appointment, and they are not discharged from this duty just by trying, yet failing, to provide them, even if their availability depends upon the local authorities over which they have no control.[220] Additionally, the appointed pilots should be competent, otherwise charterers might be liable for breach, if pilots lack a reasonable degree of competence and damage is caused due to their actions.[221] However, it is noted that albeit pilots are appointed and paid by the charterer, charterer's duty does not extend to the surveillance of pilot operations, unless otherwise agreed. So, the pilot does not become automatically charterer's agent and therefore, charterers are not responsible for his

[215] *Trade Green Shipping Inc v. Securitas Bremer Allgemeine Versicherungs A.G. and Another (The 'Trade Green')* [2000] 2 Lloyd's Law Rep. 451, at p. 456 (QB). See also in Braden Vandeventer, "Analysis of Basic Provisions of voyage and time charter parties'' (1974-1975) 49 Tul.L.Rev. 806, p. 827.
[216] Lloyd's Maritime Law Newsletter 0635/04 as found in "U.S. Ports – Liability for cost of security guards'' (Steamship Mutual, July 2004), <https://www.steamshipmutual.com/publications/Articles/Articles/US_SecGuardCosts.asp>, accessed 12 March 2020.
[217] Unreported. As found in *ibid*.
[218] Section 3(7) of Guardcon.
[219] Michael Mabbs, "Some NYPE time charter problems: fresh water and stores, pilotage, customary assistance" (1978) L.M.C.L.Q 456, p. 459-460.
[220] *Supra*, fn. 165, p. 251.
[221] Applying by analogy *Overseas Transportation Company v. Mineralimporrtexport* ("*The Sinoe")* [1972] 1 Lloyd's Rep. 201 (CA) which dealt with the appointment of incompetent stevedores by the charterer. Here, the Court of Appeal rejected the charterer's appeal by stating that there was no indication in the charter that stevedores were acting as owners' servants. Therefore, it was the charterer's duty to appoint stevedores who were competent to do the discharging and they were at fault for not doing so [at p. 205-206].

negligence.[222] Thus, claims against charterers brought either by the owner for contract's breach or by third parties (e.g harbour authorities) in tort for damages caused by pilot's negligence will be dismissed.[223] The principle's rationale emanates from the rule that ship's navigation constitutes the master's sole responsibility,[224] and that pilots' duty is to assist him while performing this obligation.

Similarly to pilots, it is usual for charterers to appoint competent agents,[225] if such are available in the agreed ports. Nonetheless, disputes are usually created between parties regarding the liability arising from agents' actions. Albeit the charterer pays for agents, it is unclear whether he is also liable to the shipowner for their negligence. The latter depends often on the type of work provided and the extent of relation between the work and the ship or cargo.[226] For example, the tasks of manning and maintenance performed by an agent would normally be for owner's account.[227] This issue was further examined in *''The Sagona''*, where the Court held that "*the agents, being appointed and paid by the charterers, are (…) considered the agents of the charterers for all the ordinary business of a ship in port. (…) But there may be some business which (although) the master ought to do himself, he nevertheless entrusts them to the agents; then it may be that the agent's omission to perform it would be an omission on behalf of the owner and not on behalf of the charterers*".[228]

The charterers also pay for any extra equipment considered necessary for the operation of their duties and for any extra fittings required due to the vessel's particular trade.[229] In addition, charterers usually undertake the payment of various taxes imposed by local or national authorities;[230] while, it is quite common for the standard forms to include provisions making the charterer liable for stowaways' expenses incurred by the shipowner due to his breach, if

[222] *Fraser v. Bee* (1900) 17 T.L.R 101 where it was held that "*the fact that the charterers had to pay the pilot did not make him their servant''* and *supra*, fn. 55, p. 577-578. Same opinion is expressed in *supra*, fn. 165, p. 251, where it is also mentioned that this view is supported by the wording of Lines 170 and 171 of the NYPE 1946 form as well as the express wording of Line 282 of NYPE 1993.
[223] *Supra*, fn. 55, p. 579.
[224] *The Hill Harmony* [2001] 1 Lloyd's Rep. 147.
[225] For example, Baltime 1939 Line 57.
[226] As established in *NYK Bulkship (Atlantic) NV v. Cargill International SA (The ''Global Santosh'')* [2016] UKSC 20. The same test was also applied in the case of owners' servants in *Glencore UK Ltd and Another v. Freeport Holdings Ltd (The ''Lady M'')* [2017] EWHC 3348 (Comm), at para. 61.
[227] *Supra*, fn. 214, p. 288.
[228] *A/S Hansen-Tangens Rederi III v. total Transport Corporation* ("*The Sagona")* [1984] 1 Lloyd's Rep. 194, p. 199.
[229] E.g NYPE 1993 Lines 95-98.
[230] NYPE 2015 Lines 781-786, NYPE 1993 Lines 440-444, Shelltime 4 Line 766.

they gained access to the vessel during cargo operations.[231] Last, under many charter forms, charterers provide and pay for "*all other usual expenses"*. There are not cases clarifying the scope of this phrase, but it is argued that it implies expenses made, for example, for tugs[232] or canal dues,[233] when not expressly included in the provision "*Charterer to provide and pay for*'', or when the relevant responsibility has not been transferred to owners.[234]

The non-payment of the above expenses by the charterer constitutes a breach of the charter and creates a liability towards the shipowner if he finally pays them instead of the charterer. Nonetheless, charterer's third party liability is also possible, if the above third party entities (eg. pilot, harbour authorities, tug operator) decide to turn against him directly. In this case, the nature of charterer's liability could be either contractual or tortious, depending on his relationship with the above entities. However, charterers' third party liabilities are analysed extensively below.

2.2 Liabilities relating to non-operational matters

Having already discussed charterer's liabilities arising from the vessel's operation, this part will be focused on the examination of liabilities that a charterer encounters as a result of non-operational issues, meaning matters arising in the course of the voyage irrespective of the ship's technical and commercial operation.

2.2.1 Charterer's liability to third parties

Undoubtedly, there are other persons usually carried on board, apart from the master and crew, such as passengers, pilots or persons facilitating the cargo operations (e.g. port officials). Simultaneously, there are others on-shore who are directly affected by vessel's operations as well. As all of them can suffer damage to their property or get injured and pursue afterwards a

[231] See for example, NYPE 2015 Clause 42 and NYPE 1993 Clause 41. Similarly also applies under section (a) of BIMCO Stowaways Clause for Time Charter Parties 2009.
[232] If so, then charterer's liability concerning tug-assistance will be similar to pilotages as described above.
[233] For example under NYPE 1993. On the contrary under NYPE 2015, the charterer's obligation to provide and pay for canal dues has been expressly described in Clause 7, so it is not any longer implied that they will fall under the phrase "*all other usual expenses''*.
[234] E.g. NYPE 1993.

compensation by the responsible party, it is important to ascertain whether charterer falls within their "target'', holding liability for their claims.

Given that time charterers' obligations are being mostly assigned to them on a contractual basis with the conclusion of separate agreements with the interested parties during the charter period, subsequently any liability towards them will be regulated contractually as well. But, if charterers' limited freedom to contract with other entities throughout charter's period is taken into account, it follows that their liability in such cases will be restricted and justified only when the party suffered loss or damage is bound contractually with the charterer, with its loss or damage having been incurred as a result of a breach of contract that is still in force.

Thus, the usual persons entitled to such claims could be first of all the bunker suppliers in case, for example, they have sold fuel to the charterer but withheld ownership, due to their bunkers' loss during pumping operations. If an employee of the bunker suppliers is also injured during the above incident, the suppliers would be further entitled to an *inter se* compensation as a recovery for the damages paid to their injured employee on the grounds of charterer's breach. Furthermore, independent contractors at ports which have assigned to the charterer the right to use their equipment during cargo operations for which he is in charge can turn against him claiming breach of their contract and requesting a refund, if he damages their property during cargo operations. Also, agents who were hired by the charterer purporting to assist him during the charter's performance have a contractual right in damages against him for any costs they incurred on his behalf or in case of their injury when executing his orders. Nonetheless, the most common contractual claim related to third parties' personal injuries or property damages is the one brought against charterers by the shipowner *inter se*, whereby he claims recovery for the compensation paid to the former, when their loss resulted from a charter breach by the charterer (e.g for nomination of unsafe port or loading of dangerous cargo), or from activities which fall within his responsibility.

Apart from the aforesaid contractual liability of charterers towards third parties, their liability can also arise in tort. In this case, the spectrum of charterer's liability appears wider with respect to the scope of the type of damages covered[235] and the entities that can turn against him, when compared with his contractual liability. Thus, charterers' tortious liability arises every time they are negligent or reckless in performing either their charter duties, or generally

[235] For example, non-compensatory damages are more favourable in tort than in contract. See, in S. Degeling, J. Edelman and J. Goudkamp (ed.), Torts in commercial law, (Thomson Reuters 2011), p. 375.

their duty to prevent a foreseeable injury or damage to a third party, [236] to the detriment of the plaintiff who suffers a loss or damage as a result of the above action.[237] The proximity of charterers' action with the loss in question is justified only when the latter is not too remote, in the sense that it was within charterer's contemplation when the duty was breached, so to lead to the recoverability of such loss.[238]

Common cases of charterers' liability in tort emanate usually from faulty cargo operations during which the pilot, crew, stevedore, longshoreman or other port worker gets injured and claims for compensation against the charterer, because he was negligent in labelling properly the obnoxious cargo on board and in stowing carefully the cargo, or generally in giving appropriate employment orders. It is needless to say that charterers will rarely be liable for the master and crew,[239] as they fall invariably under shipowners' sole control by being their "employees",[240] whereas liability for pilot's and stevedores' injuries is incurred only when they are not acting on charterer's account in the sense described earlier.[241]

But charterer's tortious liability can also extend to property damage other than the cargo aboard, as mentioned earlier. Thus, for instance, charterers will be liable in tort to port/harbour authorities for the destroyed port lights following a collision, if they have intervened in the navigation of the vessel by taking actions that exceeded their normal duties under a standard time charter.[242] However, this is unlikely to occur, as the navigation of the ship traditionally lays solely on the owner.

Overall, a time charterer's third-party liability is generally limited under the common law principles of negligence and fault and is mainly directed by the number of duties he undertakes

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[236] *Ibid*. Also, R. Glenn Bauer, "Responsibilities of owner and charterer to third parties-consequences under time and voyage charters'' (1974-1975) 49 Tul.L.Rev. 995, p. 1013.

[237] Same approach is also followed under the USA law. See for example, Daniel R. Huttlenbrauck, "Indemnity liability of time charterer in longshoreman personal injury cases'' (1969-1970) 5 Forum 121.

[238] The burden of proof for these conditions lies on the claimant-injured party. *Supershield Ltd v. Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7; [2010] 1 Lloyd's Rep. 349, at para.43; *Handley v. Baxendale* (1854) 9 Exch 341. See also, *supra,* fn. 235, p. 370.

[239] When, for instance, an explosion is caused due to the on-board-ship technology that charterer owns, which is designed in a way that permits transportation of dangerous cargoes. Potential liability of the technology's designer on the basis of contributory negligence is also not excluded. See, Tony Nunes, "Charterer's liabilities under the ship time charter'' (2003-2004) 26 Hous.J. Int'L. 561, p. 586 and 574.

[240] A different view has also been expressed according to which if the parties under the charter had shown an intention that with respect to a certain activity, the ship-owner would act as agent of the charterer, then this makes the shipowner's employees sub-employees of the charterer. However, as there is no court so far that has supported this views, it is not considered preferable. *Supra,* fn. 236.

[241] See respectively at p. 38 -39 and p.28-29 above.

[242] See for example the American case, *The Volund,* 181 F. 643, 644 (2d Cir. 1910); supra, fn. 239, in Tony Nunes, p. 575-576.

under the charter. This can change, though, if parties agree on the expansion of his duties based on the freedom of contract principle.[243] Besides, it is believed that a tortious claim against the charterer is not frequently preferred, not only because the claiming party has to prove its claim, but also because often they do not even know the charterer's identity due to the lack of any contractual relationship between them. Therefore, it seems easier for them to turn against the shipowner, whose expenses will be later reimbursed, *inter se*, by the charterer, if the third party's claim succeeds.

2.2.2 Liability arising from pollution

Pollution casualties at sea are followed invariably by extensive disasters and numerous compensation claims by the affected parties. The latter in their effort to pursue a full indemnity from the liable party as quickly as possible realized soon that turning only against the shipowner who is traditionally considered as polluter, could jeopardize the satisfaction of their claims. That could happen either due to shipowner's lack of sufficient funds, or because of his right to limit his liability up to certain amounts, or both. Also, the emergence of oil majors and large trading houses in the market, which were trading oil through the vessels' chartering was seen as a chance by pollution claimants to achieve higher and full compensation. As a result, they started bringing claims against all possible defendants, targeting charterers as well. Under these circumstances, charterers' liability exposure to pollution claims increased and nowadays it seems that it is more imminent than ever. Therefore, here, it will be examined the extent of such liability under the English legal regime only. Whereas, when it comes to charterer's pollution liability in countries outside the United Kingdom, as there is no unified regulatory framework regarding this yet, charterers' potential exposure will be subject to the legislation in force in the countries where the chartered vessel trades. So, charterers' liability will vary accordingly.[244]

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[243] However, it should not be overlooked that in many jurisdictions (e.g. US) the courts are prepared to find charterers wholly responsible for death and personal injury, or they may decide to find both owners and charterers liable to compensate the injured party. See in "West of England Club: Charterers comprehensive cover", available at <https://www.westpandi.com/products/standard-covers/charterers/>, accessed 12 March 2020.

[244] For example, United States has not adopted the Conventions ratified by the United Kingdom and which are described below. On the contrary, they apply their own Federal and State law, more specifically the Oil Pollution Act 1990 (OPA). Under the rules of this Act, the charterer does not face any direct liability for oil pollution damage; nevertheless, he might be liable under local state statutes or the common law. Furthermore, in certain jurisdictions such as California, Alaska and Japan, the charterer incurs direct and even strict liability for pollution caused by the ship. Respectively in Dr. Chao Wu, "What are the key charterers' risks?'' (UK P&I Club, June

When considering charterer's civil liability for pollution, it differs depending on whether the pollution is caused by oil or other products, and in case of oil pollution only on whether the polluted vessel was a laden tanker or non-laden tanker/non-tanker.[245]

Starting with charterer's liability in case of oil pollution caused by oil products by a laden tanker, this is regulated by the Civil Liability Conventions of 1969 and 1992 (CLC 69 and 92). Both of them provide that shipowners are strictly liable for pollution claims up to the limits defined in them[246] and provide them with limited defences as well.[247] If the claim exceeds the above limits, the affected parties are entitled to an additional compensation provided by the International Oil Pollution Compensation (IOPC) Funds[248] which supplement the aforesaid Conventions and are founded by the international oil industry.

The shipowner's strict liability, though, does not implicitly vanish charterers' liability. Although the CLC 92 forbids expressly the claimants to turn against "*any charterer''* for compensation in these cases (known as "channelling system''),[249] the CLC 69 does not. Therefore, it exposes charterers to a potential liability, equal to the one carried by shipowners. However, it should be noted that CLC 69 is no longer frequently used.[250] Thus, although it would seem that under the above "channelling system'' the likelihood of charterers' exposure to oil pollution claims is relatively low, this is not always the case. This is because the channelling system does not apply unexceptionally, but instead it is subject to the conditions of art. 3(4)(2) which, if applied, allow the interested parties to turn against any other party. If so, then the claim against the charterer will be successful only if his liability is proved on the basis of the traditional common or civil law principles, such as negligence, tort, or public nuisance.[251] Nonetheless, it is difficult to imagine many cases where such conditions could

2014) <http://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest_Publications/Newsletters/Charterers.pdf >, accessed 12 March 2020, p. 1.

[245] Richard Williams, The liability of charterers for marine pollution'' in Soyer B. and Tettenborn A (ed.), *Pollution at sea: law and liability*, (Informa Law from Routledge 2012).

[246] Art. V of CLC 92.

[247] Art. III of CLC 92.

[248] Art. 4 of the Fund Convention.

[249] Art. III(4) CLC 92.

[250] Colin De la Rue, "Charterers and Traders – Implications of the Erika and Ocean Victory incidents'' (June 2014) < http://www.colindelarue.com/wp-content/uploads/2015/04/Charterers-and-Traders-Erika-and-Ocean-Victory-cases-Marine-Pollution-2014.pdf>, accessed 12 March 2020, p. 19.

[251] An example where the charterer's liability might arise under the common law tort principles is when the pollution was caused due to dangerous cargo he loaded on board of vessel. Furthermore, certain aspects of their role in maritime commerce could, occasionally, involve him in liability as a result, for instance, of negligence in their role as terminal operators, or in oil transfer operations. However, since the charterer does not have the same degree of control over the ship as her owner, the possibility of the charterer incurring liability directly to the victims are limited. Respectively, *ibid*, p. 18. Generally, reference to the basic principles of common law in respect of negligence and tort has described at p.41-43.

apply.[252] Therefore, it is argued that a claimant is very unlikely to consider proceeding against charterers when the CLC Conventions apply, not only because the latter do not allow that, but also because even if they do, the claimants will have to carry the onerous burden of proof required under the common law of torts. Of course, if the claimants know, however, that the charterer has substantial assets[253] or is vulnerable to public opinion,[254] they might still be willing to pursue such claims, despite the above difficulties.

When the oil pollution damage is caused by bunkers' spillages coming from non-tankers, the Bunkers Convention applies. This regulates parties' liability when the loss or damage is caused "*by contamination resulting from the escape or discharge of bunker oil from the ship"*[255] that does not constitute pollution damage under the CLC Conventions.[256] Contrary to the liability described above under the CLC, liability for bunkers' pollution is jointly and severally distributed among the "*owner, bareboat charterer, manager and operator of the ship"*[257] and is limited to the amounts described therein.[258] Also, there is no channelling system similar to the one described earlier and the claimants do not have a recourse right to a supplementing Fund.

Although these rules seem straightforward, things become more complicated when examining charterer's liability under this Convention. The first issue that arises is whether charterer falls within the term "*operator"* included in the art.1(3). If he does, subsequently he is strictly liable for such claims; if he is not, without the channelling system, he could be again liable only under the traditional common or civil law conditions when fulfilled and proved.[259] Despite the difficulty of proving the latter, the danger of charterer's exposure should not be

[252] Gavin Little and Jenny Hamilton, "Compensation for catastrophic oil spills: a transatlantic comparison'' (1997) L.M.C.L.Q 391, p. 399.
[253] *Supra*, fn. 245, p. 2.
[254] As it happened for example in the case of *Commune de Mesquer v. Total France SA (*Case C-188/07) [2008] 3 C.M.L.R. 16.
[255] Art. 1(9) of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
[256] Art 4 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
[257] Art. 1 (3) in combination with art. 3 (1) and (2) of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
[258] Art. 6.
[259] Steel J held *obiter* at first instance in *CMA CGM S.A v. Classica Shipping Co. Ltd* [2003] EWHC 641 (Comm); [2003] 2 Lloyd's Rep 50, at p. 54 that "*operato*r'' included "*those who, if they have no beneficial or possessory interest in a vessel, are nonetheless in a real sense directly concerned in the operation of the vessel and have incurred liability as such*'' and concluded that the term could include time charterers but not voyage charterers. However, this approach seems to have been doubted by the Court of Appeal in the same case ([2004] EWCA Civ 114). It is believed that the approach adopted by the Court of Appeal is correct, especially if we consider that if the word "*operator*'' was intended to cover all kinds of charterers, then there would be no need for express reference to the "*bareboat charterer"* under the same provision. It should be mentioned, though, that under other jurisdictions, such as USA, the term "*operator*'' is construed wide enough so it includes charterers too. Respectively, in *supra,* fn. 250, p.18.

overlooked, particularly when the claimants can predict that their claim will not be fully recovered, if it exceeds the limits provided under the Limitation of Liability Conventions, to which shipowners are subject, and know that charterers' are socially and financially vulnerable.[260]

Last, with regards pollution liability arising from substances other than oil, it is governed by the HNS Convention 2010.[261] This Convention is not yet in force and purports to regulate liability resulting from the carriage of hazardous and noxious substances listed in its content. Similarly to the CLC Conventions, the HNS provides a two-tier protection, as it is supplemented by its Fund and includes also the same channelling system[262]. Therefore, charterers' liability for pollution will be similar to the one arsing when pollution is caused due to an oil leakage by a laden tanker.

Considering that the United Kingdom is still part of the European Union and therefore is bound by its regulations, it is interesting to note how parties' pollution liability is further affected by the provisions of the relevant EU Directives that UK has ratified. Thus, in relation to pollution, the 75/442/EEC[263] will be applicable, as it deals with environmental damages caused generally by "*wastes*''.[264] This Directive imposes a strict liability on the original waste producer[265] as well as on current and past waste-holders[266] which are obliged to cover the cost of waste disposal and management, if their conduct had contributed to the pollution risk.[267] In respect of charterer's liability under the Directive, this was discussed in "*Mosquer"* case [268] where the ECJ examined the validity of a claim brought against charterer for covering the costs of collection, recovery and disposal of waste that were found on the shoreline, mixed with water and sediment after the "*Erika"* disaster. The ECJ held initially that for the purposes of the Directive which are "*the environmental and human health protection against harmful*

[260] *Supra*, fn. 245.
[261] International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS).
[262] Article 7 (5) (c) of the HNS Convention 2010.
[263] As amended by the Directive 2008/98/EC. Despite the amendments, the principles regarding strict liability of waste producer or holder remain intact.
[264] The term "*waste*'' as under art. 1(a) of Directive includes "*any substance or object in the categories set out in Annex I to the Directive the holder discards or intends or is required to discard''*.
[265] The term "*producer*'' as defined in Annex I of the art. 1 of Directive 75/442 means "*anyone whose activities produce waste ("original producer'') and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste"*.
[266] The term "*holder*'' as defined in Annex I of the art. 1 of Directive 75/442 means "*the producer of the waste or the natural or legal person who is in possession of it''.*
[267] Article 15 of Directive 2008/98/EC.
[268] *Commune de Mesquer v. Total France SA (*Case C-188/07) [2008] 3 C.M.L.R. 16.

effects caused by the collection, transport…of waste…'',[269] the concept of "waste'' *"cannot be interpreted restrictively".*[270] Therefore, whilst heavy fuel oil did not constitute itself "waste'' under the same,[271] the product of mixing it with water and sediments when leaking at sea did, on the grounds that it was *"discarded'',* albeit involuntarily, by its holder because it has lost its marketable and economical value.[272] They also added that the rationale behind the "*previous holders'"* financial liability emanates from "*their contribution to the creation of the waste and, in certain cases, to the consequent risk of pollution".*[273] For that reason, they accepted that the national court could regard, here, the seller-charterer as previous holder of the waste and hold him liable for pollution, if according to the evidence, "*he contributed to the risk that pollution caused, particularly if he had failed to take measures to prevent such incident (...)''.*[274] But most importantly, they held that the Directive's provisions do not hinder the application of any other International Conventions, like CLC. However, if the latter cannot apply or the relevant claims exceed the Conventions' recoverability limits, preventing, hence, the costs from being borne by the charterer or shipowner, even though they are to be regarded as "waste-holders'' under the Directive, then the national law has to ensure that these costs will be borne by them in accordance with the principle "the polluter pays''.[275]

Although this decision has been accused for being heavily politically affected, it is still considered "good law'' and so, the liability exposure that creates for charterers is substantial, since they can be held unlimitedly liable as "waste-holders'' for pollution damages so long as it is proved that their conduct contributed to the pollution risk. But of course, such liability exposure will continue to exist only if the United Kingdom remains bound by the EU regulations and principles.

Apart from the potential statutory liability that a time charterer might incur towards third parties under the aforesaid regimes, he will be always liable to the shipowner, *inter se*, if the latter seeks compensation for claims paid to third parties, when charterer's negligence caused the pollution.[276] In fact, this right is also allowed under the above Conventions as they state that nothing *"shall prejudice any existing right of recourse of the owner against any third*

[269] *Ibid*, para. 38, p. 679.
[270] *Ibid*, paras.39-40.
[271] *Ibid*, paras.46-48.
[272] *Ibid* para. 59 p. 680.
[273] *Ibid* para. 77 p. 682.
[274] *Supra*, fn. 272, para. 78.
[275] *Supra*, fn. 269, para. 81-82, p. 682 and para. 89, p. 683.
[276] For example, when the charterer was negligent in labelling properly the dangerous cargo whose bad stowage resulted to an explosion and subsequently to leakage of oil in the sea.

party".[277] Thus, such liability could be established under common law principles, or arise from the charter terms, when, for example, the pollution is caused due to charterer's breach of duty to nominate safe ports or due to owner's compliance with his orders.[278] Alternatively, it could be expressly provided under special clauses incorporated into the charter, such as the International Group P&I Clubs Oil Pollution Charter Party Clause,[279] which oblige charterers to indemnify owners for any loss, liability or expense they might incur, if they must provide additional security as a result of complying with charterer's instructions.

Although in the past it was believed that there was a mechanism which was robust enough to face pollution disasters, the general concern regarding its efficiency started to grow. As it was expected, this concern impacted upon the parties' liabilities and the way they were allocated until then. As a result, it led to the development of a new trend that expanded the spectrum of the entities that could be held responsible for pollution, so to ensure that sufficient compensation will be always provided. Thus, although currently it might seem that charterer's pollution liability exposure is controlled, a shift in the latter is imminent, especially if we consider also the international current turmoil about the environmental protection that is forcing the adaptation of shipping industry to the new needs.

2.2.3 Liability for the payment of fines

Another significant exposure on charterer's part is his liability for the payment of fines arising from various causes. It is common practice for time charters to include express provisions according to which the charterer should hold harmless the owner against any fines imposed on him for complying with his orders.[280] Even without an express provision, an indemnity can be implied for these circumstances in relation to claims raised by shipowners or head-charterers against the sub-charterer. For example, the charterer may find himself liable for fines levied for breach of immigration laws and regulations, such as those related to stowaways,[281] or in smuggling cases, when illegal substances are found to be carried in the

[277] For example, art. III (5) of CLC 92.
[278] Similarly happened in the American case *Citgo Asphalt Co et Al. v. Frescati Shipping Co Ltd et al.,* 886 F. 3d 291 (March 2020).
[279]Richard Williams, "The liability of charterers for marine pollution'' in Soyer B. and Tettenborn A (ed.), *Pollution at sea: law and liability,* (Informa Law from Routledge 2012).
[280] E.g Boxtime clause 12(f) and 14(h), NYPE 2015 Clause 9(f) and 43.
[281] NYPE 2015 Lines 799-801 or NYPE 1993 Lines 464-469.

containers aboard,[282] or due to customs' violations[283] or improperly documented or non-manifested cargo,[284] as well as for shortage or over-delivery of cargo, if the charterer undertakes the responsibility for it.[285] Furthermore, charterer's respective liability arises in case of pollution damage caused during bunkering operations, where it is common for fines to be imposed by the local authorities. Charterers can also incur liability for fines related to violations of MARPOL Annex IV on sulphur and nitrogen oxide emissions from vessels by virtue of supplying off-spec bunkers,[286] as well as for not complying with the recently introduced low sulphur fuel limits.[287]

2.2.4 Liability for salvage and general average contribution

When the ship is in distress, the master often considers salvage operations or jettison of parts of the loaded cargo as necessary. Such decision, though, results to cargo owners' claims if their cargo is lost or damaged. Invariably, the latter turn against the shipowner who can claim in his turn proportional general average contributions as well as salvage expenses (e.g. towage costs, costs at the port of refuge) from the cargo interests of the rescued cargo as recovery for damages for the lost cargo. The same also applies if damage was caused to his ship and contributions are asked by the remaining parties. Therefore, in this part, it will be examined whether charterers could incur any liability under these circumstances in the sense of contributing to the general average or salvage expenses upon shipowners' request.

Generally, with regards the general average contributions, the wording often used in the standard charter forms refers to the application of the York-Antwerp Rules (YAR), yet of different years.[288] Under these Rules (as amended in 2016), all parties involved in a sea venture should proportionally share any extraordinary expenditures resulting from the ship's or cargo's voluntary sacrifice, necessitated by the adventure's rescue in an emergency.[289] The term "*all parties"*, as it is expected, contains the shipowner and cargo owners benefited from the

[282] NYPE 2015 Lines 816-820 or NYPE 1993 Lines 361-363.
[283] NYPE 2015 Lines 913-915 and Lines 981-985.
[284] For example, NYPE 2015 Lines 930-935.
[285] Valentins Abasins and Max Korndoerfer, *"Liability in time and voyage charterparty''*, <http://www.beo-pandi.com/assets/documents/pdfs/actual-circulars/2013-17-Liability-in-Time-and-Voyage.pdf>, accessed 12 March 2020, p. 4.
[286] NYPE 2015 Lines 209-220.
[287] For more details regarding this potential liability, see Chapter VII in 3.6 "The charterer's bunkers liability and the introduction of lower sulphur limits" where this issue is being discussed thoroughly.
[288] See for example, Baltime 1939 Clause 23, NYPE 2015 Clause 25, NYPE 1993 Clause 25.
[289] YAR 2016 Rules A and E.

inevitable sacrifice. Although a time charterer is not a cargo owner *stricto sensu*, as he does not usually own the cargo carried, he can still be liable for a contribution referring to the bunkers on board whose ownership belongs customarily to him, as explained earlier.[290] Similarly, he might be liable as owner of any rescued containers (when not carried as cargo) or other equipment, such as lashing material. The same applies for the pending freight which the charterer receives by cargo owners, if he is also the carrier under the bill of lading.

Concerning salvage expenses, though, the applicable regime is substantially different in relation to owner's right for contributions. Thus, in case YAR 2004 apply, a contribution right is not recognised under Rule VI, contrary to YAR 1974, 1994 and 2016. But, since the YAR 1994 and 1974 are mostly used in practice,[291] it follows that the likelihood of charterer's liability for such expenses or any special charges in respect of any property lost when the vessel suffered a casualty is increased, which expands respectively even more his overall exposure.

2.2.5 Liability for legal and defence costs

The charterer might encounter several liabilities, yet that does not make him unequivocally liable in every case. However, he might frequently get involved in many disputes which are solved through a legal route purporting to prove his innocence. So, even if he could ultimately avoid liability in respect of the risks summarized above, he cannot avoid being exposed to significant legal costs or other expenditures for defending himself.[292]

Regarding these expenses, they include, but are not restricted to, legal proceedings' costs, hire of lawyers and experts as well as expenses of collecting evidence. Therefore, the extent of this exposure can be substantial, considering simultaneously the number of contractual relationships which charterers are usually engaged in which might also oblige them to cover such costs.[293] Therefore, the bigger the number of contracts they participate, the higher the potential for disputes between them and their counterparts is. His defence costs can be even greater in case charterer face tortious claims by third parties. Dispute resolution by litigation or otherwise will certainly involve substantial expenses, especially in cases of major casualties

[290] Regarding the ownership over bunkers, see above at "liability arising from the use of bunkers", p. 34.
[291] See for example NYPE 1993 following the Rules of 1974, as well as Baltime 1939, Shelltime 4 and NYPE 2015 following the Rules of 1994.
[292] For example, Baltime 1939, Lines 452-454, or Inter-Club Agreement 1996 (as amended in 2011), clause 3(a) in combination with Clause 8, or NYPE 2015 Lines 933-934.
[293] For example, Lines 243-244,Shelltime 4.

(e.g. pollution) or disputes involving several parties other than charterers, particularly if there is a chain and the potential for costs' escalation is considerable, increasing accordingly the amount covered by a charterer.

3. Conclusion

The main aim of this analysis was to present clearly all the potential liabilities that a time charterer faces during the charter's performance, either they are related to the operation of the chartered vessel or not, and highlight the charterers' multileveled liability exposure by explaining that such liabilities can arise not only contractually, but on a statutory or tortious basis as well. It was further pointed out that the above liability emanates also from the nature of a time charter being a 'vivid' contract in commercial practice which creates interdependent relationships among various parties, so the charterer could easily get caught in disputes with them and held responsible for their losses, even if it is later proved that he was not. Of course, a limitation to the charterer's exposure is placed with the obligations that he agrees to perform under the terms of the time charter, as they will ultimately define the responsible each time party.

III. THE CHARTERER'S LIABILITIES UNDER A VOYAGE CHARTER

1. Introduction

Following the analysis of charterer's liability under a time charter, this chapter purports to present charterer's liability exposure under the second main charter form used in practice, the voyage charter. As opposed to time charters, a voyage charter constitutes merely an agreement between the shipowner and charterer for the carriage of specific goods on a specific vessel between certain places. Similarly to time charters, it also appears under various types,[294] however, it invariably provides that the shipowner performs the designated voyage by undertaking at the same time all its operational and non-operational costs, whilst the charterer pays in return for such services, freight and (when appropriate) demurrage. Charterers further usually ensure that cargo handling operations are performed accurately by providing the relevant cargo and covering all their necessary costs. As in time charters, the above risk allocation, despite being adopted by the majority of standard voyage charter forms,[295] could be always shifted, as it will be seen below, subject to the parties' freedom of contract and their commercial power.

Generally, when it comes to charterer's liability exposure under a voyage charter, it could be argued that at first glance it seems more limited compared to time charters. This is justified on the grounds that a voyage charter provides charterers with less flexibility, as they are only entitled to use the vessel's carrying capacity without undertaking any further operational responsibilities, contrary to time charterers who have the power to provide employment orders

[294] In practice, a number of different categories for voyage charters have been developed, such as the "*consecutive voyage charters''* where a vessel is contracted for several voyages which follow on directly from the previous one, or the "*intermittent voyage charters''*, or the "*contracts of affreightment''* for a series of periodic voyages in a vessel or vessels to be nominated thereafter. See respectively in J.Cooke, A.Taylor, J.D. Kimball and others, Voyage charters, (4th edn., Informa Law from Routledge 2014), p. 3; M.Davies and A.Dickey, Shipping law, (4th edn., Lawbook Co. 2016), p. 368; Gorton, Hillenius and others, Shipbroking and chartering practice, (6th edn., Informa 2004), p. 114-115.

[295] E.g. Gencon 94 for the carriage of dry bulk cargo or the Tankervoy 87 for the carriage of liquid bulk cargo.

to the master.[296] More specifically, similarly to time charters, a voyage charter constitutes only a part in the chain of contracts required for the cargoes' transportation and runs invariably in parallel with an international sale of goods contract, the combination of which will regulate parties' liabilities towards each other. Thus, the voyage charterer will appear either as cargo owner, or a mere trader chartering the vessel on behalf of the actual cargo owner either directly from the shipowner or a 'disponent owner', if the vessel is already sub-chartered. Furthermore, depending on the governing law, the voyage charterer might encounter liabilities as the 'carrier' of goods under the issuance of his own bills of lading, albeit rarely, if English law applies.[297] On the top of that, the voyage charterers by undertaking the cargo handling operations are contracting with stevedores and port operators in order to arrange the preparation of cargo at the loading and discharging ports as well as its transfer on board of the vessel. Therefore, it would seem that they are often liable mostly for cargo-related matters as shippers of the goods carried aboard.[298] However, this is not always the case, especially if it is considered that lately the powers entrusted to charterers regarding the control of voyage's performance have been expanded, making sometimes the distinction between voyage and time charters rather difficult.[299]

Consequently, similarly to a time charterer, it is evident that a voyage charterer by interacting on a daily basis with all the parties involved in a marine adventure could be exposed to various liabilities towards various parties, either on a contractual, or tortious, or statutory basis, or by way of indemnity, depending on his relationship with the party claiming against him. All of these potential liabilities will be examined below.

2. The Liabilities of a Voyage-Charterer

In line with the distinction made at the beginning of the previous chapter regarding charterers' liabilities, the voyage charterers' liabilities will be also presented based on whether they arise in relation to an operational or a non-operational matter. To the extent that some of these liabilities might coincide with the ones already described under time charters, a reference

[296] Similarly supported in Richard Williams, "How much flexibility is there in a voyage charter? – An eclectic cornucopia!", in Soyer B. and Tettenborn A. (ed.), *Charterparties: law, practice and emerging legal issues*, (Informa from Routledge 2017), p. 1; D. Rhidian Thomas (ed.), The evolving law and practice of voyage charterparties,(Informa 2009), p. 2.
[297] *Supra*, fn. 294, in *Voyage Charters*, p. 3.
[298] Anthony N. Zock, "Charterparties in relation to cargo'' (1970-1971) 45 Tul.L.Rev. 733, p. 736.
[299] E.g. in relation to port nomination orders. Same supported also in Richard Williams, *supra*, fn. 296, p. 33.

will be made to the relevant part of the earlier chapter, whereas any distinctive principles applying only to voyage charters will be mentioned separately.

2.1 Liabilities relating to the vessel's operation

2.1.1 Liabilities arising from the charterer's employment orders

Starting with the charterers' operation-related liabilities, there are many that arise as a result of the charterer's employment orders to the Master of the vessel, as in time charters. However, here, contrary to the latter, charterer's right is generally restricted and the rationale behind this distinction is based on voyage charters' commercial expediency.

As explained above, a voyage charter purports solely to regulate the transportation of specified cargo between designated places. Therefore, the charterers' powers appear limited, as they are entitled to give only such employment orders that are vital in order for the master to proceed to an already arranged voyage. The exercise of this right will be referring, for example, mainly to the port nomination, the quantity and nature of the cargo carried on board, the vessel's route and speed. But, as the charterer does not participate in the general commercial running of the vessel, nor can he control the performance of the chartered voyage, his rights cannot be more extensive and so will be the complexities that emanate from the execution of his orders as well. The only exception applicable here is when the parties agree otherwise based on the freedom of contract principle which may allow them to amend charterer's obligations by undertaking responsibilities similar to time charterers. In this case, the general rules applying in respect of master's compliance with such orders are the same with those described in the previous chapter,[300] and the master should obey on the grounds that "*such instructions are not materially different from the orders given by a time charterer; (since) there is no difference in principle"*.[301]

[300] See above, in Chapter II, at p. 10- 14.

[301] *Batis Maritime Corp v. Petroleos del Mediterraneo SA ("The Batis")* [1990] 1 Lloyd's Rep. 345 (QB), per Hobhouse J, at p. 350, referring generally to charterer's right to give instructions to the owner regarding the vessel's employment where it is stated that "*each case has to be decided on its own facts and upon the true construction of the relevant contractual document (...); (however) there is no reason for placing a different construction on voyage charters where the contractual provisions are similar to those in a time-charter''*.

At this point, hence, we will be examining the most principal examples of orders that are usually conferred on the voyage charterer and the liabilities he faces in case the shipowner complies with them.

A) Orders related to the vessel's speed

Unlike time charters where charterers are entitled to give generally speed orders subject only to the fact that the latter will not jeopardize the cargo, master and crew aboard, the charterer's position under a voyage charter is relatively constrained. This is justified by the general principle that under voyage charters only the shipowner undertakes responsibility for the preliminary and carrying voyage and should ensure that the vessel proceeds to the agreed ports with reasonable dispatch.[302] However, this general rule might not always benefit the charterer, in case, for example, where the vessel arrives in a particular time at a congested loading port, obliging him to pay more demurrage due to the delays caused by the congestion.[303] Consequently, the parties have been given the opportunity to amend this rigid rule through the incorporation of certain clauses into the charter, so to allow the charterer to direct the shipowner in respect of the vessel's speed. Of course, such shift in parties' responsibilities results in charterer's exposure to liabilities that he would not normally face as a regular voyage charterer.

Thus, for instance, if parties agree on the incorporation of BIMCO's Slow Steaming Clause for Voyage Charters, the charterer is entitled to give speed orders subject to the fact that they will not exceed the minimum speed agreed.[304] Because, if the speed order is lower than the one originally agreed and subsequently, the vessel arrives at port at a different date from the one included in the bill of lading, the shipowner's liability towards cargo interests will be transferred to the charterer by way of an express indemnity, on the basis that his speed instructions exposed the owner to additional liabilities that he would not have encountered had their obligations not been shifted under the charter.[305] The same also applies in case where the cargo is damaged due to the vessel's late arrival at the port of discharge and the cargo owners claim compensation against him for the losses suffered under the bill of lading. The charterer

[302] *CSSA Chartering and Shipping services SA v/ Mitsui OSK Lines Ltd (The "Pacific Voyager")* [2018] EWCA Civ 2413; *Bulk Ship Union SA v. Clipper Bulk Shipping Ltd (The "Pearl C")* [2012] EWHC 2595 (Comm); *Pacific Basin IHX Ltd v. Bulkhandling Handymax AS (The "Triton Lark")* [2011] EWHC 2862 (Comm).
[303] *Supra*, fn. 296 in Richard Williams, at Chapter 8.4.
[304] See clauses (a) and (d) of BIMCO's Slow Steaming Clause for Voyage Charters.
[305] See clause (C) of BIMCO's Slow Steaming Clause for Voyage Charters.

faces the same liability if the parties incorporate BIMCO's Virtual Arrival Clause which, contrary to the aforementioned Slow Steaming Clause, does not constitute an instruction to the master to reduce the speed, but entitles the charterer to request from the master to adjust the vessel's speed, so it can arrive at its destination at a pre-determined time.[306] Again, this right is conferred upon the charterer in exchange of paying for additional demurrage for any extra time required for the completion of the voyage and compensating the shipowner for any additional liabilities or expenses he incurs for complying with charterer's instructions, especially in relation to his liabilities towards the cargo interests under their bill of lading.[307] In addition, the adjustment of the vessel's speed with the instructions of the charterer might result in engine failures or breakdown, whilst the longer the voyage takes the more bunkers will be required, increasing, hence, the shipowner's fuel costs for all of which he will seek later reimbursement from the charterer, usually on the basis of an express indemnity under the charter, as it is proved below.

Similar clauses seem also to be used in the container as well as tanker trade,[308] exposing therefore, charterers to further liabilities. For example, under certain standard charter forms, such as Shellvoy 6, charterers are allowed to order either the increase or reduction of vessel's speed. However, they shall either reimburse the shipowner for any additional bunkers used,[309] or allow laytime/ demurrage continue to run for the extra time required for the vessel to reach the relevant port. Also, in respect of owner's liabilities under the bill of lading, charterers are liable in damages on the same grounds described above.[310] Additionally, under BPVoy 4, although charterers can adjust the vessel's speed, they will also have to incur the additional costs in freight which is adjusted by the owner accordingly.[311]

Therefore, although there is still some flexibility in allowing charterers to tailor the speed by intervening in the voyage's stages, this is always accompanied with extra exposure on their part, as they will have to pay the price for the right vested upon them. So, unless this decision matches with charterers' commercial convenience at that time, regarding specifically the

[306] "BIMCO's Explanatory notes on Virtual Arrival Clauses", available <https://www.bimco.org/contracts-and-clauses/bimco-clauses/virtual_arrival_clause_for_voyage_charter_parties>, accessed 12 March 2020.
BIMCO's Explanatory notes on Virtual Arrival Clauses, available at https://www.bimco.org/contracts-and-clauses/bimco-clauses/virtual_arrival_clause_for_voyage_charter_parties, accessed at 7th of May 2017.
[307] *Ibid,* sub-clauses (a) and (d).
[308] *Ibid.*
[309] Similarly also under the LNGVoy Clause 23 (b) (iv) where although the basic fuel used coming from the natural boil-off from the LNG carried aboard is covered by the shipowner, any additional boil-off caused as a result of charterer's request to adjust the speed burdens only the latter.
[310] See, Shellvoy 6 Clause 33(2).
[311] See respectively, BPVoy 4 Clause 3(4).

vessel's arrival at the loading or discharging port, the beginning of laytime and the availability of cargo, it would not seem preferable for them to pursue a shift of their duties under the traditional voyage charter, where their liability is limited.

B) Orders related to the nominated port

Per definition, under a voyage charter, the vessel's trading limits are designated in the charter beforehand. Thus, invariably, charterers are entitled to elect the loading and discharge ports and berths where cargo operations will take place. However, as most voyage charters rarely define specifically the above, charterer's obligation is essentially generated during a post-agreement phase, when he subsequently chooses the vessel's destination out of the geographical range initially agreed.[312] As the cargo on board might be bought and sold by different parties throughout the voyage, it follows that its destination will be chosen by its last buyer. Therefore, this flexibility offered in a voyage charter allows charterers, as traders of the cargo, to find easier buyers without worrying about breaching the charter's terms and so, make the most out of the vessel's employment. Nonetheless, it remains important from the very beginning of the charter to be agreed that the vessel will be sailing only between possible and safe places. Although the same duty burdens time charterers as well, under voyage charters the scope of it takes a different form.

First of all, although the loading and discharge ports do not need to be defined in advance, the timely exercise of this duty by the charterer is of essence and affects the charter's performance. As a result, it is usually agreed that the charterer has to decide on this matter before the vessel starts on its approach voyage[313] and certainly within reasonable time[314], during which he can order the vessel to sail to a port or place and wait for his instructions,[315]

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[312] Usually, in tanker trades. See, Chris Ward, "Unsafe berths and implied terms reborn'' (2010) L.M.C.L.Q 489, p. 496; see also, Braden Vandeventer, "Analysis of Basic Provisions of voyage and time charter parties'' (1974-1975) 49 Tul.L.Rev. 806, p. 809. It should be noticed, at this point, that the charterer's right to choose the port out of an agreed geographical range does not also mean that he is obliged to name the ports in their geographical rotation, unless expressly agreed otherwise. Similarly held in *Pilgrim Shipping Co Ltd v. State Trading Corp. of India Ltd. ("The Hadjitsakos")* [1975] 1 Lloyd's Rep. 356 (CA).

[313] Harvey Williams, Chartering documents, (4th edn., LLP 1999), p. 15.

[314] See, for example, Asbatankvoy 1977 Clause 4(a), according to which "*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''*, or LNGVoy Clause 7(c) Lines 117-118 where the charterer has to provide nomination orders "*as soon as possible'',* or Heavycon 2007 Clause 4(d) Line 70 where it is stated that the nomination of discharge port shall take place "*well in advance of the vessel's arrival''.*

[315]See, for example, Asbatankvoy 1977 Clause 4(a) and Shellvoy 6 Clause 3(1).

without any delay being caused for the shipowner.[316] Charterer's failure or refusal to do so constitutes a serious breach with deleterious commercial and financial consequences. Yet, it does not entitle the owner to withdraw the vessel from charterer's services, unless his delay can amount to charter's frustration.[317] In that case, the contract will be terminated due to charterer's repudiatory breach, while the owner will be entitled to claim in damages any profit losses suffered. Otherwise, any loss or delay caused to him whilst waiting for a valid nomination is customarily borne by the charterer,[318] whilst any detention damages will be calculated either on the demurrage rate or with reference to the relevant market rate, depending on charter's provisions.[319]

So, once the nomination right is exercised by the charterer, such nomination will be valid only if the chosen port/place is possible[320] as well as safe. Otherwise, the charterer is liable for breaching his obligation not to nominate an impossible port, irrespective of whether there is a breach of safe port warranty on his part.[321] Beginning with the issue of impossibility, it technically refers to physical features of a port or to questions of legality[322] and means in essence that the charterer has to abstain from nominating places which a ship cannot use at all, either literally or commercially, because they will cause delay that could lead to the frustration of the commercial object of the adventure, if the voyage results in being something different from what contracted for.[323] The applicable test to identify the breach is based on what a reasonable charterer would choose, taking also into account the facts and prospects at port, as they appear to him at the time of nomination.[324] The charterer's persistence on nominating an impossible port constitutes a breach whose consequences for both the owner and charterer are

[316] *Mansel Oil Ltd and Another v. Troon Storage Tankers SA ("The Ailsa Craig'')* [2009] EWCA Civ. 425; [2009] 2 Lloyd's Rep. 371 (CA); [2008] 2 Lloyd's Rep. 384 at 391-392 per Clarke J (first instance)– time charter-party case; *Aktieselskabet Olivebank v. Danske Svovlsyre Fabrik ("The Springbank")* [1919] 2 K.B. 162.
[317] *Bunge SA v. Kyla Shipping Co Ltd (The 'Kyla')* [2012] EWHC 3522 (Comm), at para.39.
[318] See respectively, for example, Graincon Clause 2 Lines 30-31 and *Zim Israel Navigation Co Ltd v. Tradax Export SA ("The Timna")* [1971] 2 Lloyd's Rep. 91 (CA).
[319] Shipowner's efforts to mitigate his loss are also taken into consideration. See also, J.Cooke, A.Taylor, J.D. Kimball and others, Voyage charters, (4th edn., Informa Law from Routledge 2014), p.652; D. Rhidian Thomas (ed.), The evolving law and practice of voyage charterparties,(Informa 2009), p. 11-12.
[320] It was held in *the Aktieselskabet Olivebank v. Danske Svovlsyre Fabrick ("The Springbank"*) [1919] 2 K.B. 162 (CA) that this duty is usually implied. The same was also confirmed in the more recent case of *Mediterranean Salvage & Towage Ltd v. Seamar Trading & Commerce Inc. ("The Reborn'')* [2009] EWCA Civ 531; [2009] 2 Lloyd's Rep. 639, p.651 para. 55 (CA).
[321] *Reardon Smith Line Ltd v. Ministry of Agriculture, Fisheries and Food (The Vancouver Strike Cases)* [1961] 1 Lloyd's Rep. 385, p. 421 per Wilmer L.J (CA).
[322] Supra, *fn*. 319, D. Rhidian Thomas, p.7.
[323] *Ibid*, p. 9
[324] *Supra, fn. 321,* p. 406 and 421.

the same with the ones described in time charters.[325] Regarding the aspect of safety of the nominated port, its definition is as in time charters.[326] Similarly, the charterer's duty is either express[327] or implied,[328] depending on the charter's wording,[329] and it can be construed either as an absolute warranty[330] or merely as a due diligence obligation.[331] However, many voyage charters do not include usually such express provisions, as they are drafted with a voyage between named ports in mind.[332] Therefore, the same rules mentioned in the previous chapter will apply here as well, [333] as the nature of the obligation remains the same.

Despite the similarities that this duty presents with the one exercised under time charters, there are also significant differences between them, emanating from the charterers' different power to provide for employment orders in each case. So, contrary to time charters where charterers can change the vessel's employment by amending their orders,[334] a voyage charterer

[325] I.e the shipowner can reject the order and consider the charterer's behaviour as repudiation. See respectively, in Chapter II, at p 24.

[326] Because the 'safe port' definition given in the *Leeds Shipping Compnay v. Societe Francaise Bunge* (*The Eastern City)* [1958] 2 Lloyd's Rep. 127 (CA) does not distinguish between charters. This is proved, for example, in *Emeraldian Ltd Partnership v. Wellmix Shipping Ltd and Another (''The Vine'')* [2010] EWHC 1411 (Comm); [2011] 1 Lloyd's Law Rep. 301, p. 314, 315 and 317, where the Court applied the same principles as above in order to identify whether the berth in question was safe. Same in *Independent Petroleum Group Ltd. v. Seacarriers Count Pte Ltd* (''*The Count'')* [2006] EWHC 3222 (Comm); [2008] 1 Lloyd's Rep. 72 (QB), p. 76.

[327] See, for example, the Exxonvoy 1990 Part I (C) and (D) where the word *"safe''* is followed by the named port designated by the parties, Graincon Clause 1 Line 16, Tankervoy 87 Clause 2 Line 111.

[328] See, for example, the Gencon 1976 and 1994 which do not contain an express warranty. Although the law is not uncertain in relation to this matter, it has been supported that especially in voyage charters where there is usually a wide option of discharging ranges at various freight rates, contract's business efficacy requires such duty to be implied, since otherwise the charterer would treat this option as a blanc licence to order the vessel to any port he wanted within the range agreed, even unsafe. That view was also supported in *Mediterranean Salvage & Towage Ltd v. Seamar Trading & Commerce Inc. ("The Reborn'')* [2009] EWCA Civ 531; [2009] 2 Lloyd's Law Rep. 639, 639 where it was held that "*the more extensive the degree of liberty which the charterers had to choose the port or place where the ship was to load or discharge, the greater the necessity to imply a warranty''*. Same view was supported in Dominic Buckwell and Richards Butler, "Safe and sound'' (2003) 17 MRI 5 8 Liz.
An implied warranty of safety was also supported in *The Stork* [1955] 2 QB 68, p. 100-104. A very interesting comment is made in respect of the implication of such obligation in *supra*, fn. 312, C. Ward, p. 501 and 503 where it is supported that this implication can only exist to the extent that it prevents a derisory nomination and that the implied duty cannot be the same with the one provided under time-charters, in the sense that voyage-charterer's control is inferior, while there is no employment and indemnity clause inserted into the charter. See also, Charles G.C.H. Baker and Paul David, "The politically unsafe port'' [1986] L.M.C.L.Q 112, p. 112 and in Charles G.C.H. Baker, "The safe port/berth obligation and employment and indemnity clauses'' [1988] L.M.C.L.Q. 43,p. 52 and 56. Opposite view in *Eurico S.p.A v. Philipp Brothers ("The Epaphus'')* [1986] 2 Lloyd's Rep. 387 (QB), per Straughton J, p. 392.

[329] Technically the question is one of construction and it follows that a term will only be implied when an informed and objective reader would understand that something else should happen. This principle was confirmed in *Attorney-General of Belize v. Belize Telecom Ltd* [2009] UKPC 10.

[330] For a criticism against the absolute character of the safety warranty, see J. Bond Smith, JR., "Time and voyage charters: safe port/safe berth'' (1974-1975) 49 Tul. L. Rev. 860, p. 868.

[331] See, for example, BPVoy 4 Clause 5(1), LNGVoy Clause 7 and Shellvoy 6 Clause 4 which both provide the charterer with a due diligence duty to nominate safe ports.

[332] See, for example, the Asbatankvoy 1977 Clause 4, Heavycon 2007 Clause 4(a) Lines 45-46, Synacomex, Gencon 1976 and 1994.

[333] See, Chapter II, "orders related to port nomination".

[334] *Supra, fn. 326., The Vine*, p. 319-320.

does not have such power, as Lord Roskill has expressed in "*The Evia No.2*".[335] Thus, although voyage charterers have the same right to nomination as time charterers,[336] it is questionable whether the same could be said for charterer's re-nomination right, when supervening impossibility or unsafety arises.[337] Therefore, the general rule is that re-nomination is not automatically recognized in the aforesaid cases and the reason for that is because the vessel is no longer under charterer's orders,[338] while the destination of the vessel is fixed from the beginning. Besides, as it was held in "*The Jasmine B''*[339] in the absence of any special provision in the charter, a valid nomination is considered retrospectively as written into the charter and so, it is irrevocable,[340] unless otherwise agreed.[341] Therefore, the charterer is bound by it and any attempt to change the nominated port will be regarded as unilateral change of the contract terms.[342] However, this view places an unacceptable rigidity on the charterer who is no longer able to amend the terms of the charter so to reflect his commercial interests as trader of the cargo under his cargo contract of sale.[343]

As previously mentioned, during one single voyage, it is possible for the cargo to be sold more than once. As a result, it is very likely that the discharge port might need to change in the course of the charter period. Therefore, it is crucial to the charterer to be given the right of re-nomination, as this will provide him with the flexibility he requires, so to order the vessel to sail to another location depending on his commercial decisions.

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[335] *Kodros Shipping Corporation v. Empresa Cubana De Fletes ("The Evia (No.2)'')* [1982] 2 Lloyd's Rep. 307 (HL), p. 319 (dicta)

[336] Meaning nomination of a prospectively safe port/place when the order is given. See *Transoceanic Petroleum Carriers v. Cook Industires Inc. ("The Mary Lou")* [1981] 2 Lloyd's Rep. 272 (QB), p. 276. There is also a valid nomination if the initially unsafe port becomes at the time of vessel's arrival safe, so that charterer's breach is cured. See, in Robert Gay, "Unsafe berth obligations, repairs to a berth, and exceptions to laytime: case and comment - The Vine'' [2011] L.M.C.L.Q 23, p. 28.

[337] The secondary obligation of the charterer to re-nominate was firstly discussed in the case of *Duncan v. Koster (The Teutonia)* (1872) L.R. 4 P.C. 171, however, it muddied the waters in respect of this issue. The Court ignored the principle that the charterer did not have a re-nomination right and held that the delivery at the alternative port was a contractual delivery. Despite the argument that this case erred in law, many later cases attempted to apply *Teutonia's* principle, but they were fruitless. See, respectively, Chan Leng Sun, "Nomination of ports by the voyage charterer'' (1993) 5 S.Ac.L.J. 207, p. 213-214. Also, in the case of *The Mary Lou, supra, fn. 336*, p. 278, the Court abstained from deciding on the matter as it was held irrelevant to the purposes of the case.

[338] *Supra*, fn. 312, Chris Ward, p. 495.

[339] *Bulk Shipping A.G v. IPCO trading S.A ("The Jasmine B'')* [1992] 1 Lloyd's Rep. 39 (QB).

[340] *Ibid*, p. 42. Same in *Antiparos ENE v. SK Shipping Co Ltd And Others ("The Antiparos'')* [2008] EWHC 1139 (Comm); [2008] 2 Lloyd's Rep. 237 (QB), para. 25, p. 241. The basis for this principle is the fact that nomination is an option and not a right of selection which would permit a change of mind.

[341] See, for example, the Tankervoy 1987 form Clause 2 Lines 113-114, where the charterer is provided with the right to revise his initial orders and re-nominate a different port.

[342] *P v A and Another* [2008] EWHC 1361 (Comm); [2008] 2 Lloyd's Rep. 415 at 419 [16] per David Steel J (QB); *ED & F Man Sugar Ltd. v. Unicargo Transportgesellschaft MBH* ("*The Ladytramp'')* [2012] EWHC 2879 (Comm); [2012] 2 Lloyd's Rep. 660 at 665 [12] per Eder J.; *Supra*, fn.337, Chan Leng Sun, p. 207.

[343] Similar view supported by Richard Williams, in supra, fn. 296, Chapter 8.2.

In light of the above, it has been suggested that the opposite view could equally apply on the grounds that in principle there is no reason justifying its hindrance,[344] and that therefore, the re-nomination right could also be implied.[345] The reason for such implication could probably emanate from a consideration of the voyage charter's business efficacy as contract, in the sense that it constitutes an agreement for the carriage of specific cargo between certain places. Hence, to the extent that this specific cargo can be re-sold several times under its voyage, it would also make commercial sense for the charterer to be able to deliver it each time to its new consignee by re-nominating the cargo's discharge port under the charter. The same trend seems to prevail also in the tanker trade where an express re-nomination right is usually provided to the charterer who bears respectively any other costs arising from his right's exercise,[346] as opposed to the clauses used in the dry cargo trade. This trend is not surprising, though, if we consider the power of the parties involved in the tanker trade who are usually oil majors and have the power to use the principle of freedom contract in any way that benefits their interests the most.

Notwithstanding the clear advantages that this approach confers on the charterer, it can be detrimental to the shipowner who is undertaking a voyage that he has not initially agreed to perform. It further creates a significant uncertainty to him, as he has to amend his voyage plan accordingly so to comply also with the terms of his bill of lading and his obligations as 'carrier'. This places an extra burden on the shipowner, because if he complies with the charterer's re-nomination orders, he might be found liable for deviation towards the cargo interests under the bill of lading, unless the latter includes also a Revised Order clause under which he is exonerated from any liability for deviation when acting in accordance with such clauses.[347] Also, the risk of deviation can jeopardise the shipowners' P&I cover and leave them unprotected against any liabilities arising therefrom. Furthermore, shipowners might probably

[344] *Supra*, fn. 328, Charles G.C.H. Baker, [1988] LMCLQ 43, p. 49.

[345] See, *supra, fn. 340*, "*The Antiparos"*, para. 28, p. 242 where it is stated by Andrew Smith J. that "*it does not seem improbable that the parties should anticipate this (i.e. re-nomination) and provide in the charter for an indemnity in the event that the owner does not insist that the charterer perform in accordance with a nomination that he has made''*, despite that it was held that in this case the clause in question could not be inferred to provide such right to the charterer.

[346] See, for example, Tankervoy 87 Clause 2 Lines 112-120, Exxonvoy 1990 Clause 9(b) Lines 129-130 or Shellvoy 6 Clause 3(1), BPVoy 4 Clause 22(1), Asba II clause 4(b).

[347] Such as clause 1 of CONGENBILL 2016 which provides that "*all terms conditions, liberties and exceptions of the Charterparty, dates as overleaf, including the Law and Arbitration Clause/ Dispute Resolution Clause, are herewith incorporated''.*

incur extra operational expenses, suffer loss of time and most importantly, risk losing an advantageous freight rate.[348]

Therefore, it could be argued that this view is considered risky and contrary to the whole idea of port nomination and the way it is structured so to provide certainty between the parties. For that reason, it would seem that the general applicable rule is more justifiable, if it is taken additionally into account the fact that under most voyage charters the shipowner is allowed to proceed alternatively '*so near thereto as the vessel may safely get',* in the sense that he can sail to the nearest feasible port in the reasonable interest of both parties.[349] Besides, the fact that there is still no recent authority to the contrary, apart from the old and questionable '*The Teutonia'*,[350] indicates that the voyage charterer who nominates a prospectively safe and possible port/berth is under no secondary obligation to amend his orders, if the port's/berth's conditions change.[351] Besides, if the opposite view was accepted, the re-nomination right would clash with any 'war and strike clauses' usually inserted into the charters which expressly provide either the charterer or shipowner with the right to choose alternative destinations only in specific circumstances.[352] Even though, it is understood that the conditions upon which the re-nomination right is offered in the above event have an exceptional character and refer to circumstances where the safety of the whole operation can be jeopardised, so they are not really related to the commercial efficacy of the voyage.

When supervening impossibility arises and no re-nomination right is recognized, a distinction between loading and discharging ports should be made. Thus, if the loading port is no longer accessible, whilst the charterer has already exercised his right once, then in the absence of any alternative agreement,[353] the contract is frustrated. If, on the other hand, the impossibility refers to the discharging port, while the vessel is on her laden voyage and freight is at risk, invariably an express provision will apply dealing with the issue of impossibility and determining the parties' rights.[354] Otherwise, charter's frustration will again take place, while

[348] D. Rhidian Thomas (ed.), The evolving law and practice of voyage charterparties,(Informa 2009), p. 16.
[349] Which are from the one hand, the charterer's hope to minimize any additional costs and on the other hand the ship-owner's preference to sail to the nearest safest for his vessel port. See, Stephen Girvin, Carriage of goods by sea (2nd edn., Oxford University Press 2011). p. 545; *Renton (GH) Co Ltd* v. *Palmyra Trading Corp of Panama (The Caspiana)* [1957] AC 149, 173–174.
[350] *Supra*, fn. 337.
[351] Same approach in *supra*, fn. 342.
[352] War, Ice and Strike clauses are analysed below.
[353] Such as a "*so near thereto she can safely get''* clause as well as a war, ice or strike clause.
[354] J.Cooke, A.Taylor, J.D. Kimball and others, Voyage charters, (4th edn., Informa Law from Routledge 2014), p.123.

the goods will be delivered elsewhere providing, respectively, the owner with the right to claim remuneration for acting as agent of necessity.[355]

With regards the supervening unsafety, if no re-nomination right is expressly provided to the charterer, his position will be as if he had nominated an impossible port.[356] If, however, the charterer exercises a re-nomination right when he is not allowed to do so, he is in breach, whilst owner's compliance with such order merely waives his right to reject it later. But, his right to claim damages or remuneration, such as on a *quantum meruit* basis, is maintained.[357]

The charterer's ineffective nomination, when an impossible or unsafe port is elected, constitutes a breach which sounds in damages only and includes every sort of consequences arising from his action, traditionally on the basis of an express or implied indemnity.[358] More specifically, when an impossible nomination occurs and so, the contract is frustrated, in the absence of fault on both parties' behalf, the charterer might be found liable to the shipowner for freight, potentially on the basis of any alternative existing agreement, express or implied; otherwise, liability will lie where it falls.[359] Yet, if the charterer was at fault due to which the impossibility arose, he will be liable for payment of the whole freight either in damages, or in the form of a *quantum meruit* compensation based on a new implied agreement to pay reasonable remuneration to the shipowner,[360] or on a mutual agreement for substituted performance,[361] if the vessel was forced to deviate. Freight is also payable when the owner alternatively proceeds "*so near thereto the vessel can get"* complying with the relevant charter clause.[362] Charterer's liability can further include damages to the shipowner for physical damage caused to his vessel, which is sometimes followed with detention damages and profit losses[363] referring to her period of repair, or the vessel's replacement costs.[364] Damages are also provided in case that a third party property (e.g coal wharf) is destroyed due to the

[355] *Supra*, fn. 337, in Chan Leng Sun, p. 215. For the scope of remuneration and damages provided, see below.
[356] *Ibid*, p. 214.
[357] *"The Batis"* [1990] 1 Lloyd's Rep. 345 (QB), p. 351; "*The Kanchenjunga"* [1989] 1 Lloyd's Rep.354 (CA).
[358] It has been suggested that shipowner's compensation can also arise from an employment and indemnity clause inserted into the charter. Yet, this is not very usual in practice. See, respectively, supra, fn. 328, in Charles G.C.H. Baker, [1988] L.M.C.L.Q 43, 43.
[359] Section 1(2) of the Frustrated Contracts Act 1943.
[360] Supra, fn. 357, *The Batis*, p. 352.
[361] However, it has been supported that the grounds of damages are more correct. See, *supra*, fn. 355, p. 210 and 215.
[362] *Supra*, fn. 354, p. 146.
[363] For the shipowner's loss of opportunity to earn freight. His loss is usually calculated based on the difference between the contractual freight and the market rates of freight, or more frequently on the difference between his gross profit (amount that normally the owner would have earned) and the actual gross profit earned at the end. See, respectively, *ibid*, p. 654.
[364] *Ibid*.

wrongful nomination of the charterer, either on the basis of a tort claim brought directly against him, or as a recourse claim brought by the shipowner.[365] Moreover, detention damages are provided for delay which is usually calculated on the basis of demurrage rate, even if the loading and discharging did not exceed the laytime period.[366] Damages for delay are also recognized when there is no physical damage to the vessel itself, subject to port's unsafety and the principles of remoteness and causation.[367] It is interesting, in fact, that even short delays have led to detention damages against charterers, such as in the case of '*The Count'*,[368] which highlights that especially in periods where freight rates are increased, the cost of the smallest delay can be substantial resulting in significant claims against charterers.[369]

In relation to the extent of shipowner's damages when a re-nomination right is recognised under the charter, they will include any further costs that the owner incurs from complying with the revised order, so to keep him harmless from any additional exposure he might face due to the re-nomination and in exchange of losing his security under his P&I cover.[370] It follows that if, for instance, the shipowner is found liable for deviation under a bill of lading already issued towards cargo interests, or incurs extra bunker costs,[371] or delays due to the performance of an alternative voyage by complying with charterer's orders, he will be entitled to compensation by the charterer including any reasonably foreseeable losses suffered[372] either as damages for breach of contract or on the basis of an express provision in the charter.[373]

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[365] Charterer's third party liability is extensively discussed below.

[366] *"The Vine''* [2010] EWHC 1411 (Comm); [2011] 1 Lloyd's Law Rep. 301, p. 311 which justified that conclusion by stating that *"the charterers have a number of obligations under the charterparty. One is to load within the laydays. (...) Another is to nominate a safe berth. (...) The fact that there have been no breach of the obligation to load within the laydays does not disable the owners from claiming the agreed rate of damages for delay caused by breach of another obligation''.*

[367] As it was held in the "*The Count''*[2006] EWHC 3222 (Comm); [2008] 1 Lloyd's Rep. 72 (QB), p. 76 and 77 where the Court dismissed charterer's claim and recognized the owner's right to detention damages for the period where the vessel remained "trapped'' in the port due to the grounding of another vessel because of the condition of the particular port creating a continuing risk of danger and did not break the chain of causation (charterparty in Asbatankvoy form).

[368] *Ibid.*

[369] Alex McIntosh, "Is it safe?'', *Marine Risk International* (2001) available < https://www.i-law.com>, accessed 20 March 2020

[370] It was found in "*The Antiparos", supra,* fn. 245, p. 241 that the shipowner's "further costs'' or "extra expenses'' are "*determined by comparing what expenses were incurred under the revised orders and what expenses would have been incurred under the original orders''*. See also, Harvey Williams, Chartering documents, (4th edn., LLP 1999), p. 15.

[371] As it happened in the case of *The Antiparos, ibid.* See also clause 24.3 of the BPVOY5 which allows a re-nomination on charterer's behalf.

[372] *Supra, fn. 357, The Batis*, p. 351; *ibid, The Antiparos*, p. 243 where it is stated that indemnities "*require a sufficient causative link between the order and the consequence giving rise to the claim… (otherwise) the Court will be reluctant to interpret it as covering loss that would be too remote to be recoverable as damages''.*

[373] See, for example, Tankervoy 1987 Clause 2 Lines 116-117 (bills of lading), Exxonvoy 90 Clause 2(b) Lines 141-142 (extra bunkers), Asbatanktavoy Clause 4(c). It is noteworthy that Shellvoy 6 does not provide an express

Particularly in respect of the additional time needed for the vessel to sail to the alternative destination, it is usually provided that it will either count as laytime or demurrage,[374] or be compensated at the demurrage rate as damages.[375] A change in the freight rate is also very likely to occur, since the initial voyage is altered.[376]

In addition to all the aforementioned costs that charterers usually undertake under the safe port/berth nomination, it is customarily agreed between the parties that he will be liable for lightening expenses as well.[377] The ground for such justification is that an order to proceed to a port or berth which cannot be reached, or departed from, without lightening constitutes a breach of the warranty of safety. Depending also on the charter terms, the time spent for lightening might count as laytime or demurrage, while the shipowner's compensation on the basis of detention damages or *quantum meruit* should not excluded either.[378] Last, if the charterer orders the vessel to sail to a port which is already in quarantine, he will also carry the burden of any delay arising therefrom and any time lost will again count as laytime or demurrage.[379]

Notwithstanding the parties' agreement that the vessel should sail only within safe places, there are times that unexpected events are taking place such as an outbreak of war which affects the performance of the contract and jeopardises the safety of the whole adventure. The vessel and cargo might be detained, the crew might get arrested and valuable time might be lost, increasing the voyage's overall costs. For that reason, invariably voyage charters include provisions in their body which deal effectively with such issues by allocating respectively liabilities between the involved parties.[380]

Despite the variations that these clauses adopt in the various standard voyage charter forms, the general idea that characterizes all of them is that the risk of war during the performance of the voyage should be borne primarily by charterers. The rationale behind this logic is based on the fact that no party can be forced to continue the performance of a contract

compensation for damages arising from liabilities under the bill of lading, a fact which constitutes a great risk on shipowner's part.

[374] See, for instance, BPVoy4 Clause 22(3).

[375] See, for example, Shellvoy 6 Clause 26(1).

[376] *A/S Tank v. Agence Maritime L. Strauss* (1939) 64 Ll.L.R. 19.

[377] See, for example, Graincon Clause 24, Shellvoy 6 Clause 25, Amwelsh Clause 11.

[378] *Supra*, fn. 354, p. 138.

[379] See, respectively, Heavycon Clause 7, Asbatankvoy 1977 Clause 17(a), BPVoy 4 Clause 29, Exxonvoy 90 Clause 23 and Shellvoy 6 Clause 23.

[380] See, for example, Shellvoy 6 Clause 34, Tankervoy 87 Clause 30, LNGVoy Clause 28(D), Graincon Clause 38, Exxonvoy 90 Clause 28, Asbatankvoy 1977 Clause 20(iv), Heavycon 2007 Clause 31, Gencon 94 Clause 17 and Gencon 1976 Clause 16.

under circumstances which no party has contracted for. Therefore, the charterer's request for the vessel to proceed to a warlike area introduces completely new terms into the parties' agreement, as there are new risks to be considered and the voyage is performed under different conditions. So, if he wants the shipowner to comply with them, he should also be ready to accept the burden of his request. On the same grounds, the shipowner through his master may refuse to proceed to the designated port, if the war occurs before loading or discharging, and has to ask the charterer for revised orders. Otherwise, he is entitled to terminate the contract. Similarly, when the loading or discharging operations have already commenced, the master may stop them and ask for new orders. If the charterer does not respond, the master can sail to whichever port he considers safe. In that case, the contract will be considered fulfilled and the charterer will be obliged to pay full freight,[381] plus any other expenses incurred by the shipowner, such as bunkers, wages, or port charges as well as additional freight or demurrage for any delay caused. These principles apply also when the charterer provides timely alternative orders and the master complies with them. Lastly, owners' agreement to comply with charterer's request might jeopardise his liability insurance cover. Consequently, as in time charters, any additional premium imposed on shipowner by his insurer should be covered directly or reimbursed by the charterer.[382] Yet payment of such premium by the charterer does not exonerate him from any liability in damages he might have, if the vessel or shipowner suffers losses as a result of the war, unless express wording allows otherwise.[383] This is justified, if it is considered that these clauses purport to protect solely the owner who undertakes the risk of the operation. Besides, these clauses do not imply anywhere that charterer's contribution to the premium releases him from his general duty to nominate only safe places and the circumstances arsing therefrom.[384]

[381] Problems can be created, though, when the freight is paid in advance and the vessel or the cargo is lost before delivery. See, J.Cooke, A.Taylor, J.D. Kimball and others, Voyage charters, (4th edn., Informa Law from Routledge 2014), p. 752.

[382] *Eleni Shipping Ltd v. Transgrain Shiping BV (The ''Eleni P'')* [2019] EWHC 910 (Comm) where the Court examined whether the charterer's defence under the piracy clause under a time charter could be applicable to allow charters not to pay hire and detention damages for the period during which the vessel was captured by pirates.

[383] Same view supported in *D/S/ A/S Idaho v. Collosus Maritime S.A. (The "Concordia Fjord")* [1984] 1 Lloyd's Rep. 385, per Bingham J. who agreed with the arbitrator's reasoning. See also, *ST. Vincent Shipping Co. Ltd v. Bock, Godeffroy & Co ("The Helen Miller'')* [1980] 2 Lloyd's Rep. 85 (QB). However, the opposite was held in *The Evia (No.2*), *supra, fn.335,* where it was held that war clauses were construed as a complete and exhaustive code for the shipowner, so that the charterer's obligations under this safe port warranty would be excluded. It seems that the same can also apply to voyage charters cases too.

[384] Same view was expressed in *supra*, fn. 328, Charles G.C.H. Baker and Paul David, [1986] L.M.C.L.Q 112, p. 119-120 and 123 where the outcome of the second limb of *The Evia No.2* is being criticised.

Charterer's duty to nominate safe places extends also to the obligation of selecting ice-free ports. Thus, when the designated voyage takes place where there is risk of ice, the voyage charter customarily will include an ice clause defining the vessel's trading limits as well as the parties' obligations in case the vessel encounters ice during its voyage.[385] Irrespective of the clauses' particular wording, the general idea emanating from such provisions distinguishes between ports of loading and discharging and whether the vessel encounters ice whilst sailing to or being at the nominated port. So, if there is an ice risk while the vessel is sailing to the loading port, the same principles apply in respect of charterer's liability as in case of warlike ports above. If the danger arises while the vessel is approaching the discharging port, the master can notify the charterer who can either request the vessel to wait outside the port at his own risk until it becomes safe and accessible, or provide revised orders and pay compensation at the demurrage rate for any time lost. If, on the other hand, the vessel encounters ice while waiting at the discharge port, the charterer, upon receipt of master's notice, can elect either the vessel to remain at port and complete discharging at his own risk with any time lost counting as laytime or demurrage, or order the vessel to continue discharging at another safe and accessible port. If, however, the charterer takes no action, the master has the right to proceed to the nearest safe port and complete discharging. Then, the freight will be adjusted according to the charter's provisions and the distance covered. The same further applies in case the master considers unsafe for the vessel to remain at the loading port, while the loading has not been completed yet and there is risk of ice.

Last, the safety of a nominated port is intertwined with the risk of a strike taking place at it. An event like that will of course disturb the balance of the voyage and jeopardise its timely execution due to delays and additional costs caused which affect both parties. For example, strikes at berths can create congestion and prevent the vessel from entering to the berth. That in its turn can delay the commencement of cargo operations and expose potentially charterers to additional costs for freight and demurrage or detention damages. The charterer faces a similar exposure when the vessel is already berthed and the cargo operations are interrupted because of the strike.

[385] Similarly also under many standard voyage charter forms which contain either General Ice clauses or adopt BIMCO's Ice Clauses for voyage charterparties, or equivalent clauses. See respectively, Gencon 1976 Clause 17,Gencon 1994 Clause 18, Heavycon 2007 Clause 17, Exxonvoy 1990 Clause 21, Graincon Clause 29, Asbatankvoy 1977 Clause 14 and Tankervoy 1987 Clause 22.

However, despite the disturbance that strikes cause to the voyage, voyage charters provide for clauses that protect parties' interests against the negative impact of such events. For instance, it is provided that the occurrence of a strike constitutes generally an exception to the running of laytime[386] protecting charterers from incurring further demurrage expenses. In fact, this principle applies to strikes that infer either directly with cargo operations once the vessel is berthed, or indirectly when they prevent the vessel from getting into berth because of congestion.[387] Particularly in case where a strike interrupts the cargo discharge operations, the charterer can elect either the vessel to wait at port until the strike finishes and complete the discharging, or to order the vessel to discharge at a strike-free port. Only in the former case, charterer is usually given the choice of paying half-demurrage after the expiry of laytime,[388] while so long as laytime has not expired, he can always benefit from the charter's exception clause. Nonetheless, in the latter case, his obligation to pay full freight remains, unless otherwise provided under the charter. [389] Charterers' obligation to pay full freight and demurrage arises also when they nominate a berth knowing that there is a risk of strike. In this case, none of the above exceptions as to the running of laytime will apply and charterers are considered to be in breach of the charter.

Overall, it is clear from the above that there is still some uncertainty concerning charterer's nomination right under voyage charters, supported also by the general reluctance of the Courts to speculate on issues that have never been challenged before them.[390] Maybe this explains why the parties sometimes prefer to deal with this matter expressly by providing a broad liberty to voyage charterers, so their nomination right resembles at the end the one provided under time charters. Consequently, although voyage charters may not create numerous uncertainties compared to time charters, they undoubtedly expose charterers to significant risks and liabilities, especially if we also consider the general hesitation of the Court to allow them escape from their liability.[391]

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[386] See, for example, Heavycon 2007 Clause 15(c), Exxonvoy 90 Clause 14(b)(i) and Clause 29(a) Line 662, LNGVoy Clause 17(a)(i) and 26, Shellvoy 6 Clause 32(a), Asbatankboy 1977 Clause 19, BPVoy 4 Clause 18(1)(3) and 38(2), Gencon 76 Clause 15 and Gencon 94 Clause 16.

[387] *Carboex SA v. Louis Dreyfus Commodities Suisse SA* [2012] EWCA Civ 838; [2012] 2 Lloyd's Rep. 379 (CA), paras. 14,17 and 20, contrary to *Cero Navigation Corp v. Jean Lion & Cie ("The Solon")* [2000] 1 Lloyd's Rep. 292, 298-299 (High Court).

[388] See, for example, Gencon 76 Clause 15 Lines 166-167, LNGVoy Clause 17(d), Shellvoy 6 Clause 15(2), Asbatankvoy 1977 Clause 8, BPVoy 4 Clause 17 and Gencon 96 Clause 16 Lines 231-232.

[389] See, for example, Gencon 76 Clause 15 Lines 172-173 and Gencon 94 Clause 16 Lines 238-243.

[390] Chan Leng Sun, "Nomination of ports by the voyage charterer'' (1993) 5 S.Ac.L.J. 207, p. 218.

[391] The Court will interpret the parties' general rights and warranties by taking into account the parties' actual intention. Therefore, parties should be very clear when it comes to the nature and extent of warranties they seek to give or receive. Accordingly in "*The Archimidis"* [2008] EWCA Civ. 175.

C) Orders related to bills of lading

Similarly to time charters, the voyage charters provide charterers with the commercial ability to issue bills of lading under the same terms and principles,[392] even when they ship their own goods, as they often have more contracts of sale with third parties requiring such actions to be taken on their behalf. Nonetheless, the exercise of this right is subject to specific limitations justified on the grounds that the powers conferred upon them can affect both the shipowner as well as cargo interests, as third parties. Besides, it needs to be remembered that under a voyage charter, it is very unlikely for the charterer to be considered as carrier under the bill of lading, when English law applies.[393] Thus, when charterers sign the bill, they are acting on behalf of the shipowner and therefore, any liability arising from their actions will expose the latter to more risks, especially towards cargo owners.

Consequently, the majority of standard voyage charter forms include express indemnity/redress clauses[394] in respect of any liabilities resulting from the issuance of bills of lading by the charterer which provide the shipowner with an indemnity right in case the bills signed by the charterer expose him to more onerous liabilities than those he agreed to carry under their charter.[395] Apart from the express indemnity, charterer's liability towards the shipowner can also arise in damages on the basis of breach of contract, when the charter contains a clause according to which the charterer is entitled to sign bills, yet '*without prejudice to the charter'*. The interpretation of such wording indicates that "t*he rights of shipowners against charterers, and vice versa are to be preserved"*;[396] therefore, *"notwithstanding any engagements made by the bills of lading, that contract (i.e. the charter) shall remain unaltered"*.[397] Consequently, if the charterer does not comply with it, he will incur the liability for breaching their agreement.[398] The same applies when the relevant clause requires the

[392] See Chapter II, at p. 21.
[393] *Supra*, fn. 381, in Voyage Charters, p. 3.
[394] Gorton, Hillenius and others, Shipbroking and chartering practice, (6th edn., Informa 2004), p. 253.
[395] See, respectively, Gencon 1994 Clause 10 Lines 159-163, BPVoy 4 Clause 30 (1)(1), Exxonvoy 90 Clause 27 (a) Lines 505-508, LNGVoy Clause 27 Lines 379-382, Tankervoy 87 Clause 31, Shellvoy 6 Clause 3 (2), Gencon 1976 Clause 9.
[396] *Turner and Another v. Haji Goolam Mahomed Azam* [1904] A.C. 826 per Lord Lindley at p. 837 (Privy Council), as it was confirmed in *President of India v. Metcalfe Shipping Co. Ltd ("The Dunelmia")* [1969] 2 Lloyd's Rep. 476 (CA) ,p. 481.
[397] *Hansen v. Harrold Brothers* [1894] 1 Q.B. 612, per Lord Esher M.R. at p. 619, as it was confirmed in *ibid*, "*The Dunelmia"* [1969] 2 Lloyd's Rep. 476 (CA), p. 481.
[398] *Cathiship S.A. v. Allanasons Ltd ("The Catherine Hellen")* [1998] 2 Lloyd's Rep. 511 (QB), p. 517.

charterer to sign bills with a specific form or terms,[399] or when it is stated that charter terms '*shall be incorporated or be deemed incorporated by the reference in any such bill of lading'*, but the charterer acts otherwise, as it happened in case of "*The Garbis*".[400] Here, it was held that the charterer was entitled to incorporate into the bill only terms that were consistent with the charter, while if master's compliance to charterer's order resulted in shipowner's greater liability, "*the charterer had to make good any expense suffered by the shipowner in consequence".*[401] The nature of this liability, therefore, emanates either from "*charterer's obligation to indemnify the owner against the consequences of the master acting at his request, or from his breach of contract*".[402] The shipowner's recourse right against the charterer can furthermore arise as damages for breach of a collateral warranty when inaccurate facts are presented in the bill by him,[403] or even in the form of an implied indemnity for complying with charterer's orders subject to the conditions described in the previous chapter.[404] It should be noted, though, that a right for indemnity will not be very frequently implied in voyage charters, as charterer's rights are more limited and most charterer's orders are for the vessel to do what the owners have already agreed she will do.[405]

Regarding the scope of damages that a charterer has to provide to shipowners, it remains the same either his liability arose due to a contractual breach, or an express or implied indemnity, provided that the master was entitled to sign such bills, as it was argued in "*The Eurus*".[406] However, a claim for damages is enforceable only when the loss is foreseeable, subject to the principle of remoteness. Whereas a claim for indemnity is valid if there is no break in the causal link between the loss and the signing of the bill, even if the loss was not within the parties' reasonable contemplation.[407] In addition, yet rarely, the charterer might

[399] *Paros Shipping Corporation v. Nafta (GB) Ltd ("The Paros")* [1987] 2 Lloyd's Rep. 269, at p. 274-275 (QB); *Garbis Maritime Corporation v. Philippine National Oil Co. ("The Garbis")* [1982] 2 Lloyd's Law Rep. 283 (QB), p. 288.
[400] *Ibid*, *The Garbis*.
[401] *Ibid*, p. 287-288.
[402] *Ibid*, p. 288.
[403] *Dawson Line Ltd. v. Aktiengesellschaft ''Adler'' Fuer Chemische Industrie* [1931] 41 Ll.L. Rep. 75 (CA), p. 78 per Scrutton referring to charterer's liability in case of *Kruger & Co. Ltd. v. Moel Tryvan Ship Company* [1907] A.C. 272; *Naviera Mogor S.A. v. Société Metalurgique De Normandie ("The Nogar Marin'')* [1988]1 Lloyd's Rep. 412 (CA), per Staughton p. 460.
[404] *Telfair Shipping Corporation v. Inersea Carriers S.A ("The Caroline P") (No.2)* [1984] 2 Lloyd's Rep. 466, at p. 476 (QB).
[405] *The George C Lemos* [1991] 2 Lloyd's Rep. 107; *Aegean Sea Traders Corporation v. Repsol Petroleo S.A. And Another* ("*The Aegean Sea'')* [1998] 2 Lloyd's Rep 39 (QB), p. 68.
[406] *Total Transport Corporation v. Arcadia Petroleum Ltd. ("The Eurus")* [1998] 1 Lloyd's Rep. 351 (CA).
[407] *Ibid*, p. 360-361 and 357.

encounter tortious liability, if the bill holder decides to turn directly against him claiming recovery for the losses suffered under the bill due to the former's orders.

The same rules apply between disponent owners and sub-charterers respectively. It is noteworthy, though, that the shipowner might be bound by bills signed by sub-charterers, although he would not be bound by them, if they were initially signed by the disponent owner/charterer, instead.[408] In the latter case, it follows that if the liabilities arising are generally increasing his exposure, then he can claim damages only under the head-charter, as he does not appear as a named party under the sub-charter, whilst the disponent owner, in his turn, may claim the amount back from the sub-charterer on the same basis.

D) Orders related to the nature of the loaded cargo

The cargo carried aboard may frequently constitute the cause of disputes between the parties, considering the wide spectrum of liabilities emanating from its potentially dangerous nature. For that reason, it would be expected that most charters would make express reference to it. However, unlike time charters, which invariably contain an express clause about the conditions of the loading of dangerous cargo,[409] voyage charters in their great majority are silent[410] and so, any liability will depend upon the terms of each charter. It could be argued that the rationale behind this practice is found in the role of the voyage charter itself as a contract of carriage of specific goods between designated places. This means to some extent that the shipowner is aware of the cargo's nature before the charter is concluded, so he is not caught by surprise when relevant liabilities arise. As a result, it is supported that problems related to dangerous cargo are more typical in time, rather than in voyage charters.[411]

Although this effect might limit voyage charterer's liability for loading dangerous cargo, it does not eradicate it completely, as parties can always agree otherwise by including a provision which imposes on charterers an express obligation similar to those found in time charters. Besides, even if no such clause is included into the charter, charterers can still remain impliedly liable for loading dangerous cargo on the grounds of common law principles.

[408] S. 3(3) COGSA 1992; R. Glenn Bauer, "Responsibilities of owner and charterer to third parties-consequences under time and voyage charters'' (1974-1975) 49 Tul.L.Rev. 995, p. 996.
[409] See Chapter II, at p.23.
[410] With the exception of Heavycon 2007 (clause 18). This is justified on the basis that this form refers to the super heavy lift market where cargoes are almost exclusively carried on deck. So, as they include already an element of dangerousness in their nature, further clarifications are required as to what it should not be carried on board.
[411] Gorton, Hillenius and others, Shipbroking and chartering practice, (7th edn., Informa 2009), p. 113.

Alternatively, the charter may contain either such words as to deem the charterer to be treated as cargo shipper,[412] or most likely include a Clause Paramount applying the Hague or Hague-Visby Rules,[413] under which the absolute duty not to load dangerous goods will be imposed.[414] As a result, whatever has been mentioned so far under time charters with regards the scope of the term "dangerous" or "lawful merchandise" as well as the charterer's liability under all the above regimes is followed accordingly in case of voyage charters too.[415]

In addition to the charterer's aforesaid absolute duty, the law usually implies another absolute obligation for him, particularly when he is acting as shipper.[416] According to this obligation, the charterer should not load dangerous cargo before first notifying the shipowner for his action and providing sufficient information, so that an ordinary and skilful carrier would be able to appreciate the nature of the risks involved in the carriage.[417] But even if the charterer is not the shipper, it could be argued that his liability can also arise in tort on the grounds that any person behind the shipper who is aware of the specific dangers, but loads the goods without notice, should compensate the shipowner for any losses suffered.[418]

The extent of damages covered due to the above duties' breaches depends on the applicable each time regime. When common law applies, the damages include losses arising either due to the physical or even legal dangerousness of the cargo. Whereas, when the Hague or Hague-Visby Rules apply, they cover solely personal injuries or property damages resulting from the physically dangerous cargo. Generally, as in time charters,[419] they cover damages to the hull of the ship or other cargo carried aboard, stevedores' injuries, repair costs as well as damages for detention for the delay caused whist waiting at the port of repair, or until the seized cargo is released,[420] calculated on the demurrage rate. However, in case of a tort claim against the charterer, shipowner's compensation will be limited only to the physical damages and

[412] D. Rhidian Thomas (ed.), The evolving law and practice of voyage charterparties,(Informa 2009), p.131.
[413] Art. IV Rule 6 of Hague and Hague-Visby Rules.
[414] Johan Schelin (ed.), IX Hässelby Colloquium 2001 – Modern law of charterparties, (9th edn., Axel Ax:son Johnson Institute of Maritime and Transport Law, University of Stockholm 2003), p. 57.
[415] See Chapter II, at p. 24-25.
[416] As, for example, in *Atlantic Oil Carriers v. British Petroleum Company Ltd ("The Atlantic Duchess'')* [1957] 2 Lloyd's Rep. 55 (QB), where the charterer was also the shipper of the goods in question.
[417] *Brass v. Maitland* (1856) 6 E.& B. 470. *"The Athanasia Comninos'' and "George Chr. Lemos''* [1990] 1 Lloyd's Rep. 277, p. 291 (QB).
[418] *The Fiona* [1994] 2 Lloyd's Rep. 506, per Lord Justice Hoffman at p. 521-522 (CA).
[419] See Chapter II, p. 26.
[420] See, for example, *Sucden Middle-East v. Yagci Denizcilik Ve Ticaret Ltd Sirketi (The MV 'Muammer Yagci')* [2018] EWHC 3873 (Comm) where the cargo was seized by the Authorities due to the submission of false documents to local customs Authorities related to the cargo and shipowners claimed that the delay and any extra costs caused should have been borne by the charterer.

personal injuries, whereas pure financial losses such as losses from the use of the ship will be excluded.[421]

Overall, the concept of legally dangerous cargo constitutes a very likely way through which the shipowner might attempt to hold charterers responsible for any cargo damage or delay. That fact combined with the absolute character of charterer's liability expands his liability exposure. However, unlike time charters, where it was supported that charterers usually cannot ascertain the nature of cargo carried and therefore, such liability might be quite burdensome for them, the same does not apply in voyage charterer's case. This is because voyage charterers usually own the carried cargo or are its shippers. Consequently, their increased liability is fully understood, as no one else could know better than them the risks that their cargo entails.

2.1.2 Liability arising from cargo operations

It is trite law that the carriage of goods under a voyage charter is mainly divided into four phases within which the parties' responsibilities are equally distributed. Thus, the charterer usually undertakes the responsibility for bringing the agreed cargo alongside the port of loading and receiving it thereafter at the port of discharge,[422] whereas the ballast and laden voyage are being carried by the shipowner.[423] Respectively, any delay incurred as a result of these operations will lie on the party responsible for this operation. For that reason, it is justified why the charterer is interested in the ship's prompt arrival at port, as any excess in respect of the laytime agreed will make him liable to the shipowner for demurrage or detention damages.

With regards the liability for cargo operations such as loading, stowing and discharging the cargo, the general rule provides, similarly to time charters, that unless otherwise agreed, the loading and discharging of goods under a voyage charter is executed by the shipowner and

[421] As in *"The Giannis NK"* [1998] 1 Lloyd's Rep. 337 (HL).
[422] *Harris v. Best, Ryley & Co.* (1892) 68 LT 76, p. 77. See also *Classic Maritime Inc v. Limbungan Makmur SDN Bhd and Another* [2019] EWCA Civ 1102 where although the main question was in relation to the supply of cargo under a contract of affreightment, the Court of Appeal confirmed the decision held in *The Nikmary* [2004] 1 Lloyd's Law Rep. 55 regarding the charterer's absolute duty to supply the cargo on board.
[423] *Ibid*, where it was stated by Lord Esher MR that "*loading is a joint act of … the charterer and of the ship-owner… The (charterer) has to bring the cargo alongside so as to enable the shipowner to load the ship within the time stipulated by the charterparty, and to lift that cargo to the rail of the ship. …The stowage of the cargo is the sole act of the shipowner".* The same was also supported in the older cases of *Argonaut Navigation Co Ltd v. Ministry of Food ("The SS Argobec")* [1949] 1 KB 572 (CA) and in *Pyrene Co. Ltd v. Scindia Navigation Co Ltd*. [1954] 2 QB 402.

his servants at his own expense and risk.[424] The same allocation applies also when liner or gross terms are elected by the parties to regulate their cargo operations under the charter, according to which the charterer has merely the duty to provide the cargo and place it alongside the vessel, notwithstanding that the wording of the clause does not indicate clearly such conclusion.[425] However, in practice this happens very rarely, because the parties often introduce clauses which place the liability and cost arising from such operations either wholly to the charterer, or allocate them in a balanced way between both parties.

The latter is usually adopted under the majority of the standard charter forms used in tanker trade and provides customarily that *"the cargo shall be pumped into the vessel at the expense and risk of charterer and pumped out of the vessel at the expense and risk of owners*".[426] Alternatively, the parties can allocate the cargo operations' duties by inserting express clauses into the charter "*placing responsibility upon the party which performs the relevant operation, (according to) the common sense''*.[427] On the other hand, other charters, used mostly in bulk trade, include the so called F.I.O (free in and out), F.I.O.S (free in and out, stowed) or F.I.O.S.T (free in and out, stowed and trimmed) clauses, according to which the charterer is responsible for the whole loading and discharging operations and respectively for "*any risk, liability and expense whatsoever*"[428] arising throughout the aforementioned operations.[429] These terms are often preferred for the benefit of both parties' interests when it is believed that either the charterer has better connections at the relevant ports so, he can perform these operations at a lower price, or because he is experienced in dealing with them in relation also to the particular type of cargo.[430] However, mere incorporation of those terms into the charter does not suffice in order for the whole responsibility of cargo operations to be transferred to the charterer. On

[424] *Blandy Brothers & Co. LDA v. Nello Simoni Ltd* [1963] 2 Lloyd's Rep. 393, p. 402 and 404 (CA).
[425] See for example, Gencon 76 Clause 5(a).
[426] BPVoy 4 Clause 19(2) Lines 641-643. Similar wording is also used in Asbatankvoy 1977 Clause 10, LNGVoy Clause 12, Shellvoy 6 Clause 7 and Tankervoy 87 Clause 11 as well as in Heavycon 2007 Clause 4(c) for the carriage of heavy cargo.
[427] See, for example, *"The Visurgis''* [1999] 1 Lloyd's Rep. 218, p. 223 (QB) where the parties have expressly agreed that the shipowner will be only liable for losses that arise from improper or negligent stowage, whereas any other loss whatsoever should be borne by the charterer (Clause 2).
[428] See respectively, Gencon 76 Clause 5(b), Gencon 94 Clause 5(a) and Graincon Clause 10.
[429] *Government of Ceylon v. Chandris* [1965] 2 Lloyd's Rep. 204, p. 213 (QB) where the charter was under Gencon form, yet the parties have included a clause providing the *"cargo to be loaded, stowed and discharged free of expense to the owner*" which eliminated, respectively, his stowage liability that the printed form included. See also, *Blandy Brothers & Co LDA v. Nello Simoni Ltd* [1963] 2 Lloyd's Rep. 393, p. 401-402 and 405 (CA); *SA Sucre Export v. Northern River Shipping Ltd (''The Sormovskiy 3068'')* [1994] 2 Lloyd's Rep. 266, p. 281 (QB).
[430] *Supra*, fn. 412, p. 60.

the contrary, clear words are required[431] indicating respectively parties' objective intention.[432] Otherwise, the shipowner will remain responsible for these operations, whereas the charterer will undertake only the costs of them,[433] as it is also implied by the clause's word "*free*" (i.e at no cost).[434]

As a consequence, when the charterer is responsible for completing either the cargo operations[435] or part of them,[436] the principles governing charterer's liability will not differ substantially from those applying under a time charter, as described in the *"Canadian Transport Co. v. Court Line"*.[437] Therefore, in a nutshell, the charterer remains directly liable towards the shipowner on the basis of breach of contract for any damages caused to his ship,[438] or to other property damage as well as for personal injuries, or even pollution and wreck removal when caused during the cargo operations due to improper stowage[439] under the supervision of the master, and the shipowner has already indemnified the parties suffered the loss. Similarly, if damage is caused to the cargo on board under owner's bill and the charterer is found *prima facie* liable for bad stowage, it follows that the shipowner is entitled to claim indemnity from the charterer for any sums paid to the bill holders/cargo owners on the basis that justice requires an indemnity right to arise "*when one person does an act and thereby incurs liability at the request of another, who is then held liable to indemnify*".[440] Yet, if the charterer is also the cargo owner, he cannot claim damages for the cargo lost, as he should not benefit from his own wrong.[441] Simultaneously, if there is a delay arising from these operations,

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[431] Sometimes, similar wording is being used by the parties resulting in the same interpretation. See, for example, the Graincon Clause 10 Line 119, where cargo operations are performed "*free of risk and expense to the Vessel".*
[432] *Jindal Iron & Steel Co Ltd v. Islamic Solidarity Shipping Company Jordan Inc. ("The Jordan II")* [2003] 2 Lloyd's Rep. 87, per Tuckey LJ at p. 103-104.
[433] See, for example, Clause 3 of Stemmor charterparty.
[434] *The Jordan II, supra, fn. 431,* per Tuckey LJ at p.103. Same view was also followed by Waller LJ and Black J at p. 106. See also, *S.G. Embiricos Ltd. v. Tradax International S.A ("The Azuero'')* [1967] 1 Lloyd's Rep. 464 (QB) where the relevant typed clause in the charterparty provided that *"discharge to be free of expense to the vessel''*.
[435] Meaning "*all the sequential operations required to put the cargo safely on board ready for safe sea transport, craning the goods onto the ship, positioning them (...) and then securing them in position by lashing, dunnaging any other steps required".* See, for example, the case of *"The Azuero'', ibid,* where the charterers were found liable for the damage incurred to the cargo as being part of the general cost of opening and closing the hatches of the vessel when discharging, for which they were liable under the charterparty.
[436] *Supra*, fn. 427, "*The Visurgis'',* p. 223.
[437] *Court Line v. Canadian Transport* [1940] 67 Ll.L.Rep. 161 (HL).
[438] See, for example, *London Arbitration 8/93* L.M.L.N. 354, where charterers were held liable for the vessel's damaged gear resulting from stevedores' negligence.
[439] *C.H.Z "Rolimpex" v. Eftavrysses Compania Naviera SA ("The Panaghia Tinnou")* [1986] 2 Lloyd's Rep. 586 (QB) where the charterer was held liable for the cargo damage, because notwithstanding that he was aware of the particularities of the cargo, he did not show reasonable care and skill while stowing the cargo.
[440] *Ibid* per Wright LJ at p. 943-944.
[441] *Total Transport Corporation v. Amoco Trading Co. ("The Atlus")* [1985] 1 Lloyd's Rep. 423 per Webster J at p. 436. (QB).

the charterer will be also liable to the shipowner for demurrage or detention damages, since he undertakes the responsibility to complete loading and discharging within the laytime period. Furthermore, when oil or LNG cargoes are carried on board, the charterer might be liable for any expenses arising from vessel's arrest or detention, if, due to his lack of care, the loading operations resulted in a change of cargo's substance, making it unfit for the ultimate receiver which, in its turn, brought a cargo claim against the shipowner who is now claiming it back from the charterer.[442]

Conversely, the liability for these operations returns to the shipowner when the parties agree that cargo operations will be performed "*under the supervision and responsibility of the master*",[443] or when the loss or delay is caused due to master's fault or intervention in the cargo operations for which the charterer is normally responsible.[444] Respectively, charterer's liability is exonerated in cases that damages are caused to the cargo on board due to the vessel's unseaworthiness attributed to an act or omission of the owner, despite the faulty stowage, as the shipowner remains liable for such matters.[445] However, it has to be proved that the faulty stowage did not affect the unseaworthiness of the vessel,[446] otherwise the principles of "*The Imvros*"[447] as mentioned under the previous chapter will apply here as well. The position is slightly different, though, when F.I.O.S or F.I.O.S.T terms are included in the charter, as they are silent about unseaworthiness. Consequently, if the bad stowage affects the vessel's seaworthy condition and the cargo loss or damage arises as a result of that, the apportionment of liability between the owner and charterer will be regulated according to the construction of F.I.O.S.(T) clause in combination with the charter clauses.[448] This means that if the parties want to transfer also the seaworthiness liability related to cargo operations to the charterer, clear and unequivocal words should be included in the F.I.O.S.(T) clause to that effect, as the definition of such clauses *per se* do not suffice for that result.[449]

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[442] Valentins Abasins and Max Korndoerfer, *Liability in time and voyage charterparty''*, <http://www.beo-pandi.com/assets/documents/pdfs/actual-circulars/2013-17-Liability-in-Time-and-Voyage.pdf>, accessed 12 March 2020, p. 3-4.
[443] See, for example, *The Argonaut* [1985] 2 Lloyd's Rep. 216.
[444] *''The Imvros''* [1999] 1 Lloyd's Rep. 848 (QB).
[445] Anthony N. Zock, "Charterparties in relation to cargo'' (1970-1971) 45 Tul.L.Rev, p.751.
[446] See, for example, *Northern Shipping Co. v. Deutsche Seereederei G.m.b.H And Others ('The Kapitan Sakharov')* [2000] 2 Lloyd's Rep. 255 (CA), or *Compania Sud American Vapores v. MS ER Hamburg Schiffahrtsgesellschaft MBH & Co* [2006] EWHC 483 (Comm);[2006] 2 Lloyd's Rep. 66.
[447] *Supra*, fn. 444.
[448] *Supra*, fn. 412, p. 68.
[449] *Ibid*, p. 71.

With regards the loading of deck cargo, there are some standard voyage charter forms that contain the same wording as in time charters, imposing absolute liability on the charterer for the cargo loss or damage carried on deck "*whatsoever*" or "*howsoever*" caused.[450] But, there are also others which merely state that "*if shipment of deck cargo agreed same to be at the charterer's risk and responsibility"*.[451] Since that wording creates some uncertainty in respect of the exact extent of charterer's liability, it seems that the "risk" in such clause refers initially to loss or damage caused to the cargo itself.[452] However, charterers may always be found liable for the latter as well, either in damages on the basis of breach of contract for negligent loading or discharging, or through the use of language to that effect.[453]

If the cargo is damaged or lost during its transportation, the charterer might also encounter liability directly towards the cargo owner, albeit very unlikely, either on a contractual basis when he is also considered the "*carrier*" of the goods under the bill of lading, or on a tortious basis when the cargo owner elects to turn directly against him for compensation so long as his cargo was lost or damaged due to charterer's fault during the cargo operations.[454] In the latter case in order for such claim to succeed, the conditions of tortious principles as mentioned in the previous chapter need to apply here as well.[455] However, in practice, cargo owners choose usually to turn directly against charterers when the shipowner is insolvent or the security assets that he has are of less value than their actual cargo losses.[456]

As mentioned in the case of time charters, cargo operations are almost invariably performed by stevedores, without the direct involvement of the charterer.[457] As a result, the standard voyage charter forms provide different ways through which stevedores' liability for damage to the ship, cargo or other property during cargo operations is allocated between the parties. Thus, similarly to time charters, the first option that parties have is to choose the charterer merely to appoint and pay for stevedores and the owner to remain liable for their

[450] Heavycon 2007 Clause 25(b)(ii).
[451] Gencon 1976 Clause 1 Lines 10-11 and Gencon 1994 Clause 1 Lines10-11.
[452] See, for example, in *L.D Seals v. Mitsui OSK Lines ("The Darya Tara")* [1997] 1 Lloyd's Rep. 42 (QB), in which similar wording was included in respect of deck cargo (ie "at charterer's risk *and expense*") and the Court held that charterer was not liable to the owner for damage to his vessel, or for general expenses incurred by the owner for the purposes of deck cargo carriage.
[453] *The Visurgis* [1999] 1 Lloyd's Rep. 218 (QB) where the charter provision stated expressly that "*Deck cargo will be shipped at charterer's risk and expense".*
[454] *Balli Trading Ltd. v. Afalona Shipping Co. Ltd ("The Coral'')* [1993] 1 Lloyd's Rep. 1 (CA).
[455] See Chapter II, at p. 29-30.
[456] *Supra*, fn. 442, p. 3.
[457] See, Chapter II at p. 28.

actions as their agent.[458] Here, albeit the charterer does not employ the stevedores himself, he still has an implied duty towards shipowner to ensure that competent[459] stevedores are appointed. Otherwise he will be in breach and have to indemnify the owner for any losses suffered.[460] The parties can also choose that stevedores will operate as charterer's servants, yet '*under the supervision of the master'*.[461] In the latter case, similarly to the interpretation of the relevant wording for ascertaining the liability for cargo operations, such supervision is not enough to shift the responsibility to the shipowner. Therefore, the charterer will be liable for them subject to the defences mentioned earlier.[462] When the charter does not expressly regulate on this matter, such as the standard voyage charter forms for oil cargoes, it follows that liability for stevedores will lie on the party responsible for loading and discharging operations either under the general law or the charter clauses.[463] Consequently, if F.I.O or F.I.O.S.(T) terms are included in the charter, charterers will assume responsibility for stevedores' damages as well,[464] if it is proved that the damage resulted from these operations. Proving this, however, can be complex sometimes, especially when the damage is found long time after the voyage. So, the charterer may be able to escape liability due to the lack of proof of link between the damage in question and the cargo operations. Last but not least, it is also frequent for the charters to leave the matter for adjustment between the owner and stevedore.[465] However, this clause alone is not enough to exonerate charterer's obligation to compensate shipowners, when the former undertakes the cargo operations under the charter and a stevedore damage occurs.[466] Conversely, express words should be used making clear that charterer's liability in that case

[458] See, for example, Graincon Clause 11 or Norgrain 1989 Clause 11.Mere payment of stevedores by the charterer does not imply charterer's liability for their actions as well. See *Societe de toutes merchandises en cote d'Ivoire, trading as ''SDTM-CI'' and others v. Continental Lines NV and Another (The 'Sea Miror')* [2015] EWHC 1747 (Comm) at para. 41.

[459] "*Incompetence involves a conclusion that there was a consistent course of conduct falling below what would be regarded as satisfactory in all the circumstances''* as it was stated in *London Arbitration 18/13* L.M.L.N. (17 Dec 2013), p. 2.

[460] *The Sinoe* [1972] 1 Lloyd's Law Rep. 201 (CA); *The Clipper Sao Luis* [2000] 1 Lloyd's Rep. 645, p.649; *London Arbitration 18/13* L.M.L.N (17 Dec. 2013).

[461] See, for example, Ferticon 2007 Clause 5(c) Lines 106-107, Gencon 94 Clause 5(b) Lines 73-75.

[462] *Brys & Gylsen v. Drysdale* (1920) 4 Ll.L.Rep. 24; *Filikos v. Shipmair* [1983] 1 Lloyd's Rep. 9.

[463] See, for example, *The Azuero* [1967] 1 Lloyd's Rep. 464 (QB) where the damage was caused by the labour employed by the charterers during an operation (ie. opening and closing the hatches) for which the charterers were found liable by the Court under the charter-party clauses..

[464] See, for example, Gencon 76 Clause 2 Lines 25-26 in combination with Clause 5 which makes the owner liable for "*improper or negligent stowage''* so long as the stowage was not done by "*shippers or their stevedores''*.

[465] See, for example, Amwelsh 1993 Clause 19 (a).

[466] *A Meredith Jones & Co. Ltd v. Vangemar Shipping Co Ltd ("The Apostolis (No.2)'')* [2000] 2 Lloyd's Rep. 337 (CA) at p. 347-348 by analogy.

will be excluded.[467] Nonetheless, such provisions are not widely used in practice, because they place the shipowner in the rather difficult position to prove not only stevedore's negligence, but also the extent of the damage suffered, if they decide to turn later against the charterer.[468]

For that reason as well as for the sake of clarity, the parties sometimes agree on the inclusion of express wording such as the one provided under BIMCO's Stevedore Damage Clause for FIO Voyage Charter Parties 2008 with which the expense of repairs and any loss of time incurred as a result of stevedores' actions will be borne by the charterer.[469] It is noteworthy that the Clause additionally provides that charterer's liability for stevedore damage is subject to the fact that the shipowner reports the damage '*as soon as reasonably possible'*,[470] contrary to the clause's time charter version which requires notice only within twenty four hours of occurrence. The same approach is also followed under clause 5 (c) of Gencon 1994 and it is supported that it is undoubtedly justified, sensible and balanced considering both parties' interests. From one hand, it protects the charterer by preventing the shipowner from charging him for damage caused by subsequent voyages or incidents, as it would be unreasonable to hold charterers liable for an indefinite period of time. On the other hand, it secures the shipowners' interests by imposing on them a 'due diligence' duty to notify the charterer, as it would be unreasonable to expect them to do more than exercising mere diligence in the discovery of such damage.[471] Notwithstanding the similarities between BIMCO's clause and clause 5(c) of Gencon 94, it needs to be highlighted that there is a substantial difference as regards the type of charterer's liability in such cases. Thus, although under BIMCO's clause, as mentioned, the charterer is liable, among others, for the cost of repair of the damage caused, under clause 5(c) Gencon 94, he is obliged to repair the damage himself instead. However, it is very unlikely for the owner to consent on that, as traditionally he prefers to carry out the repairs on his own and seek compensation for the expenses thereafter against the charterer, unless his solvency is questionable.

In sum, it is believed that in practice, under most voyage charters, the charterer will be found liable for cargo operations as well as for stevedore's negligence, whereas shipowner's

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[467] *Ibid*. When, for instance, in Amwelsh 1993, the Clause 19(b) is deleted by the parties which provides optionally that the shipowner can claim indemnity from the charterer for stevedoring damage which remained unpaid by stevedores, because his claim against them was unsuccessful.
[468] Harvey Williams, Chartering documents, (4th edn., LLP 1999), p. 7.
[469] Sub-clause (a). See respectively, "Explanatory notes of BIMCO's Stevedore Damage Clause for FIO voyage charter parties 2008", < https://www.bimco.org/contracts-and-clauses/bimco-clauses/stevedore_damage_clause_for_fio_voyage_charter_parties_2008>, accessed 12 March 2020.
[470] Sub-clause (b).
[471] *The Dimitris L (No.2)'')* [2012] EWHC 2339 (Comm.).

liability will be limited to the some exceptional circumstances, as in time charters. Therefore, it is expected that traditionally charterer's liability will be contractual, arising either from his breach of contract, or from shipowner's recourse right against him based on the respective distribution of liability under the charter.[472] However, charterer's tortious liability is not excluded and can arise when third parties elect to turn directly against him for damages suffered to their property. In this case the same principles mentioned in time charters will apply and for the same reasons it is respectively believed that they will rarely occur under voyage charters as well.[473]

2.1.3 The charterer's most common expenses

It is common place that the performance of the voyage agreed under the charter requires some expenses to be covered by the involved parties which are distributed between them based on the contractual responsibilities the latter have undertaken. Although these costs' allocation seems straightforward, there are times that it leads to disputes between the parties concerning the expenses' payment. These, in their turn, result either in contractual or third-party liabilities against the charterer.

Under the most standard voyage charter forms (as opposed to time charters), there is no express provision dealing with the expenses that a voyage charterer should customarily provide and pay for. Hence, the relevant obligation emanates from various provisions scattered across the charter. However, the general idea lying behind the costs' allocation, in line also with the commercial practice, is that shipowners cover expenses related to the vessel, whereas charterers are responsible for those related to cargo and freight.

More specifically, the voyage charterer first of all pays for harbour dues which fall solely upon the cargo and are calculated based on its quantity carried aboard and its particular type.[474] This obligation applies also in cases that port authorities demand payment by the owner who will be able to recover thereafter the costs from the charterer on the basis of their charterparty agreement.[475] Further, it is usually stated that voyage charterers are responsible for any

[472] *Ibid*, p. 31.
[473] See Chapter II, at p. 29-30.
[474] For example, Shellvoy 6 Clause 6(1), Graincon Clause 25(b), Gencon 94 Clause 13 (b) and Asbatankvoy 77 Clause 12.
[475] Gorton, Hillenius and others, Shipbroking and chartering practice, (7th edn., Informa 2009), p. 247.

'charges for the use of any wharf, dock, place, or mooring facility arranged by (him) for the purposes of loading and discharging the cargo'.[476]

The charterer pays also for all taxes levied upon freight at loading or discharging ports by the tax system of most countries.[477] Yet the identification of freight taxes can be complicated causing disputes between the parties. That happened, for example, in the case of "*Gunda Brovig*"[478] where the Iraqi authorities to whose port the vessel was sailing, imposed an 'income tax' on vessels and the issue of whether this should constitute a freight tax paid by the charterer or not was examined. The Court of Appeal after ascertaining the nature of the tax in question, held that it was a freight tax. The justification for this conclusion was given by Lord Denning and Eveleigh LJ who supported that in order to identify whether a tax is a freight or profit tax, '*the substance of the matter'* should be looked,[479] according to which '*the charterers knew that they were undertaking to pay the taxes which the vessel attracted in relation to the service of transporting goods (i.e the freight)*', irrespective of how port authorities decide to call this, or other earnings of the shipowner. Given the frequency that tax laws change, the standard charter provisions used in practice are effectively dealing with taxes' payment by preferring using general phrases including simultaneously any further freight taxes imposed in the future.[480] Where the vessel is involved in a chain of charters, the charter's tax payment provisions will impose liability on the charterer only in respect of taxes payable on freight by the owner with whom he is in an immediate contractual relationship. On the contrary, they will exclude liability for taxes paid by some third party (i.e. the disponent owner), as "*imposing on the ultimate charterer the risk of having to bear the entirety of any imposition of tax all the way up the chain (would be) a very heavy burden''*.[481]

In addition, considering that invariably the voyage charterer performs the loading and discharging operations under the pressure of laytime period, it follows that if he wishes these operations to proceed faster, any expenses incurred for overtime work should be carried by

[476] Asbatankvoy 1977 Clause 12.
[477] For example, LNGVoy Clause 25(b), Heavycon 2007 Clause 6, Graincon Clause 25(b), Gencon 94 Clause 13(c), Asbatankvoy 1977 Clause 12.
[478] *A/S Brovigtank and I/S Brovig v. Transcredit and Oil Tradeanstalt ("The Gunda Brovig'')* [1982] 2 Lloyd's Rep. 39 (CA).
[479] *Ibid*, p. 41 col. 1 and 2.
[480] See for example, the Asbatankvoy 1977 form Clause 12 where it is stated that "*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''*.
[481] *The Dimitris L* [2012] EWHC 2339 (Comm); [2012] 2 Lloyd's Rep. 354, p. 362 para. 38.

him[482] on the grounds that the party demanding such work should bear respectively the relevant costs.[483] While, the use of any equipment during cargo operations such as elevators, cranes, winches[484] or tugs[485] is again covered by the charterer, if he is responsible for loading, stowing and discharging under the charter.[486]

The same also applies for any marine surveyors' services provided as well as for any expenses paid "*referring to the production of documentation related to the cargo and/or charterer's equipment"*.[487] Particularly in respect of documentation, invariably the charter forms nowadays incorporate BIMCO's ISPS/MTSA Clause for Voyage Charterparties 2005, according to which charterers shall provide the owners or master with full details any information required by the owners to comply with the aforesaid safety Codes. Any delay caused due to charterer's failure to provide such information should be carried by him.[488] A voyage charterer further pays for fumigation[489] and cleaning of tanks at the discharge port.[490]

Last, under the majority of charter forms, the voyage charterer should cover any '*charges whatsoever levied or based on cargo and/or freight'*.[491] To the extent that in voyage charters there is no provision dealing expressly with stowaways' expenses, unlike time charters, it could be argued that the former can fall under the scope of the aforesaid phrase, so long as stowaways gained access to the vessel during cargo operations for which the charterer was responsible, if the principle followed in time charters is applied by analogy.[492]

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[482] *Wye Shipping Co Ltd v. Compagnie du Chemin de Fer Paris-Orleans* [1922] 1 Lloyd's Rep. 386, p. 389 (KB) where it was held that stewards and cooks could be considered as crew members, since they are under the command of the master and in the service of the ship-owner; therefore the charterer was liable for their overtime wages.

[483] For example, see Graincon Clause 13(a), LNGVoy Clause 13(b)(i), Shellvoy 6 Clause 12(1).

[484] *Hang Fung Shipping Co v. Mullion* [1966] 1 Lloyd's Rep. 511, p. 524 (QB).

[485] Heavycon 2007 Clause 4(c).

[486] *Transoceanica v. Shipton* [1923] 1 K.B. 31 where it was recognized the ship-owner's recourse right against the charterer for the extra payments he made in relation to shore operations.

[487] For example, Heavycon 2007 Clause 11(d) and (c) respectively.

[488] For example, Heavycon 2007 Clause 36 (b) and (d), LNGVoy Clause 30(b) and (d), Shellvoy 6 Clause 52 (2) and (4).

[489] For example, Graincon Clause 16 and Asbatankvoy 2007 Clause 17(b). See also, *London Arbitration 14/01* L.M.L.N. (07 June 2001) where the same was supported by the shipowner's who claimed compensation for detention and additional damages caused due to cargo's infection by inspects resulting in the vessel's arrest. The tribunal rejected their argument and claim, though, on the basis that this was a dangerous cargo case.

[490] For example, Exxovoy 1990 Clause 14 (b) (vi).

[491] Heavycon 2007 Clause 6 and similarly in Exxonvoy 90 Clause 20 as well as Asbatankvoy 1977 Clause 12.

[492] See Chapter II, at p. 40 -41.

2.2 Liabilities relating to non-operational matters

Following the discussion on charterer's operational liabilities, this part is concentrated on voyage charterer's liabilities that refer to non-operational matters in the sense described in the previous chapter.[493]

2.2.1 Charterer's liability to third parties

It is common place that during the performance of the voyage, various entities are being involved in the completion of the charter's execution either on board or not, in addition to the master and crew. However, inevitably, there is an underlying risk of the vessel's performance getting off track, affecting subsequently these entities and possibly resulting in various consequences such as property damages, personal injuries or even death. It follows then, that these consequences will render necessary the allocation of the relevant liability and the identification of the responsible person from whom compensation will be sought. Therefore, in this part, it is going to be examined whether a voyage charterer might incur such kind of liability and if so, on which basis the latter can be justified.

Beginning with the voyage charterer's type of liability, similarly to time charters, is distinguished between contractual and tortious, with the former creating liability only in cases that the charterer is contractually connected with the person claiming recovery, and with the latter including cases where he was acting negligently, to the detriment of the third party who suffered loss as a result of his conduct. But, since the general principles for the identification of the kind of liability do not differ from those described under time chapters, we will not elaborate further on this issue. Instead, we will proceed to identify the persons contesting voyage charterer's direct liability and the basis of their claim's justification.

As regards the voyage charterer's contractual liability, it can potentially arise between the charterer and various independent contractors at ports, on the basis that their property was damaged during cargo operations due to charterer's faulty use of their equipment which has been agreed to be provided to him. The same liability emanates also from charterer's relation with his stevedores in case they get injured during loading, stowage or discharging operations. Nonetheless, when it comes to agents, the charterer's contractual liability is not always

[493] See Chapter II, at p. 54.

straightforward.[494] The reason is that under voyage charters, invariably agents are either appointed by the shipowner or the charterer, yet they are employed and paid by the shipowner,[495] contrary to what described under time charters. This means that charterer's liability towards agents for personal injury is justified only if the charterer is entitled under the voyage charter to employ his own agents, or when the agents, albeit appointed by the shipowner, got injured during an activity whose performance falls upon the charterer's responsibility sphere, traditionally being the cargo operations.[496] However, the voyage charterer's liability exposure remains the same, as he will be contractually liable to reimburse the shipowner *inter se*, on the basis of an indemnity clause for the damages paid by him to any third parties who might have suffered property losses or injuries caused by a charterer's charter breach when he loaded, for example, dangerous cargo or nominated an unsafe port, or stowed badly the cargo on board of the vessel.

On the other hand, when dealing with charterer's tortious liability, it can include claims for property damage as well as personal injury or death. The former are usually brought against the voyage charterer by harbour authorities when, for example, damages are caused to the harbour following a collision due to charterer's fault. However, similarly to time charterers, considering that voyage charterers' rights do not extend to navigational matters, in combination with the fact that even his right to give employment orders is narrower than in time charters, it is believed that the latter liability is unlikely to occur. Conversely, charterer's liability for personal injury is more frequent in relation to pilots, crew, stevedores, port workers or ship's agents. Yet, such liability is justified only if the charterer is also considered the 'employer' of the injured person. Therefore, voyage charterer's liability will be rarely established in cases of pilots' or crew injuries, because under the voyage charter, owner is customarily responsible for their employment. Whereas, regarding stevedores, port workers and ship's agents, their compensation claims for personal injury against the voyage charterer can succeed only when they were appointed by him and were being employed under his instructions, as mentioned above.

[494] See, for example, the discussion in *Blandy Brothers & Co. LDA v. Nello Simoni Ltd* [1963] 2 Lloyd's Rep. 393, p. 404- 405 (CA), where the liability status of the ship's agents was examined in relation to loading and discharging expenses incurred by them.
[495] See, respectively, Shellvoy 6 Clause 24, LNGVoy Clause 36, Graincon Clause 27, Asbatankvoy 1977 Clause 22, Heavycon 2007 Clause 34, Gencon 94 Clause 14.
[496] To some extent, similar with *Blandy Brothers & Co. LDA v. Nello Simoni Ltd* [1963] 2 Lloyd's Rep. 393 (CA).

In sum, it seems that although voyage charterer's third party liability is considered as a main pillar of charterer's liability exposure, it essentially takes place solely in cases that he is in charge of cargo loading, stowing and discharging operations. But even when he incurs such liability, it will not be as broad as in time charters, because the scope of his employment right is less extensive, as it was established at the beginning of this chapter. Consequently, in terms of third party liability exposure, a voyage charterer is in a more advantageous state than a time charterer.

2.2.2 Liability arising from pollution

With regards the voyage charterer's liability due to pollution, it generally presents the same characteristics as in time charters. Although it is more controlled in the sense that the voyage charterer is exposed to less risks triggering pollution when compared to time charterers, the scope of it remains the same. Therefore, he still remains exposed to expenses for cleaning the polluted area, paying any pollution fines imposed by the Authorities, or compensating any third party whose property is damaged or affected directly as a result of the pollution incident.

Regarding voyage charterer's direct statutory liability, it arises under the same conditions described in the previous chapter,[497] depending upon the applicable regime.[498] Whereas, in respect of his liability towards the shipowner, charterer is obliged to indemnify him for the losses suffered only if the incident of pollution occurred due to charterer's fault, either on the basis of an express indemnity, or indirectly on the basis of a breach of a term included in their charter. The latter can happen, for example, if he gave wrongful employment orders concerning the loaded cargo or nominated ports, or if the pollution resulted from negligent stowage for which he was responsible under the charter, as it usually occurs in tanker trade cases due to the high-risk nature of the carried cargo. However, contrary to time charterers, voyage charterer does not incur any liability whatsoever if the pollution arises from defaulting bunkers, as this obligation lies on shipowners. In respect of voyage charterer's express liability towards the shipowner, it can arise through the inclusion of "hold harmless" clauses into their charter,[499] such as the International Group P&I Clubs Oil Pollution Charter Party clause[500] or the

[497] See in detail Chapter II, in "2.2.2 Liability arising from pollution'', at p. 44.
[498] See for example the form of BPVoy 4 Clause 45(3) Lines 1408-1410 which expressly state that Clause 45 dealing with Oil Pollution Prevention should not prejudice the parties' rights under any International Convention.
[499] See, for example, Heavycon 2007 Clause 24(b).
[500] Richard Williams, "The liability of charterers for marine pollution'' in Soyer B. and Tettenborn A (ed.), *Pollution at sea: law and liability*, (Informa Law from Routledge 2012).

International Group of P&I Clubs Financial Security in respect of pollution clause[501] which require charterers to indemnify owners for any losses or liability incurred due to their failure to comply with the owner's financial security requirements.[502]

Either way, charterer's exposure in case of pollution is pivotal due to the wide spectrum of the consequences that such incident can infer. As a result, it is clear that the bigger the casualty, the greater the expenses and respectively charterer's liability will be. Thus, even if it is argued that the injured parties will primarily purport to blame the owner for their losses because his identity could be easier identified, or the value of the assets he possesses is higher so to secure effectively their claims, voyage charterer's liability remains significant for the same reasons mentioned in the previous chapter.[503] Also, there is the risk of a direct statutory liability arising against the charterer, as happened in '*Commune de Mesquer v. Total France SA',*[504] from which the charterer will not be able to evade.

2.2.3 Liability for the payment of fines

Another obligation that can likely arise on charterer's behalf is the payment of fines imposed by local port or custom authorities which are mostly related to the cargo carried on board. Fines can also arise as a result of charterer's breach of cargo and safety regulations as well as for pollution.

Although, as it was seen, it is common practice for standard time charter forms to include an express provision dealing with this issue, that is not frequent in voyage charters. However, this does not exclude charterer's liability, as charterers can always be found liable under an implied or express indemnity clause, depending on whether the parties have decided to include into the charter a relevant provision based on the principle of freedom of contract. Thus, for example, the most common cases that a voyage charterer might find himself liable for fines is when there is a shortage or over-delivery of cargo, as a consequence of charterer's breach to provide the quantity of cargo agreed.[505] His liability for fine may also arise when the cargo loaded is illegal and unlawful, contravening with the rules and regulations referring to

[501] See for example LNGVoy Clause 29 (b) (ii).
[502] "BIMCO's Special Circular (No.2)" (3 February 2011) available <http://www.green4sea.com/wp-content/uploads/2014/09/pdf/2011.2.3-BIMCO.pdf>, accessed 12 March 2020, p.3.
[503] See Chapter II, at p. 47-48.
[504] *(*Case C-188/07) [2008] 3 C.M.L.R. 16. This case has been analysed in the previous chapter and the same principles apply here as well. For more details, see Chapter II, p. 48-49.
[505] *Supra*, fn. 442.

immigration (e.g stowaways) and smuggling (e.g. drugs), on the grounds of charterer's breach to employ the vessel only for a lawful merchandise. Charterers can further incur direct liability for cargo fines when they constitute simultaneously the carriers under the bill of lading.[506] As mentioned above, voyage charterers might also incur liability for pollution fines when the incident was caused by their fault, such as due to loading of dangerous cargo which exploded and leaked at sea or, due to the nomination of an unsafe port, and the parties have agreed on the application of the oil pollution indemnity clause for penalties and fines of the International Group of P&I Clubs.[507] The latter constitutes in essence a "hold harmless" clause which creates an indemnity right for the owner when he incurs strict liability for oil pollution damage due to an incident for which the charterer was responsible. But even when no such clause is included, charterer's liability can again arise on the basis of the shipowner's recourse right for recovery against him, as it was described earlier.[508]

2.2.4 Liability for salvage and general average contribution

As it was mentioned in the previous chapter, there are times where the master needs to 'sacrifice' part of the cargo on board for the sake of the rest due to various adverse circumstances jeopardising the overall safety of the vessel, crew and cargo. However such an action results in the shipowner's liability (or more correctly, carrier's liability) in damages towards the cargo owners of the lost/sacrificed cargo under the bill of lading. It follows then that in order for the owner to cover the above loss, he will turn against the cargo owners of the remaining rescued cargo and ask for general average contributions, including salvage expenses, amounting to the loss suffered by him. The latter, same as in time charters, is regulated by the York-Antwerp Rules of various years whose application is referred in the majority of standard voyage charter forms.[509]

Therefore, although the principles described in the previous chapter apply equally here as well,[510] in voyage charters, the scope of charterer's liability exposure to such contributions is

[506]Dr. Chao Wu, "What are the key charterers' risks?'' (UK P&I Club, June 2014) <http://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest_Publications/Newsletters/Charterers.pdf >, accessed 12 March 2020, p. 2.
[507] Clause b (ii).
[508] See above, in "2.2.2 Liability arising from pollution''.
[509] For example, Gencon 76 Clause 11 Lines 131-132 which mention that York-Antwerp Rules 1974 apply, contrary to Gencon 94 Clause 12 Lines 179-180, BPVoy 4 Clause 41 Lines 1324-1325, Heavycon 2007 Clause 30 and Graincon Clause 37 Line 401 which state that York-Antwerp Rules 1994 will be applicable.
[510] See Chapter II, in " 2.2.4 Liability for salvage and general average contribution', at p. 49 - 50.

different. Thus, he will be liable for general average expenses only if he is connected to the cargo carried on board by being either its owner, or its carrier (or indorsee) under the bill of the lading.[511] Therefore, as the voyage charterer is often in practice the trader of the cargo carried on board and usually also its owner, it is expected that his liability for general average expenses will be increased compared to time charterers who are only associated to the bunkers carried on board. However, contrary to time charterers, a voyage charterer will have no liability to contribute in respect of any saved bunkers, as their ownership traditionally lies with the shipowner. Similarly applies also in relation to his contribution for another equipment on board. Last, the voyage charterer might incur liability for freight contributions, when the freight is not earned and so, its payment is affected by the quantity of the delivered cargo.[512] But, if the parties have agreed that freight should be prepaid or earned upon the completion of loading, the charterer will incur no further liability.[513]

2.2.5 Liability for legal and defence costs

Albeit charterer's obligations under a voyage charter are more restricted than in time charters,[514] the voyage charterer's risk of exposure to disputes with the owner as well as other parties seems paradoxically higher, if the existing case law is taken into consideration.[515] Subsequently, voyage charterers are endangered to incur significant legal costs or other expenses purporting to defend themselves and escape from liability. These disputes will usually refer to issues related to the commencement of laytime and demurrage as well as to defaults in the payment of the relevant freight or the damages for detention by the charterer, or even to port nomination. In fact, the risk of dispute is even greater when the voyage charterer is also part of a bigger contractual chain, where the vessel is sub-chartered by him and the involved parties are turning against him not only on contractual, but on tortious basis as well. The charterer's liability exposure to such expenses expands further when he is finally found liable for a particular breach or damage and is required to cover all the legal expenses incurred by all

[511] See, for example, the wording used in Gencon 76 Clause 11 and Gencon 94 Clause 12 where it is stated that "*proprietors of cargo (to) pay the cargo's share in the general expense…'',* meaning that the charterer is not rendered liable to contribute unless the cargo is owned by him.
[512] See, for example, Gencon 1994 Clause 4(c), Gencon 76 Clause 4 and Asbataknvoy 1977 Clause 2.
[513] See, for example, Heavycon 2007 Clause 12(a), LNGVoy Clause 20, Graincon Clause 9 and Gencon 94 Clause 4(b).
[514] See the discussion at the beginning of this chapter, at p. 53.
[515] Especially in relation to the calculation of laytime and demurrage under the charter as well as the latter's timely request by the shipowner.

the involved in the dispute parties in defence of their position.[516] Similarly to time charters, these expenses will include legal proceedings' costs or expenditure made for getting a professional legal advice on the issue in question as well as for hiring inspectors to collect relevant evidence.

3. Conclusion

Equally to the purposes of the previous chapter, the examination of charterer's liabilities under voyage charters purported to present thoroughly the overall charterer's risk exposure nowadays under the same. Thus, it is evident that despite voyage charterer's restricted power over the commercial employment of the vessel, his liability exposure remains significant. The charterer's undertaking for the performance of cargo operations, the complexities that port nomination duty creates and the delay that is usually caused as a result of the aforementioned, in relation also to the calculation of laytime and demurrage period place voyage charterers in a constant and money-consuming dispute marathon where their liability is always contested each time by different entities and on a different legal basis. Therefore, despite the differences that both types of charterers might present, they both emanate from the same principles and are justified on the same liability grounds.

[516] See for example, Asbatankvoy 1977 Clause 23.

PART B

IV. CHARTERER'S LIABILITY INSURANCE (CLI): THE CONCEPT, MARKET AND THE PROVIDERS

1. Introduction

It has been established from the precedent analysis that charterers' liabilities as they arise in the contemporary shipping world are as vast as the ocean, creating a significantly wide spectrum of exposure against charterers. As a consequence, charterers find themselves in a position where they seek for a protective mechanism which will be robust enough to safeguard them from the unpredictable perils that every maritime adventure entails. This mechanism is generally known as liability insurance and although its origins date back to 19th century, this concept has been expanded enormously since then and continues to flourish especially in maritime industry, constituting an indispensable piece not only for shipowners', but charterers' businesses as well.

Hence, the focus of this chapter will be on charterers' liability insurance (CLI) concept, as the title indicates. More specifically, it will be examined the general concept of liability insurance and the way it has been developed in the maritime industry, resulting finally in the evolvement of charterer's liability insurance. Also, it will be presented in depth the currently available insurance market for charterers and the rules which is subject to, and the various providers of charterer's liability insurance as they are formed nowadays within the market. This examination will allow us at the end to ascertain whether the extent to which charterers are represented in the insurance world nowadays is satisfactory in terms of protecting their special interests.

2. The concept of charterer's liability insurance

It is important to note that the concept of charterer's liability insurance was not created from scratch. On the contrary, its fundamental basis emanates from the principles of liability

insurance as it was developed within the scope of maritime law, being initially addressed exclusively to shipowners which, in its turn, was respectively founded on the general rules applying to liability insurance. For that reason, it is considered crucial to refer first to the general concept of liability insurance, as it is associated with the rationale behind charterer's liability insurance whose very essence is found within the former's rules of application.

2.1 The concept of liability insurance

2.1.1 Historical background

Although the concept of liability insurance is quite old when compared with other forms of insurance, it seems that its development actually delayed noticeably. That is, however, well-justified on the grounds of public policy considerations as well as the limited application of liabilities at that time, with the exception only of the fields of motor insurance and workers' compensation insurance.[517] Thus, even if the mechanism of liability insurance is now well-established and widely accepted in the insurance market, it is not surprising that it was first treated with suspicion. As it was designed ultimately to provide compensation to assureds in respect of the consequences of their wrongdoing, this concept was challenging the notions of legality and morality of insurance protection, given that the general rule was that negligent conduct should be punished and not compensated.[518]

Despite the rejection of early requests made by railway companies to obtain liability insurance, the concept finally emerged in the market under two particular forms. At first, it appeared as part of a comprehensive policy provided for old horse-carriages covering primarily the insured against loss of or damage to the horse and/or the vehicle. Later, around 1890s, it was presented in the very popular form of poison insurance for piemakers after a rash of cockroach poison. It was not before 1920s, though, that this form of cover started to be used widely when dermatitis was caused by the treatment of furs and woollen garments.[519] However, the booming of liability insurance came along with the growth of law of negligence, after the famous case of *Donoghue v. Stevenson*[520] in which it was supported that a manufacturer of ginger beer bottles could be liable to any ultimate customer who might suffer psychological

[517] D. Derrington and R.S. Ashton, The law of liability insurance, (2nd edn. Lexis Nexis Australia 2005), p. 2.
[518] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 62-63.
[519] *Supra*, fn. 517, p. 1-2.
[520] [1932] AC 562 (HL).

shock after finding a decomposed snail emerging from the bottle. Furthermore, the abolishment of a number of statutes, mostly related to employment, opened up the liability of certain groups, such as employers, and since the danger of numerous claims being brought against them increased, the liability cover was recommended as a means of commercial precaution. The fact also that the new legislation being enforced provided for compulsory insurance in particular areas, such as road traffic and workers' compensation, brought liability insurance in the foreground of the commercial market.[521] Since then, it was further developed into various different forms which in their turn adjusted the characteristics of general liability insurance to their needs. However, for the purposes of this research it is enough to focus solely on the general elements that define liability insurance since they also form the foundation of charterer's liability insurance.

2.1.2 Main elements

Liability insurance in its very nature constitutes a third-party cover in the sense that the insurer promises to indemnify the insured for his liability for loss suffered by a third party caused by the former's negligence in exchange of periodical payment, called premium.[522] In other words, it is a kind of indemnity insurance where the insured insures the risk of him becoming liable to others.[523] Thus, this type of cover usually refers to sums which the insured will have to pay to another as a result of the latter suffering a personal injury, property damage or economic loss. So, it is not the injury of another or the damage caused to his property that constitute the basis of this cover, but the liability of the insured in respect of the aforementioned instead. Hence, the indemnity offered is attached to this liability. This element, in fact, distinguishes liability insurance from a first party cover in which the original loss is directly sustained by the insured and the cover is provided for this loss respectively. Therefore, it is clear that in case of liability insurance, coverage is subject to the traditional concepts of fault, proximate cause as well as causation, since it operates only when the insured is found responsible at law for the loss in question.[524] However, that results in difficulties when it comes

[521] *Supra*, fn. 517, p. 1-2.
[522] For other definitions of liability insurance under various jurisdictions, see respectively in Clarke Malcolm A, The law of liability insurance, (Inform Law from Routledge 2013), p. 5.
[523] *Tooney v. Eagle Star Insurance Co Ltd* [1994] 1 Ll Rep. 516, p. 522 (CA).
[524] *Enterprise Oil Ltd v. Strand Insurance Co Ltd* [2006] EWHC 58 (Comm); [2006] 1 Lloyd's Law Rep. 500, p. 501 and 516.

to the estimation of the cover's extent, because the potential exposure to third parties is not usually very easily definable.

Another basic element of liability insurance is the fact that it does not require the harm to be discovered at a particular point in time. Conversely, it suffices if the relevant claim is brought by the assured in his own good time,[525] merely in compliance with the limitations imposed to him by law[526] or his policy.[527] Most importantly, though, in order for the liability cover to be triggered, it is first required that the relevant liability is established, meaning that the assured should be actually liable for the loss or damage occurred.[528]

Following the establishment of liability, the cover will not be activated unless the risk to which the liability is attached constitutes an insured peril under his liability policy. Liability insurance is essentially a personal contract between the insurer and assured, modified to some extent by statute, commercial practice or custom. As a consequence, although the content of this cover might be related to certain legal liability of the assured for damages, arising either in tort as well as in contract or even under statute, the determination of parties' rights *inter se* must always be defined by what the parties have promised to each other and what they intended to cover under this agreement. It is actually this kind of freedom offered to the parties involved that led to the creation of numerous different types of liability insurance nowadays, depending every time on the nature of the activity being insured.[529]

The latter element is further associated with the exact point of time at which the insurer's obligation to pay the assured arises. Respectively, a distinction has been developed, here,

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[525] *Supra*, fn. 517, p. 2-3.

[526] For example, all the insurance contracts are subject to the normal limitation period under s. 5 of the Limitation Act 1980 in respect of causes of action founded on simple contract which is six years from the date on which the cause of action accrued. Also, under s. 5A, when it comes to actions for damages for late payment of insurance claims, these cannot be brought after the expiration of one year from the date on which the insurer has paid all the sums referred to in subsection (1) of that section.

[527] For example, as it will be seen later in the following chapter, in case of all charterer's liability insurance policies in order for the coverage to be enforced, the liability of the assured should occur during the policy period. On the contrary, in cases of personal injuries caused due to asbestos, where professional liability was involved, it was found that the manufacturers' insurers were all jointly and severally liable in full, while any period when the insured had no insurance was irrelevant to such liability. See respectively, the famous case of *Keene Corporation v. Insurance Company of North America*, 667 F.2d 1034 (US Court of Appeal, District of Colombia, 1981) and the *J.H France Refractories Co. v. Allstate Insurance Co* 626 A.2d 502 (Pa 1993), as they were mentioned in *Wasa International Insurance Co and AGF Insurance Ltd v. Lexington Insurance Co* [2009] UKHL 40; [2009] 2 Lloyd's Law Rep. 508, at p. 523-524.

[528] *Enterprise Oil Ltd v. Strand Insurance Co Ltd* [2006] EWHC 58 (Comm); [2006] 1 Lloyd's Law Rep. 500, p. 501 and 516.

[529] Charterer's liability insurance is one example of the variety of types available. Other examples include also public liability insurance, aviation insurance, professional indemnity insurance, employer's liability insurance and product's liability insurance. *Supra, fn*. 517, p. 4-5.

between general liability policies and liability indemnity policies.[530] With respect to the former, the insurer's obligation to compensate the assured is activated as soon as the liability emerges.[531] So, the insurer will assume responsibility for covering the assured's claims without claiming further contribution from the latter, apart from the premium paid.[532] On the contrary, when it comes to the second type,[533] the aforesaid obligation arises once the insured has sustained actual loss, such as by payment of a judgement,[534] and he has in fact done so. To put it simply, in this case, it is a condition of coverage that the assured has satisfied first the relevant claim, before seeking indemnity from his insurer.[535]

Although it has generally been suggested that in the United Kingdom the initial satisfaction of the claim by the assured is not necessary,[536] this statement is not entirely accurate as the answer depends on the type of insurer proving liability insurance. For instance, in case of marine insurance policies, invariably the "*pay to be paid*" rule applies based on which the assureds must have a liability to pay a claim and first settle it with their claimants so to be entitled thereafter to seek a reimbursement from their liability insurers (P&I Clubs).[537] Whereas, in case of commercial insurers, s. 11(2) and (3) of the Insurance Act 2015 provides that "*if a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss",* if the assured "*shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred".* Furthermore, s. 9(5) of the Third Parties (Right against Insurers) Act 2010 expressly bars any condition precedent to liability such as the "*pay to be paid*" rule,[538] with the same also being held by the House of Lords for reinsurance contracts where the prevailing rule is that the sum becomes payable when the insurance claim becomes payable and not only when the latter is actually

[530] *Ali Galeb Ahmed, et. Al. v. American Steamship Owners Mutual Protection and Indemnity Association Inc. et al.* [1978] AMC 2008 (American case).
[531] That contract is known as liability contract. See, Ling Zhu, "Probing compulsory insurance for maritime liability'' (2014) 45 J. Mar. L. & Com. 63, p. 72.
[532] John D. Kimball, "The central role of P&I insurance in maritime law" (2012-2013) 87 Tul. L. Rev. 1147, p. 1149.
[533] *Ibid*. That contract is known as indemnity contract.
[534] *Supra, fn*. 531; *supra, fn.* 512, p. 8.
[535] *Supra, fn. 532*; see also, Norman J. Ronneberg, Jr., "An introduction to the Protection & Indemnity clubs and the marine insurance they provide'' (1990-1991) 3 U.S.F.Mar.L.J.1., p. 14.
[536] Dieter Schwampe, Charterers' liability insurance, (Lloyd's of London Press Ltd 1988), p. 120-122.
[537] See, for example, the Rule 5A of the UK P&I 2016 Rules which provides "*Unless the Directors in their discretion otherwise decide, it is a condition precedent of an Owner's right to recover from the funds of the Association in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same out of funds belonging to him unconditionally and not by way of loan or otherwise".*
[538] In particular, it states that "*the transferred rights are not subject to a condition requiring the prior discharge by the insured of the insured's liability to the third party*".

paid.[539] Also, practice has shown that the issue of the initial satisfaction of the claim will be usually determined by the parties expressly under their insurance policies depending on the incorporated each time clauses.[540]

Either way, though, it should be borne in mind that since liability insurance constitutes an indemnity contract and no more, the insured is not entitled to make a profit out of his cover. Therefore, the indemnity under his liability policy will apply only in respect of the loss that has been proved[541] and will be reduced to the extent the insured has been compensated from other sources (e.g. another insurer or tortfeasor).[542]

It could also be supported that the provision of concession to the insurer under a policy clause allowing him to represent the assured, handle as well as defend occasionally his claims is a further distinctive characteristic of liability insurance. However, the importance of this characteristic is mostly practical, as it provides the insurer with the necessary legal interest required by law which allows the former to intervene and conduct litigation against a third person with which only the assured was initially connected.[543]

However, setting aside all the aforementioned distinctive characteristics of liability insurance and the fact that it was evolved as an independent form of insurance, it needs to be highlighted that its very essence does not depart from the general rules applicable to every contract of insurance. Consequently, this means that the requirements provided under the Insurance Act 2015 apply to liability insurance as much as they apply to any other form of commercial insurance. At the same time, as liability insurance entails some contractual aspects as well, it follows that the basic rules of offer and acceptance, privity of contract, consideration, subrogation, wilful misconduct or illegality are equally enforceable here too,[544] subject always to the parties' freedom of contract.

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[539] *Charter Reinsurance Co Ltd v. Fagan* [1996] 2 Lloyd's Law Rep. 113, at p. 118 (HL).
[540] See, for example, the Institute Time Clauses 1/10/83 where clause 8.1 of the Running Down Clause (Collision Liabilities) states as below adopting the "pay to be paid" rule: "*The Underwriters agree to Indemnify the Assured for three -fourths of any sum or sums paid by the Assured* (emphasis added) *to any other person or persons by reason of the Assured becoming legally liable by way of damages for …"*.
[541] *Enterprise Oil Ltd v. Strand Insurance Co Ltd* [2006] EWHC 58 (Comm); [2006] 1 Lloyd's Law Rep. 500, para. 72; *McDonnell Information Systems Ltd v. Swinbank* [1999] Lloyd's Rep. IR 98.
[542] D. Derrington and R.S. Ashton, The law of liability insurance, (2nd edn. Lexis Nexis Australia 2005), p. 10.
[543] Third Parties (Rights Against Insurers) Act 2010.
[544] *Supra, fn*. 542, p. 6.

2.2 The concept of liability insurance in maritime law

2.2.1 The origins

As noted earlier, liability insurance delayed generally to establish its position within the insurance world until 19th century. Similarly happened with the concept's development within the field of marine insurance, as the first form of marine liability insurance was introduced somewhere in the mid-19th century.[545] Taking into account the great significance of maritime commerce and its long history in England, it is not surprising that from this very early stage of the concept's introduction, it had an immediate effect on shipping industry. However, it needs to be remembered that marine insurance was already prosperous and well-established at that time.[546] So, it followed that the emergence of liability insurance came as a response to the demands of the time, purporting to cover potential deficiencies, influenced by other pre-existing aspects of marine insurance. Thus, the very first form of marine liability insurance that was developed is the well-known today protection and indemnity (P&I) insurance.

More specifically, before 19th century, there was only one main type of insurance provided solely to shipowners (i.e. hull insurance), whereas liability insurance was not even necessary.[547] The reason for that is quite simple and concerns the fact that the English maritime law at that time was not so advanced in terms of liabilities, requiring for P&I insurance.[548] The idea that the shipowner could find himself liable towards cargo owners, or crew members and passengers, as well as harbour authorities whose property could be damaged by his ship was not fully developed. On the marine insurance market's part, the allocation of insurance obligations was clearly defined, with the Hull Clubs on one hand providing cover to shipowners for damages to their ships, and general merchants on the other hand who were underwriting marine risks together with their ordinary business, providing cover to cargo owners for loss of

[545] Mark Tilley, "The origin and development of the mutual shipowners' Protection & Indemnity associations'' (1986) 17 J. Mar. L. & Com. 261, p. 261.
[546] It has been recorded that the first policy on marine insurance was issued in Italy already in the 14th century and covered only hull and cargo damages. See respectively, A.B. Leonard (ed), Marine insurance: origins and institutions, 1300-1850, (Palgrave Macmillan 2016).
[547] There were also "freight and outfit clubs" as well as "small damage clubs" which were offering cover to very specific circumstances not covered under the general hull cover, at a prohibitively high rates of premium. For that reason, they were not very popular among shipowners. More information about these covers can be found in Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 3-4.
[548] The same also has been noticed in the United States where marine liability insurance was non-existent in 19th century, while it has been argued that the first protection and indemnity insurance was disclosed in 1898 and blossomed later after the World War I. See, John P. Kipp, "The history and development of P&I insurance – The American scene'', (1968-1969) 43 Tul. L. Rev. 475, p. 476-477.

or damages to their cargo.[549] Therefore, it was reasonable for shipowners not to seek protection for liabilities which did not even exist.[550]

Nonetheless, the situation changed after the "*De Vaux v. Salvador"*[551] which generally increased shipowners' as well as market's awareness with regards the extent of their liability exposure. In this case, the court had to deal with a collision between two ships which were both found at fault and had sustained damages for which compensation was sought from one another. The main issue, though, was whether the shipowner could seek to recover the balance from this amount under his policy on the basis that the loss was caused by perils of the sea. The court rejected this argument by supporting that this risk did not constitute a maritime peril and therefore, it was not recoverable under the shipowner's hull policy, as it fell outside its scope. As a result, for the first time shipowners started to worry about their protection with regard to their liability for sums exceeding the insured amount under their hull policies emanating from the ownership or operation of their vessels. Consequently, that led to a new arrangement between shipowners and their hull insurers, according to which coverage could be granted to the former only for three-quarters collision liability in respect of claims by another ship and her cargo, insofar as a relevant clause was incorporated into their policy agreement, called "Running Down Clause" and an additional premium was paid by shipowners. The exclusion of the one-fourth liability stemmed from the idea that it would encourage shipping interests to take proper precautions. Even so, however, the limited nature of shipowners' hull policy, along with other significant legislative changes that occurred, which imposed new and burdensome liabilities on them[552] that were not previously included in their hull policies, in combination with other social factors,[553] necessitated the finding of a more flexible alternative means of

[549] William R. A. Birch Reynardson, "The history and development of P&I insurance: The British scene'' (1968-1969) 43 Tul. L.Rev. 457, p. 459 and 464.
[550] *Supra*, fn. 548, p. 475.
[551] (1836) 4 A. & E 420.
[552] For example, the Fatal Accidents Act of 1846 which provided the shipowner's unlimited liability in respect of liability for loss of life and personal injury. Or, the Merchant Shipping Act 1854 according to which their liability was limited to the ship and freight which could not exceed though £15 per ton. See, *supra,* fn. 545, p. 263-264; *supra*, fn. 547, p.6 and Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 5.
[553] That time was dominated by the Industrial Revolution which was followed by huge immigration waves to America as well as Australia that led not only to the construction of more, bigger and technologically modern ships, but most importantly to the increase of the overall number of passengers and seamen travelling by sea resulting in higher liability risks on shipowners' part. But even earlier, during the 17th and 18th century, English commercial vessels were enormously destroyed or seized by the enemy navies of France, Spain or United States bringing catastrophic risks in power which no underwriter was willing to undertake. See respectively, *supra*, fn. 545, p.263; *supra*, fn.549, p.462, 465-466; Granville E. Libby, "Some aspects of protection and indemnity insurance'' (1952) A.B.A. Sec. Ins. Negl. & Comp. L. Proc. 170, p.171.

insurance cover.[554] Also, the fact that the insurance provided to them by the merchants until then was extremely expensive and inadequate in terms of security[555] led shipowners to the creation of the first mutual association which started offering them insurance protection against the newly created liabilities on a non-profit basis. Thus, those Clubs at first provided "*protection*" for liabilities concerning loss of or damage to the vessel due to collision,[556] personal injury or loss of life and damages to third-parties' property. Whereas, later, they expanded their cover to include also "*indemnity*'' for liability for loss of or damage to cargo and fines.[557] As a result, at last, the Clubs transformed into Protection and Indemnity (P&I) Clubs with the form they are known today. So there is no more practical difference between "indemnity" and "protection" risks, except that the former tend to be connected to the operation of the vessel, whereas the latter to her ownership.[558]

2.2.2 The characteristics

Throughout time, as more and more liabilities were added on shipowners' shoulders, P&I Clubs became more popular, whilst their cover expanded to meet the time's needs. But, although there was nothing novel with these mutual associations, their function was treated with scepticism on the grounds of legality and public policy that also appeared upon the arrival of the general liability insurance concept.[559]

It was the use of the aforementioned "running down'' clauses which attempted to cover collision liabilities that triggered the opposition of Lloyd's underwriters to liability insurance. The main argument supported against this cover was that it deprived the insured from the obligation to take care of the object subject to insurance. In other words, it was said that since shipowners could insure both their vessel and cargo liabilities, they were less concerned about the performance of their duties, as the cost of their actions, even when wrong, would be afforded most likely by their insurers.[560] So, in a sense, it was believed that liability insurance

[554] *Supra*, fn. 549, p. 466 and 467.
[555] *Ibid*, p. 459 and 461.
[556] I.e. the remaining ¼ which was intentionally left outside from their covers became now part of the newly introduced liability cover. *Ibid*, p. 467.
[557] *Ibid*, p.464-465, and Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 7.
[558] Supra, fn. 547 in Introduction to P&I, p. 61. A more descriptive historical approach regarding the development of P&I Clubs can be found in *supra, fn.* 546, p.11-20.
[559] See above, p. 92-93.
[560] *Supra*, fn. 547, p. 62.

was facilitating shipowners' wrongdoing by protecting them against the consequences of their own (or their agents') negligence and therefore it contravened the principle of legality.[561]

This belief was not entirely incorrect, however it is outdated, since nowadays such practices are considered absolutely legitimate under the modern marine insurance law. Specifically, section 192A subsection 1(a) of MSA 1995 provides for compulsory insurance against liabilities defined by regulations subject to the requirements provided therein. While, sections 3(1) and 74 of MIA 1906 recognize the shipowner's right to insure against his third-party liabilities. Also, in 1999 the IMO Guidelines on shipowners' responsibilities in respect of maritime claims required shipowners to arrange proper insurance for claims and have on board a certificate issued by the insurer.[562] Additionally, P&I Clubs cover invariably shipowners for numerous types of expenses which in their majority arise with or without their fault (e.g quarantine and repatriation costs, penalties, pollution) indicating that the issue of legality no longer exists. Even further, the fact that an unlimited protection is never granted to the assured as well as that there are always certain risks whose coverage is strictly prohibited under all the marine insurance policies (e.g the trading of illegal cargo) impose the obligation on the assured to always conduct his trading in a legal manner and in compliance with what public policy requires, so the assured's insurance protection will not be jeopardised. The same position is also adopted by the English courts when dealing with maritime claims, where coverage for shipowners' liabilities by their Clubs is generally accepted.[563] The liability insurance has been also recognized as valid form of insurance within the European Union under the EU Directive 2009/20/EC as well as in the U.S where it was held that shipowners' protection by insurance against losses arising from their own neglect "*was no longer open to question''*.[564] Besides, to the same direction points the fact that during the last decades various types of marine liability insurance have been created, being successfully provided by several underwriters across the world to specialised individuals, apart from shipowners, such as vessel operators, commodity traders, stevedores, ship repairers. So, overall, liability insurance

[561] *Delanoy v. Robson* (1814) 5 Taunt. 605.
[562] Supra, fn. 557, in Steven J. Hazelwood, p. 8.
[563] *Supra, fn*. 547, p. 62 and 64.
[564] *Hanover Fire Insurance Company of N.Y v. Merchants Transportation Company* [1927] AMC 1 at p.6 per Rudkin CtJ. Also, in Ney York, for instance, such insurance protection was given statutory recognition in respect of marine policies, while direct actions against insurers were prohibited. See respectively, *Ali Galeb Ahmed, et. Al. v. American Steamship Owners Mutual Protection and Indemnity Association Inc. et al.* [1978] AMC 2008 (American case) and *supra, fn*. 562, p. 8.

constitutes today an integral part of shipping industry and sometimes it is even a pre-requisite for trading legally at sea.[565]

With regards the nature of liability insurance provided in shipping industry, it is a liability indemnity insurance,[566] in the sense it was described above.[567] Therefore, the Clubs' obligation to indemnify the assured will be only triggered when the latter is actually found liable[568] and incurs a loss by paying out first the relevant claim brought against him.[569] That is generally known as "*pay to be paid*" rule, as explained above.[570] However, it should be noted that such insurance is more complicated when compared to the average one, as its specialised cover provides protection against exposures of a nature and extent normally excluded from the general liability policy.[571] Apart from that, it should also be highlighted that particularly this type of insurance can sometimes depart from the general rules of the indemnity insurance in the sense that it will be allowed for third-party actions to be brought directly against the insurer, irrespective of whether the assured has breached his cover. Similarly, common practice allows such diversion in cases where Clubs undertake coverage for such claims when the assured has become insolvent.[572]

Furthermore, similarly to the general liability insurance, there is coverage under P&I and more generally marine liability insurance only against the specifically enumerated risks within the policies. Thus, the assured can negotiate which risks he wishes to include in his policy in return for premium and whether he wishes to bear deductibles in respect of any such risk.[573] Also, it is self-explanatory that every maritime liability policy, being essentially an insurance

[565] See, for instance, art. 7 of the International Convention on Civil Liability for Bunker Oil Pollution 2001, art. 4 of Athens Convention, art. VII of the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992, art. 12 of the Nairobi International Convention on the Removal of Wrecks 2007.
[566] *Ali Galeb Ahmed, et. Al. v. American Steamship Owners Mutual Protection and Indemnity Association Inc. et al.* [1978] AMC 2008 (American case).
[567] See above, at p. 95.
[568] Ling Zhu, "Probing compulsory insurance for maritime liability'' (2014) 45 J. Mar. L. & Com. 63, p. 72.
[569] Norman J. Ronneberg, Jr., "An introduction to the Protection & Indemnity clubs and the marine insurance they provide'' (1990-1991) 3 U.S.F.Mar.L.J.1, p. 5; Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 123.
[570] More details about the application of this principle can be found in Chapter V in 2.3.5 "The pay to be paid rule".
[571] Granville E. Libby, "Some aspects of protection and indemnity insurance'' (1952) A.B.A. Sec. Ins. Negl. & Comp. L. Proc. 170, p. 172.
[572] For example, that will happen under s. 9(6) of the Third Parties (Rights against Insurers) Act 2010 according to which the application of "pay-to-be-paid" rule is not permitted in respect of claims for death or personal injury, as well as under the provisions of Civil Liability Conventions, the Bunker Convention, the Wreck Removal Convention 2007 and the Athens Convention 2002.
[573] *Supra*, fn. 569, in P&I Clubs Law and Practice, p. 124 and 393-394.

contract, is subject to the conditions of MIA 1906 as well as the general principles of contract and insurance law.[574]

2.3 The charterer's liability insurance (CLI)

2.3.1 The chronicle of its development and the triggering causes

Indisputably, marine insurance market is not immune to the constantly new emerging trends taking place within the shipping industry, while it is significantly affected by the effects of our inflationary economy. Thus, being a "breathing organism'', it is adapted to the new circumstances and seeks always for new business opportunities which will not only supplement its profits, but also reflect the contemporary needs of the entities involved in it. Respectively, it could be argued that the evolvement of CLI was the result of such trends, as formed by the relevant commercial, statutory and legislative changes.

It has been noticed above that since liability insurance emerged in the world of maritime commerce, it evolved later into further and more specialised fields. Nonetheless, the concept of charterer's liability insurance is considerably recent, as it arose only three decades ago, with the first stand-alone charterer's cover to be provided in the very late of 1980 after the creation of the first Charterer's P&I Club in 1986.[575] Up until then, the charterer was traditionally regarded as the shipowner's customer, whereas the latter was the only one carrying the burden of liabilities arising from every maritime adventure, on the basis that he was also responsible for the safe prosecution of the voyage. Thus, charterers had limited liabilities and most importantly were less identifiable within the transport chain which put them in a more secure position. That was justified not only on the grounds that shipowners used to own the most valuable asset in the whole maritime adventure (i.e the vessel), but also on the fact that the progress of the technology and the systems used at that time did not allow the interested parties to gain easily access to the charterers' identity.

[574] E.g. the requirement of insurable interest under s. 5 of MIA 1906, or the lawfulness of the maritime adventure under s. 41 of MIA 1906 and the absence of the assured's wilful misconduct under s. 55 of MIA 1906.

[575] Astrid Elvebakk, "Charterers liability insurance - to buy or not to buy - that is the question...", <https://www.linkedin.com/pulse/charterers-liability-insurance-buy-question-astrid-elvebakke/?lipi=urn%3Ali%3Apage%3Ad_flagship3_profile_view_base_post_details%3BiQtDOtm5QImjNE0u6kFVqg%3D%3D>, accessed 12 March 2020.

But, around 1990s, it is supported that this balance started to shift when charterers were found for the first time equally exposed with shipowners when a debate about "quality shipping'' was initiated and the charterer was believed to be one of the most vital links in the chain of responsibility. Thus, charterers were found liable, yet morally, for hiring ships that were subsequently proved deficient, on the grounds that if they had not chartered the ship in exchange of a cheap rate, the voyage and therefore the accident would have never occurred.[576]

The most important reasons that triggered the appearance of this new form of liability insurance are numerous and emanate mostly from the financial, regulatory as well as commercial reformations taking place from 80s onwards within the shipping world. First of all, this hostile environment against charterers was supported by the prevailing bargaining position of shipowners under the charterparties at that time. It is widely recognized that the ultimate balance between shipowners' and charterers' obligations is determined by the prevailing market for maritime transport which, in its turn, is influenced by the rules of supply and demand related to vessels and cargo as well as the type and location of cargoes that need to be transported across the world. Of course, the aforesaid are supplemented by other factors too, such as the cost of building ships, the tax regimes, or even the manpower availability.[577] It follows therefore that due to the fact that the freight market was prospering at that time, charterers felt "forced'' to sacrifice part of their negotiation power and agree on more "owner friendly'' terms.[578] The same effect on charterers had also the dramatic increase in both vessel as well as commodity values over the following years which made shipowners even more reluctant to undertake themselves the whole cost of any potential and expensive damages arising either from their vessels or the cargo on board.[579]

Furthermore, the regulatory and legislative changes that were occurring[580] pointed to the same direction by finding that charterers are tied in with shipowners in a common venture and therefore, they should be treated as independent entities with distinct obligations for which they had to carry their own liability, separately from shipowners.[581] The development also of new practices within the insurance world affected even more charterers' relationship with

[576] Michael Grey, "How charterers can understand marine insurance'', *The Charterers P&I Club Newsletter*, (December 2008),p. 1.
[577] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. xviii.
[578] *Ibid*, p. vii.
[579] *Ibid*, p. 3.
[580] Such as the emergence of IMO Conventions, pollution liability conventions as well as liability for dangerous cargo conventions.
[581] *Supra, fn*. 577, p. 101.

shipowners, highlighting once more the above conclusion. For example, although in the past all charters invariably would have included the so-called "*benefit of insurance*" clause which essentially enabled charterers to benefit from the shipowners' P&I insurance, this practice was eventually abolished as it prevented later the Club's recourse right against charterers and so, it left the latter exposed.[582] Thus, despite the prevailing rule provided that these clauses would be void only to the extent that they contravene to the Clubs' rules,[583] there is no Club today accepting them as in their majority forbid its use by the shipowners expressly under their Rules.[584] Assuming, therefore, that no shipowner would be ever willing to jeopardise his own P&I protection, it is clear that there is no longer scope for the application of such clauses for the charterers' benefit.[585]

As a result, in an era of blame where shipowners were desperately seeking for ways to mitigate their liability, it was noticed that charterers were gradually brought in the foreground, with their liability exposure beginning steadily to increase. Thus, although at first charterers' exposure regarding ship operations was nil, they started to assume more and more liabilities which were originally rested with shipowners. Consequently that led charterers to the realisation of their need for liability insurance, similar to the one provided to shipowners, since they were now seen as separate entities who required their own insurance cover.

2.3.2 The basic characteristics of CLI

CLI is a classic form of liability insurance, in the sense that it covers third-party liabilities of the assured. More specifically, it is a form of P&I policy similar to the one provided to shipowners, intending to provide protection against charterers' liabilities. That is to say, the contractual and legal liabilities which charterers encounter under a charterparty with the owners

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582 "Charterer's liability blowing in the wind", *Maritime Journal* (21 May 2012) <http://www.maritimejournal.com/news101/insurance,-legal-and-finance/charterers-liability-blowing-in-the-wind>, accessed 12 March 2020.

583 See respectively the *Court Line Ltd v. Canadian Transport Company Ltd* [1940] 67 Lloyd's Law Rep. 161; [1940] AC 934.

584 See, for example, in Gard's Rules 2018, Rule 89.1 according to which "*the Member shall not assign or otherwise transfer its rights under its contract of insurance with the Association or otherwise arising pursuant to these Rules, save as provided in Rule 89.2''* as well as Rule 1 which states that an "*Owner's Entry" is "an entry effected by an owner, bareboat or demise charterer or operator of the ship and which does not insure a charterer of the ship [emphasis added] (other than a charterer insured as a co-assured or an affiliate)".*

585 It has been suggested that charterers might be able to overcome this hindrance by demanding that "the owners will undertake to indemnify them to the extent that owners would be covered by their P&I Clubs", if the owners should have ultimately carried the loss; or, by still invoking such clause in a charter-party, where a third-party claim is asserted against both of them, requiring, however, the owner to ensure that his P&I insurance will respond to the claim first, especially in cases where we are dealing with a cargo claim brought under owner's bill and the charter-party is subject to Inter-Club Agreement. See, *supra*, fn. 569, in Steven J. Hazelwood, p. 82.

of the vessel and under the laws of the countries to which the chartered vessel is trading.[586] Yet, the only difference with this coverage, compared to the shipowners', is that it concerns liabilities assumed under the charter by the assured only under the capacity of "charterer" of the vessel.[587] It is important to note, though, that the term "charterer" in this type of insurance refers solely to time or voyage charterers, as bareboat charterers traditionally purchase the usual P&I cover provided to shipowners due to their peculiar nature under the charterparty, as they act like shipowners.[588] Apart from that, similarly to shipowner's P&I insurance, the requirement of insurable interest under section 5 of MIA 1906 applies to charterer's case too, along with the assured's obligation to be found liable and have already paid the claim for which he is requesting coverage, while the relevant risks should arise from a maritime peril falling within his insurance policy. Particularly in respect of charterers' insurable interest, it arises on the basis of their involvement in the vessel's adventure either as "charterers'' or even as cargo "carriers''.

But, the most significant characteristic of charterer's liability insurance is its non-compulsory character. It is widely accepted that the development of numerous and adverse liabilities, especially the last few years, resulted in the introduction of the mandatory insurance principle within the maritime world.[589] However, albeit this is unexceptionally the case with shipowners' P&I insurance, the same does not apply to charterers. So, contrary to the traditional P&I insurance which is compulsory, CLI is not, and allows charterers to take all the risk themselves. Though, given the amount of charterer's liabilities in his normal course of business, it is assumed that every prudent person in charterer's shoes would voluntarily purchase the relevant liability insurance cover when its everyday activities could easily result in numerous as well as occasionally burdensome claims. Therefore, as no prudent shipowner would allow his vessel to operate without insurance coverage and equally no responsible charterer would accept a vessel without knowing it is insured, it follows also that no charterer would opt to trade without covering his own liability risks.[590] In fact, frequently shipowners

[586] *Supra*, fn. 575, p. 2.
[587] See, for example, Clause 1.2.2 of Skuld's Charterer's Cover, or Rule 1.3 of Gard's Rules 2017, or British Marine Terms and Conditions for Charterers Marine Liability, Protection and Legal Expenses, at p.1
[588] See, for example, the definition provided for "charterer's entry" in the Rules of all the IG P&I Clubs, where it is stated that such an entry requires "*an entry which is a charterer, not being a bareboat or demise charterer, as member''*.
[589] See respectively the CLC 69 and the Bunkers' Convention 2001 regarding pollution, as well as the Nairobi International Convention on the Removal of Wrecks 2007, the Athens Convention relating to the carriage of passengers and their luggage by sea 1974 and the Maritime Labour Convention referring to the employment of seafarers at sea.
[590]John D. Kimball, "The central role of P&I insurance in maritime law" (2012-2013) 87 Tul. L. Rev. 1147, p. 1148 and supra, fn. 577, p. 63.

agree on a charter with charterers subject to the latter getting liability insurance.[591] Thus, charterers by acquiring liability insurance merely comply with their charter's requirements and so, the former becomes inherent part of their business. But, despite how logical the above conclusion might seem, the reality suggests otherwise, as there are still charterers who prefer trading without having a liability insurance in place, benefiting from its discretionary character, as it will be discussed below.

2.3.3 The factors of CLI's importance

The reasons which necessitate charterers' liability insurance vary and depend on various factors each time, such as the applicable jurisdiction, market's conditions and charterer's obligations under the charterparty as well as his position generally within the transport chain. That, of course, applies equally to both time and voyage charterers, since both are exposed to various time-consuming, complex and expensive risks, although usually time charterers carry a wider risk than voyage charterers, as it was concluded in Part A.

A) The conditions of the market

Starting with the market's conditions and charterers' position in the transport chain, it is supported that due to the extensive chartering activity in the bulk trade that was noticed especially before the crumbling of shipping industry in 2008, charterers were placed even deeper in the transport chain, as they started contracting with many other entities (such as stevedores, port operators, bunker suppliers, cargo traders) in order to facilitate the execution of their charter. In addition, high freight rates and commodity prices had a very adverse impact on the claims' value, with the shipowners being reluctant to carry the financial burden themselves, which meant subsequently that a claim against the charterer would be more likely to be pursued.[592] This, in its turn, resulted in the overall increase of charterer's liability exposure which has not changed since then, indicating an expanding potential need for CLI. But even

[591] See, for example, clause 26 of Heavycon 2007, Lines 407-411 according to which *"…. the Charterers shall ensure that there is taken out and maintained at all material times and throughout the duration of this Charter Party a policy or policies of insurance in respect of all loss or damage to the Cargo up to the full value of the Cargo including but not limited to a policy or policies comprising All Risks cargo cover and cover against liabilities to third parties (including liability in respect of death and injury and claims for consequential loss), and wreck removal of the Cargo…".*

[592] Gavin Ritchie, "Ten questions about the International Group of P&I Clubs", *The Charterers' Club Newsletter* (June 2013) <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/ten-questions-about-the-international-group-of-pi-clubs/>, accessed 12 March 2020.

nowadays, where the market is still trying to recover from its recent recession, charterers' exposure remains crucial for the reasons mentioned below and most importantly, because the parties involved in a dispute will certainly seek full compensation by turning against any potential entity they think is suitable or could be found liable for their losses.[593] So, charterers could naturally be among them.

B) The charterer's increased obligations under the charter

At the same time, the already increased liabilities of the charterer under the more "owner friendly'' charterparties extend charterers' aforesaid exposure,[594] while occasionally the blur drafting of parties' obligations creates unforeseen disputes[595] which usually could be quite costly for charterers. In fact, in practice many standard clauses are extremely favourable to shipowners and appear to be designed not only to place as much responsibility as possible on charterers, but make it easier for shipowners to claim against them as well. Besides, it needs to be remembered that invariably these standard charter forms and clauses are produced by BIMCO, a shipowners' association with its Members' majority being shipowners, where charterers' influence on the outcome is minimal at best.[596] Also, disagreements might arise from the management of warranties and conditions under a charterparty which can often be extremely complex for charterers.[597] It is noteworthy, in fact, that certain obligations of the charterer, such as the performance of cargo operations or the vessel's bunkering, and primarily the port nomination are tied up with numerous risks and liabilities to the charterer's detriment. For example, it has been noticed that 50% of cargo damages are caused by cargo handling or errors for which the charterer is ultimately responsible, 20% of pollution claims are due to

[593] "Alandia Marine: Charterers liability", available <https://www.alandia.com/marine-insurances/pi/charterers-liability>, accessed 12 March 2020.

[594] See, for example, Boxtime or Tankervoy clauses as well as BIMCO's stowaway clause which are more onerous for charterers by placing more responsibilities on them. It is noteworthy, actually, that although the latter clause is an additional, non-standard clause, the measure of damages that it provides constitutes most of the times the basis of the recoverable liability under charterer's liability insurance policy in respect of claims or expenses arising as a result of stowaways on board of the vessel or even further it is a condition precedent for the charterer's insurance protection. See, respectively, clause 4.4(ii) of Charterama Policy Wording 2017 or clause 23 of the Charterers' Rules 2017 of the Norwegian Hull Club and clause 9, section 14 of the Charterers P&I Club Terms and Conditions 2017.

[595] Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p.481-482 and 508.

[596] Carlos Vasquez, "BIMCO – What's the point for charterers?", *The Charterers P&I Club Newsletter* (May 2011), p.9.

[597] "Raets Marine: Charterer's liability hand-out" (2014), available <https://www.raetsmarine.com/sites/default/files/default/files/cl-handout_2014_0.pdf>, accessed 19 June 2017, p.2.

dangerous cargo on board or occurring during bunkering, while 70%of hull damage claims occur in ports nominated previously by charterers.[598] Particularly in respect of the latter, it follows that the bigger and more expensive the vessel is, the greater charterers' exposure will be. Whilst, when it comes to the former, it should be noted that charterer's exposure remains the same, even if he has obtained cargo insurance as well.[599]

The necessity of liability insurance also applies when charterers are sub-chartering the vessel on back-to-back terms, because their liability exposure remains intact, contrary to what most charterers misleadingly believe. More specifically, sub-chartering the vessel on back-to-back terms describes a situation where the head and the sub-charterparty forms are materially identical, save hire, demurrage and freight clauses, allowing, therefore, risks to pass through the charterer in the middle of the chain. Thus, in case, for example, where the charterer at the bottom of the "back-to-back" chain has an inadequate cover or no insurance cover at all for their liabilities, then the sub-charterers above him remain exposed, as they will have to pay claims from their balance sheet, if no (proper) charterer's liability insurance has been taken out.[600] Besides, it should also be remembered that "back-to-back'' arrangement does not prevent charterers from being found involved in a claim, since the privity of contract principle would not allow sub-charterers to remain passive during claims' handling, simply passing matters through the chain.[601]

C) Jurisdiction issues

Furthermore, charterer's exposure to liabilities depends on a wide range of jurisdictions and legal regimes. Under certain jurisdictions charterers are being treated stricter in the sense that they can be found directly liable for expensive claims, liability for which might rest with shipowners under English law. For instance, under various jurisdictions a charterer can also be considered a carrier under the bill of lading and therefore, undertake the respective liabilities arising from its breach.[602] In others also, such as in Alaska, California or Japan, charterers can

[598] *Ibid.*
[599] Because cargo insurance is a property insurance, so it does not provide protection for cargo liabilities that charterers encounter when transporting cargo. *Supra*, fn. 575, p. 5.
[600] *Ibid*, p. 8.
[601] *Ibid.*
[602] *Ibid.* If so, the charterer can also be found liable and fined for non-compliance with US Automated Manifest System Regulations under US law. See respectively, Dr. Chao Wu, "Of growing concern'', *Maritime Risk International* (01 September 2007).

be found directly and strictly liable for pollution claims[603] which tend to be invariably huge. At the same time, the various sanctions that are still in force[604] as well as the international maritime and national legislation and regulations, which are subject to constant changes,[605] increase even more charterer's exposure to further liabilities.[606] On the top of that, governments are increasingly focusing on vessels' safety and the role that charterers play in restricting the supply of sub-standard ships, with some jurisdictions actually taking this even one step further, by investigating and holding charterers responsible for chartering sub-standard and unsafe vessels.[607] Similarly, it is also common for some local authorities as well as international bodies, such as IMO, to hold an uninsured vessel operator liable for being below the "minimum standards".[608]

D) The issues of co-assurance and the "misdirected arrow" cover

It has been stated earlier that although charterers could benefit in the past from shipowners' P&I insurance by incorporating "benefit clauses'' into their charters, such clauses are no longer acceptable for shipowners, as they are not allowed to assign or subrogate their P&I cover to charterers because it goes against their Clubs' rules.[609] The logic behind this prohibition is that Clubs do not wish to make themselves liable to claims referring to persons who are not even their members and against whom they might not have a set-off right in relation to unpaid calls or other sums due.[610] Besides that, charterers do not share the same interest on the insured asset with shipowners.

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[603] In Alaska, actually, the same strict liability for pollution claims is also imposed on cargo interests which can constitute an even bigger for those charterers who also own the cargo traded. See, *ibid.*
[604] Such as the Ukrainian, Iranian and Syrian sanctions.
[605] "OMNI P&I Report 2016", available <http://www.omniltd.com/en/publications/p-i-reports>, accessed 12 March 2020, p.14.
[606] See, for instance, the Directive 2008/98/EC on waste which introduces the "polluter pays principle" and the "extended producer responsibility" based on which charterers can now be found liable for pollution damages, the Convention on Limitation of Liability for Maritime Claims 1996 which leaves charterer's liability for certain claims illimitable, as well as the Athens Convention relating to the carriage of passengers and their luggage, by sea 1974, as amended by the Protocol of 2002 and implemented by the EU into its member states with the Regulation (EC) No 392/2009 which exposes charterers to certain liabilities when constituting the performing carrier under the contract of carriage.
[607] Christopher Else, "Stability is the key to success", *The Charterers P&I Club Newsletter*, (November 2003) and in Heinz Gohlish, Charterers' liability insurance: Essential best practice, (Witherbys Insurance 2008), p.102.
[608] *Ibid*, Heinz Gohlish, p. 1
[609] See, above, at p. 103 -104. Also, see in Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p.70.
[610] *Ibid*, in Hazelwood, at p. 73.

Despite this rule, though, there are times that Clubs allow exceptionally charterers to appear as "co-assureds" under owners' P&I insurance through various ways and so, absolve themselves of any liabilities arising against them.

The first one is through the use of the so-called "misdirected arrow" cover[611] which applies when a co-assured (e.g. charterer) is found liable to pay in first instance for loss or damage which should have been normally covered by the Club's member (i.e the shipowner), yet the claim was brought against the co-assured instead.[612] In that case, therefore, it could be possibly argued that CLI is not necessary. Yet, this is not entirely the case. First of all, the scope of application of this particular rule is very limited, as it refers mainly to the offshore sector,[613] and not generally to shipping industry, and is used with offshore operators or contractors,[614] especially in pollution cases which entail very high risks, but not with independent charterers.[615] Also, it extends only to liabilities that arise from risks which would have been recoverable, had the claim initially been brought against the member itself, rather than the co-assured. In other words, this cover protects the co-assured only against liabilities for the member's acts or defaults.[616] The same principle was also confirmed in "*The Rita Maersk*"[617] case, where the arbitrators had to decide whether a time charterer was entitled to a full P&I cover or only to a "misdirected arrow" cover in circumstances whereby the charter provided that the owner would ensure that the charterer was named as "additional insured'' under his P&I policy. The award given supported shipowner's view and held that the charterparty entitles charterer merely to a "misdirected arrow'' protection, in the sense that he would only be covered for those situations in which he is found liable, yet the liability should rest properly with the shipowner. It is clear, therefore, that even under such arrangement charterer will still remain exposed to numerous other liabilities related to his particular nature for which a shipowner would never have a relevant coverage. These risks are exactly the ones that often fall under CLI.

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[611] See, for example, Rule 78 of GARD's Rules for ships.
[612] *Ibid.*
[613] Specifically, this is common with vessels chartered for use within the development of upstream energy projects, with specific emphasis on renewable energy. See respectively in "Charterer's liability blowing in the wind", *Maritime Journal* (21 May 2012) <http://www.maritimejournal.com/news101/insurance,-legal-and-finance/charterers-liability-blowing-in-the-wind>, accessed 12 March 2020.
[614] "Co-assurance – GARD" (April 1997), available <http://www.gard.no/web/updates/content/53238/co-assurance>, accessed 12 March 2020.
[615] *Ibid.*
[616] See, respectively Rule 78.5 of GARD's Rules, *supra, fn. 611*.
[617] *Stolt Tankers Inc. v. A.P. Moller (The Rita Maersk*), S.M.A. 2951 (February 1993); 360 LMLN 4. (New York arbitration award).

Another way through which charterers can be considered as shipowner's co-assureds is when the former constitute affiliated or associated charterers. However, the application of this option again is not very wide, as it applies only to the aforementioned type of charterers. In other words, this arrangement will be enforceable solely in cases where owners and charterers are owned by the same company or group of companies, or are arranged in a joint venture, or (very rarely) when they share some expenses under the charter, even if there is no link in ownership.[618] Nonetheless, this sort of agreement does not entirely release charterers from their liabilities so to discard their liability insurance cover, as it covers only risks, liabilities, losses, costs and expenses that charterer incurs under this capacity, provided, though, that they constitute risks for which shipowners would be covered under their P&I policy.[619] This constitutes a serious limitation on charterer's potential protection, especially in case the shipowner has decided on certain exclusions in his P&I policy. Therefore, charterer's exposure remains intact at least when it comes to his very own liabilities, as above.

E) Economic reasons

Indisputably, every maritime adventure is coloured with a fortuitous element which keeps always the co-adventurers, shipowner and charterer, alerted to any potential exposure to maritime risks. Therefore, relying on the operational excellence of others does not work as a guarantee for charterers that they will incur no liability for expensive claims. If it is also taken into account the amount of capital involved in a modern ship and cargo operation, together with the geographic uncertainty, it seems imprudent for a charterer to operate without an adequate insurance protection.[620] Because, it is very likely that certain liabilities can even exceed the value of the chartered vessel and therefore, jeopardise the continuity of charterer's whole business, if trading uninsured, which will create further responsibility for the charterer towards his share or stakeholders.[621] This kind of domino effect, combined with the existing highly litigious environment, where every party at fault tries to limit its liability to the least possible and seek for full compensation against its losses, indicates that CLI should become an

[618] See respectively, Rule 78.4 of GARD's Rules, *supra,* fn. 611.
[619] *Ibid.*
[620] *Ibid*, p. 1.
[621] "DUPI: Charterers liability - Questions and Answers", available <http://charterersliability.com/questions-and-answers/>, accessed 21 March 2018.

indispensable part of charterers' business which will allow them to maintain their cash flow and allocate respectively their resources when performing their ventures.

3. The characteristics of the insurance market available to charterers

The realisation of the above reasons led eventually to the development of different charterer's liability insurers and to the enormous expansion of charterers' insurance market. However, the process of its transformation so to accommodate charterers was not easy and it took several years for the insurance world to develop a good understanding of charterers' needs and exposure.[622]

More specifically, at first, (small) charterers looked for major brokers to arrange their operating and trading insurance; but, they got no response, since they were not seen as an attractive and profitable business. Also, the fact that charterers' total potential brokerage fee does not traditionally reach the minimum that such brokers charge, combined with the time required in administrating these matters made them look as non-cost-effective clients in these brokers' eyes.[623] Besides, as the industry at that time was still prospering, there was no immediate need to expand their existing clientele. However, when later the marine insurance industry was faced with new challenges resulting usually in high claims, it turned to charterers' market, because it was thought they could boost its overall income, release it from its financial pressure and maybe also cover its deficits emanating from shipowners' claims. In fact, this was evident especially the last decade when the globalisation of marine insurance market increased the competition among marine insurers even more, promoting the development of new and more elaborate insurance products as well as the establishment of charterers' liability within the insurance market. As a result, today charterers' insurance market is quite broad and full of options for charterers to choose depending on what fits best to their needs. Before we proceed, though, to the detailed analysis of charterers' insurance providers, it is considered necessary to examine first some of the general, yet fundamental, characteristics that define charterers' insurance market and the forms it can take.

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[622] Astrid Elvebakk, "Charterers liability insurance - to buy or not to buy - that is the question...", <https://www.linkedin.com/pulse/charterers-liability-insurance-buy-question-astrid-elvebakke/?lipi=urn%3Ali%3Apage%3Ad_flagship3_profile_view_base_post_details%3BiQtDOtm5QImjNE0u6kFVqg%3D%3D>, accessed 12 March 2020, p.1.

[623] Heinz E. Gohlish, Charterers' liability insurance: Essential best practice, (Witherbys Insurance 2008), p. 18.

Generally, it could said that charterer's insurance market mirrors to a great extent the shipowners', as they both come under the same forms and are subject to similar rules of application, as it will be seen below. So, today, similarly to shipowners, the insurance market that refers to charterers appears under two main different types: a) the mutual premium market and, b) the fixed premium market, each of which corresponds to different needs and types of charterers.

3.1 The charterers' mutual premium market

Starting with charterer's mutual premium market, its development stems from the very old idea of mutuality[624] which especially in relation to the liability insurance goes usually along with the creation of the International Group (IG)[625] that includes thirteen of the biggest P&I Clubs across the globe[626] and continues to prosper over the decades, covering today ninety per cent of the overall ocean-going tonnage.[627] The main idea behind this principle that applies to all IG Clubs is essentially that the assureds are also the insurers[628] in the sense that they all come together in the form of an "association'' or "club''[629] through which they all bear collectively the risks of their losses by protecting at the same time each other.[630] Accordingly, as they perform their role under the aforesaid dual "identity'', it follows that the Clubs' managers will be servants of the Clubs' members, allowing the latter to have direct control over its decision-making procedures. Additionally, as these Clubs purport solely to exist for the mutual benefit of their members, they lack of any competition or profit-making elements which on one hand reduces the insurance costs that are spread among them, whilst on the other

[624] The establishment of the mutuality concept in the United Kingdom took place in the early 18th century, when a number of shipowners decided to form alliances in ports other than London by creating mutual hull clubs. Later, in the mid. 19th century, mutual clubs providing P&I protection also arose in an effort to meet shipowners' needs of that time. See, Mya Thida Lin, "A selective appraisal of the P&I insurance system, with special reference to claims for personal injury, illness and loss of life" (Master thesis, World Maritime University Dissertations 2009), p.11.

[625] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 30.

[626] These Clubs are the following: the American P&I, Standard P&I, Steamship Mutual P&I, Skuld, Gard, West of England, North of England, Japan P&I, London P&I, UK P&I, the Swedish Club, the Shipowners' P&I and Britannia.

[627] Information provided by the International Group of Protection & Indemnity Clubs, available at https://www.igpandi.org/about, accessed at 27th of March 2020.

[628] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010),p. 1; R.C Springall, "P&I insurance and oil pollution'' (1988) 6 J. Energy & Nat. Resources L. 25, p. 26.

[629] These Clubs in UK are registered under the Companies Act as registered companies limited by guarantee with no share capital. See, Ramasamy Ravichandran, "Emerging trends in marine insurance: is there a trend towards demutualisation of mutual clubs?*"* (Master thesis, World Maritime University Dissertations 2001), p.23.

[630] See respectively section 85(1) of MIA 1906 that provides that *"where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance*".

entails higher personal liabilities for them.[631] In respect of the Clubs' expenditures, they are covered by the annual "advance calls" paid by their members,[632] while in case the latter do not suffice, the Club is entitled to claim "supplementary calls'' from them. Also, with regards the insurance limits that Clubs offer, they are always backed up with reinsurance, as the mutual Clubs are traditionally pooling their claims in a separate (from shipowners) reinsurance pooling arrangement applicable solely to their chartered entries,[633] according to which charterers' claims are borne both by the members of the particular Club as well as by the rest within the IG.

It should be mentioned, though, that notwithstanding mutual insurance is traditionally associated with IG Clubs, there are also other mutual insurers outside the Group, but within the commercial insurance market, operating on similar basis and offering protection to charterers too. Such insurers are owned and run solely for the benefit of their assureds, which are obliged to contribute to the former through the payment of any type of calls (such as annual, advance or supplementary calls), with no shareholders demanding a profit on their investment. The limits of their insurance are arranged by the insurer itself, depending on its financial capacity, whilst reinsurance is once again sought in the commercial insurance market with its limits varying, based on the insurers' overall credibility. However, due to the extreme and worldwide popularity of the IG Clubs, the existence of such mutual insurers in the market constitutes an exception, so their clientele in terms of numbers is limited and subsequently, the information about them is scarce.

3.2 The charterers' fixed premium market

At the beginning of the development of charterer's liability insurance, the idea was exactly to create a system according to which charterers could enjoy the same insurance protection as shipowners, subject to similar principles. Thus, when the first Charterers' P&I Club was founded in 1986, it was operating on a mutual basis constituting an exact copy of shipowners' P&I Clubs, yet servicing only charterers. However, after a few years of positive activity, it was finally demutualised in 1999 following the market's trends of that time.[634] The rationale behind this decision was that the pre-existing way of the Club's operation did not facilitate charterers'

[631] *Supra,* fn. 625, p. 30.
[632] *Ibid* p. 39
[633] See respectively below at p. 120.
[634] At the same period of time, British Marine Mutual (MMM) was also demutualised.

needs.[635] In particular, the concept of mutuality was seen as a flaw on charterers' part who were unwilling to expose themselves to the uncertainty of being called to pay extra for the Club's annual deficits, even though their supplementary calls would always be lower than those usually imposed on shipowners. Consequently, the Club through its demutualisation, managed to expand its business and grow by benefiting from the improving market conditions, without deteriorating its members' status.[636] Since then, it was noticed that fixed premium insurers, which got tempted to explore new areas of business, continued gaining increasingly ground in both insurance as well as shipping market, offering charterers protection of equal to shipowners standards.

Regarding the principles that characterise fixed premium insurance, it constitutes a commercial insurance service operating on free competition terms and purporting to make profit for its corporate owners or shareholders in the same way as in any other business.[637] This type of insurance is offered worldwide by multiple providers[638] which constitute usually part of a larger composite insurance group or are backed by major capital providers,[639] outside the IG Clubs, specialised or not, either directly by the company itself or through its agents, the fees of which are also taken into account to the overall amount of the premium paid. Additionally, the fixed premium insurers are managed by their shareholders-members[640] and therefore, contrary to the mutual P&I Clubs, they bear the risk as separate entities, distinct from the assured.[641]

When it comes to the premium paid, it is per definition carefully predetermined under the contract of insurance and corresponds to the degree of risks that the insurer is willing to cover, after calculating the expected value of the relevant losses[642] as well as the insurer's performance the previous years and the reinsurance market rates, since their aim is to make profit too. As a result, on one hand fixed premium insurers work to maximise returns before the favourable to them market conditions disappear, when on the other hand the assured charterers are not exposed to any extra charges, or annual general premium increases depending

[635] Chris Hill, "Fixed premium charterers P&I club surges ahead", *The Charterers P&I Club Newsletter*, (September 2000).
[636] *Ibid.*
[637] *Supra*, fn. 623, p. 35 and fn. 629, p. 37.
[638] These insurers are called generally commercial insurers, composite insurers, fixed premium providers or non-mutual insurers. *Ibid*, p. 36.
[639] *Supra*, fn. 623, in Heinz E. Gohlish, p. 35.
[640] *Supra*, fn. 629 in Ramasamy Ravichandran, p. 42.
[641] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010). p. 63.
[642] *Supra*, fn. 629, p.36 and 39.

on the financial performance of the insurance provider, as the renewals are underwritten on the assured's individual merits and loss record. Exceptionally, increases might take place, though, on the basis of exposure, operating costs or the overall performance of the insurer's portfolio. Respectively, this means that the assured will not be entitled to any dividends from the earnings of the company.[643] Furthermore, the fixed premium market allows the insured to change with absolute freedom its insurer without having to release itself from future liabilities to supplementary calls or excess supplementary calls.[644]

Although there is no distinction between mutual and fixed premium insurers as far as reinsurance is concerned, since reinsurers operate on both markets,[645] the pooling system that has developed within the mutual Clubs does not apply in case of fixed premium insurers. Consequently, the latter seek for reinsurance directly in the commercial insurance market, while its limits depend on the company's overall capital and the volume of the business they bring to it.[646] For that reason, in order for fixed premium insurers to secure high reinsurance limits, irrespective from the capital they provide, it is important for them to ensure first the creditability of their primary reinsurance underwriter, so that they can seek later for further reinsurance support, increasing, hence, their reinsurance limits.[647]

Therefore, overall, it could be argued that the difference in the form of the premium paid between shipowners and charterers plays an important role, especially in relation to the way charterers are organized within the insurance market as well as to the rights and obligations they undertake under each of these forms, as it will be proved below. Nonetheless, the extent to which this arrangement could potentially become problematic in the future for charterers in respect of the efficiency of their protection is another issue and is discussed in detail in another chapter.[648]

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[643] *Ibid*, p. 37-38.
[644] Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 20.
[645] Frans Malmros, Fixed premiums, mutuals and the future of P&I'', in Zarach S. (ed.), *BIMCO Review 2000* (Book Production Consultants 2000), p. 167.
[646] *Supra*, fn. 643.
[647] William Moore, "Fixed premium and commercial P&I market overview'' <http://www.american-club.com/files/files/fixed_premium_commercial_PI_market.pdf>, accessed 12 March, p. 13.
[648] See Chapter VII, in "2. The evaluation of charterer's liability insurance market".

4. The providers of charterer's liability insurance

It has been established already that charterer's liability insurance is available in the insurance market nowadays both on mutual and fixed premium basis by various providers. Therefore, it is now turn to examine comparatively the nature of these providers in order to ascertain their strengths and weaknesses. It should be borne in mind, though, that this evaluation will be focused on the effectiveness of these providers solely in relation to the basis of their operation, whereas issues with regards the scope of the cover they all provide individually will be assessed separately in the following chapter.

4.1 The options of the charterer

To begin with, it was mentioned earlier that mutual and fixed premium charterers' insurers operate within or outside the IG Clubs. Therefore, this means that charterers can seek insurance protection (both mutual and fixed) either within one of the thirteen shipowners' P&I Clubs that belong to the Group, or otherwise to any other insurance provider outside of it. Based on the research that has been conducted, it seems that the latter option can be further divided into four main categories; and although some of them might overlap sometimes with each other, it is considered preferable to treat them separately due to some distinctive characteristics they present. Thus, overall, charterers nowadays when seeking insurance protection have four more options, in addition to shipowners' P&I Clubs. They can resort either to mutual insurers seeking for mutual insurance protection, or otherwise be insured on fixed premium basis with a general commercial insurer, or a charterer's specialist underwriter, or finally a managing general agent appointed by commercial insurers.

4.1.1 The shipowners' P&I Clubs (the IG Clubs)

Although the primary rationale behind the creation of shipowner's P&I Clubs was to cater exclusively shipowners' needs and protect them from burdensome claims, as their name besides indicates, soon this idea was set aside when these Clubs decided to open their doors and provide their services to other entities as well, such as charterers, operators or traders. This commercialisation of the Clubs was initially seen as a smart move on their behalf to expand their fleets even further[649] as well as diversify their product range which allowed them to

[649] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p.143.

increase their revenue streams and enhance their free-reserves further.[650] They also benefited from the upward trend that chartering activity was presenting at that time. But, most crucially, such move constituted a way to sustain their competiveness in the market in relation to fixed premium insurers who began to supply charterers with insurance products that the former did not have developed yet. Therefore, such evolvement was the result of a new marketing opportunity as well as the outcome of the market reality.[651]

But for that arrangement to work in conjunction with the principle of mutuality, it was obvious that these entities could not be insured under the same terms as shipowners. Consequently, it was decided that in addition to their mutual owned entries, the Clubs could also accept chartered entries either on mutual or on fixed premium basis,[652] for all of which they have created distinct rules and covers.

A) Charterers as mutual members

When charterers choose to be insured within an IG Club as mutual members, the terms of their protection when it comes to the payment of calls and contributions to the Club remain the same as with shipowners, in the form described above.[653] Similarly also applies as far as the pooling agreement arrangement is concerned. Furthermore, like shipowners, cover under charterer's entry is restricted by the general requirement that the liabilities, losses, costs and expenses must arise in direct connection with the operation of, and in respect of the charterer's interest in the ship.[654]

However, charterers albeit mutual members, do not share on multiple grounds the same "privileges'' with shipowners, a fact which indicates that the original direction of these Clubs will remain owner-orientated. For example, although charterers' claims are satisfied by the

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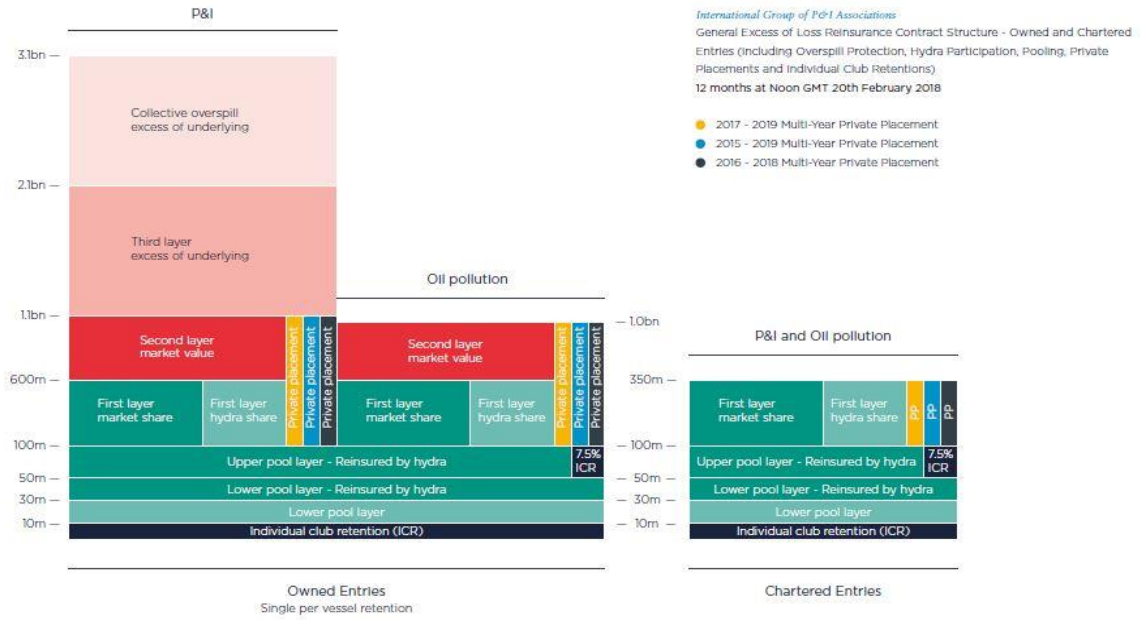
[650] Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 6.
[651] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008),p. 42.
[652] See, for example, Rule 3.1 of Gard's Rules 2018; see also, art 1.1.3 of Skuld's Statutes 2018 according to which *" (...)The Association may provide such insurance on the basis of (a) Estimated Total Calls which are subject to supplementary, overspill and release calls, or (b) upon the basis of fixed premiums, with no liability to supplementary, overspill or release calls and no entitlement to any surplus."*
[653] See above at p. 113-114.
[654] We have mentioned earlier that one of the reasons why charterers are not allowed to be co-assureds under the shipowners' P&I cover is because they do not share the same interests with them over the insured vessel. This is justified on the basis that shipowner's interest over the vessel is proprietary or possessory, whereas charterer's is not. Similarly applies here as well and therefore, it follows that the cover provided to them will be associated only with the obligations that charterers usually undertake under the charterparty or emanate from their negligence or fault. For more details regarding this general condition, see in Chapter V, in 2.3.2 'Link with the operation of the vessel', at p. 208. See also, "Gard guidance to the Rules 2020: E*ntries and duration of cover – Rule 3",* available <http://www.gard.no/web/publications/document/chapter?p_subdoc_id=20747954&p_document_id=20747880>, accessed 12 March 2020.

Group's common pool, their (re)insurance limits are different from the ones applying to shipowners on the reasonable grounds that they do not share the same level of exposure nor liabilities.[655]Also, regarding the scope of the P&I cover provided to them, there is a limit justified on the grounds that the Club is not willing to insure risks which are not traditional shipowner's risks.[656] Last, unlike owned entries, charterers can name only themselves as member, whilst any co-assureds or affiliates of theirs are not entitled to membership and enjoy only a limited cover.[657] For instance, the definition provided by the Clubs for "owner's entry" is often very broad and entails not only the vessel's owner, but also an *"owner in partnership, owner holding separate shares in severalty, part owner, trustee (…), a manager or operator having control of the operation and employment of the Entered Ship (…) or any other person in possession and control of the Entered Ship".*[658] On the contrary, under the "charterer's entry" definition there is no other entity that can fall, as the former is very narrowly defined, so to include solely any type of charterers, other than by demise,[659] or *"any other party having similar capacity in respect of an insured vessel which (is deemed) to have an insurable interest under the (Clubs') rules".*[660] Moreover, when it comes to the application of the charterer's cover to their co-assureds or affiliates, it will certainly be restricted only to the risks for which charterer is insured against. But, since charterer's liability insurance cover is from its nature more limited than shipowners', it follows that the former's protection will be equally constrained and subject also to the same limits.[661]

Consequently, the clear advantages of this option on charterers' part are firstly the stability they offer by distributing the cost of risks within the Group's Clubs through the pooling agreement as well as the possibility of getting back the annual call paid in the form of dividend, after a profitable financial year, based on the mutual market's principles. In addition, charterers can benefit from the long-standing presence of these Clubs in the shipping industry and the

[655] For a detailed examination of the different scales of these insurance limits see the table below.
[656] *Supra*, fn. 654. Also, more specific details in respect of the scope of the various covers provided to charterers by the mutual Clubs can be found in the following chapter.
[657] *Ibid.*
[658] In Section I, Rule 2(1) of North of England P&I Rules 2018-2019. Also, similarly in Rule 1 of Gard's Rules 2017 which states that : *"Owner's Entry (is) an entry effected by an owner, bareboat or demise charterer or operator of the Ship and which does not insure a charterer of the Ship (other than a charterer insured as a Co-assured or an Affiliate)".*
[659] Respectively, under Rule 1 of Gard's Rules 2017, a *"Charterer's Entry (is) an entry effected by a charterer and which does not insure any other person except as a Co-assured or an Affiliate";* similarly, under Rule 2(1) of North of England P&I Rules 2018-2019.
[660] See in Class III, Rule 1, Section 2 of the American Club's 2016-2017 By-Laws, Rules and List of Correspondents.
[661] See, for example, Rule 78.3 of Gard Rules 2017, Rule 9(2)(c) of North of England P&I Rules 2018-2019, or clause 37 in combination with Appendix 2, section 2 of Skuld's Charterer's Cover Terms and Conditions 2017.

sharing of claims between them which not only leads inevitably to the provision of high-standard services, but also ensures a resilient financial security, when it comes to the immediate payment of their claims.[662] Most importantly, though, it is the advantage that the pooling agreement offers that plays the most crucial role in charterer's insurance protection, as it secures them high insurance and reinsurance limits at an affordable cost too. More specifically, regarding the insurance limits provided by the IG Clubs, they depend on the number of each Club's members. Therefore, the bigger their number, the greater the Clubs' "guarantee base" will be, resulting, hence, in high insurance limits on the basis also that there is no constraint on the insurer's overall capacity. Effectively, this could ideally lead further to a reduction at their insurance cost, since the risks are now spread among numerous members.[663] Also, in respect of reinsurance, there is a form of distributed protection that applies, according to which the IG provides for chartered entries a single combined P&I and Oil Pollution cover limit of 350 million (US) dollars,[664] of which the first layer (i.e 10 million (US) dollars) is retained by each member club, whereas the rest is distributed among the pool and GLX/Hydra/Private Placement (reinsurance) structures which operate within the commercial insurance market.[665]



Source: International Group of Protection & Indemnity Clubs

[662] More details are provided below.
[663] *Supra*, fn. 651, p. 32.
[664] This limit applies only to mutual members. See respectively, Rule 52 of Gard Rules 2018 (Limitations for charterers and Consortium Vessels) and the interpretation provided for it in Richard Williams, "Gard guidance to the Rules 2016" *(*August 2015*)* <http://www.gard.no/Content/20889036/Gard_Guidance_to_the_Rules.pdf>, accessed 12 March 2020, p. 378.
[665] 2018/2019 Pool and GXL Reinsurance contract structure, available <https://www.igpandi.org/reinsurance>, accessed 20 January 2020.

The fact also that there is no profit element within the IG Clubs makes the reinsurance for the lower layer of pooled claims the cheapest form of reinsurance available,[666] while the spread of the overall risk throughout the whole tonnage of the world maintains the level of reinsurance costs respectively low as well.[667] Also in the long term, it offers the assured certainty of costs,[668] subject to the condition, though, that no major incidents have taken place during the policy year disrupting the financial balance of the Group and its members. On the top of that, since this reinsurance system operates mostly on the basis of mutual trust and confidence, it is consequently concerned with its members' satisfaction and for that reason, it ensures that the latter will be equipped with the greatest security possible allowing their claims' immediate payment. Besides, this can be also supported by the undoubted credibility of the Group's securities which stems mostly from the fact that this system constitutes the largest so far reinsurance contract placed in the market.[669]

On the other hand, there are significant defects that come along with this option for charterers. First of all, charterer's obligation to contribute to the Clubs' annual deficits in the form of supplementary or advance calls exposes them to further and undefinable in advance costs which promote generally an uncertainty in respect of the charterer's overall cost of insurance. In addition, due to the principle of mutuality that prevents Clubs from competing each other, the charterer's cover comes into a standard, non-flexible form, as all IG Clubs are subject to the same rules when it comes to the insured risks.[670] This is in fact proved in the following chapter where it is shown that there are minimal differences between the liability covers provided to charterers by all the thirteen P&I Clubs belonging to the Group. The scope of this cover can also become problematic for charterers to the extent that it might sometimes include risks against which every charterer does not necessarily need protection.[671] Though, the irony in this is that due to the mutuality which per nature predominantly represents shipowners' interests, charterers might be found exposed to liabilities for which cover is not available under the Clubs' rules on the basis that such coverage would not fit to the latter's purposes. Therefore, charterers might find themselves in a situation where they are protected against risks which they rarely face, but not for others which are crucial and frequent in

[666] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 370.
[667] *Ibid*, p. 365 and 370; also, supra, fn. 649, p. 132.
[668] *Ibid*, fn. 649, p. 130-131.
[669] *Ibid*. See also the Table below, at p.125.
[670] As provided by the International Group Agreement 2019 and the Pooling Agreement.
[671] More details regarding the particular charterer's risks covered by the IG Clubs will be discussed in the following chapter.

practice. A good illustration of this situation is charterer's liability for damages to the hull of the vessel which constitutes a type of loss that is traditionally excluded from shipowner's (mutual) P&I cover[672] and for which charterers should purchase an additional cover from them at extra cost.[673] Moreover, it is noteworthy that the insurance limits here (i.e 350 million dollars) are significantly lower than the traditional limits offered by the fixed premium insurers in the commercial insurance market which sometimes can even reach one billion dollars, as it will be seen below. However, this gap between the limits is of vital importance to charterers, especially when their liability for oil pollution is at stake. Thus, for example, if charterers continue to be found directly liable for oil pollution incidents, such as in "Erika" disaster, it follows that the Group's limits will not suffice to cover these burdensome claims, and so they will leave charterers unprotected.

Nonetheless, the greatest weakness of this option for charterers is the ''owner-friendly'' nature of the Clubs' administration which can very easily leave charterers almost excluded from their decision-making procedures. For instance, charterers are allowed by the Clubs' rules to take part in both bodies that control the Clubs' regulation (i.e the Board of Directors and General Meeting),[674] on the basis that they constitute Club's members.[675] While, the extent to which they can affect the decision to be made depends on the overall number of votes they possess. However, the voting system of Clubs' General Meetings is construed in a graded way based on the gross tonnage of ships entered by each member.[676] As a result, only large charterers whose insured chartered GT is significant may manage finally to play an important role within the Clubs' governance. Subsequently, the limited representation of charterers within Clubs' Meetings diminishes further their chances of becoming part of their Board of Directors,

[672] See, for example, Rule 63.1.a of Gard's Rules 2018.
[673] The matter is discussed in detail in Chapter V, in 2.2.2.1 "First class: Liability in respect of damage to an insured ship".
[674] See, for example, art. 11(1) and art. 5 of Gard Statutes.
[675] See, for example, art. 7(1) of Gard Statutes according to which according to which *"(a)ll persons who are Members of the Association and all executives of companies which are Members of the Association are eligible to serve as members of the Board of Directors. Member who is no longer eligible shall cease to serve*" and art. 11(7) according to which *"(m)embers shall be entitled to a number of votes at General Meetings…"*[text highlighted by the author].
[676] See respectively, for example, art. 7 of Gard Statutes according to which *"(m)embers shall be entitled to a number of votes at General Meetings determined by reference to the total gross tonnage of ships entered by them, as follows: a) up to 20,000 gross tons – one vote; b) 20,001 – 50,000 gross tons – two votes; c) 50,001 – 100,000 gross tons – three votes; d) 100,001 – 200,000 gross tons – four votes; e) thereafter, one additional vote for each 200,000 gross tons or part thereof, provided that…."*

which among others determines the Rules of the Club,[677] as its members are being elected by the Meeting.[678]

For all these reasons, it has been supported that in practice the number of charterers insured through the IG arrangements is relatively small.[679] This further justifies the same practical logic that led to the demutualisation of the Charterers' P&I Club;[680] that is to say the overall unwillingness of charterers to be found exposed to future calls. Nonetheless, this conclusion is not undisputable and allows us to presume that the number of chartered entries within the IG Clubs is still significant, albeit their exact number cannot be identified with certainty. Otherwise, there would be no reason for the IG Clubs to continue purchasing reinsurance particularly for them.

B) Charterers as special entries (fixed premium members)

Due to the very nature of these Clubs as shipowners' mutual associations, it was decided that in respect of any entities other than shipowners only a certain number[681] of "special entries'' could be also insured, yet on a fixed premium basis.[682] Essentially, the Clubs created a stand-alone fixed insurance which is provided within their market by a separate entity they own and does not fall within their conventional mutual pooling arrangement. Conversely, their reinsurance is arranged within the commercial insurance market, similarly to what a fixed premium insurer would do. This means, therefore, that it does not need to follow the insurance limits of the latter, whilst it preserves the security of their mutual members by keeping them apart from its fixed entries.[683] So, despite that charterers could be simultaneously accepted as mutual members, the Clubs' effort to filter their other entries (including charterers) indicates to a certain level their willingness to maintain the integrity of their identity as shipowners' associations. Also, it is worth mentioned that the acceptance of such "special entries" within IG Clubs is usually subject to the condition that they will comply with the Clubs' stringent

[677] See, for example, art. 9(2)(a) of Gard Statues.
[678] *Ibid*, art. 6.
[679] *Supra*, fn. 666.
[680] See above, at page 115.
[681] Although it has never been formalised, it is suggested that a reasonable estimate for the fixed premium entries should not normally exceed 10% of the mutual premiums. See respectively, *supra*, fn. 651, p. 40.
[682] *Supra, fn.* 666, p. 68; Robert T. Lemon II, "Allocation of marine risks: an overview of the marine insurance package'' (2006-2007) 81 Tul. L. Rev. 1467, p. 1488; Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p. 482.
[683] *Supra*, fn. 651, p. 42.

requirements regarding their operation standards and profile.[684] Thus, for example, some Clubs impose a warranty on their chartered entries to ensure that their chartered vessels which they wish to insure with them are also entered by their shipowner for full P&I risks in an IG Club.[685] Considering, however, that IG Clubs insure around 90% of the ocean going tonnage nowadays, the fulfilment of this warranty by charterers should not be extremely difficult.

Thus, this option undoubtedly offers some leverage to charterers who benefit on multiple levels. First, being technically insured with one of the IG Clubs allows them to take advantage of the high (re)insurance limits usually provided to them by the commercial reinsurers thanks to their credibility's reputation which can reach usually 750 million dollars (per entry per event),[686] although higher limits can also be negotiated.

At the same time, charterers do not need to anticipate any future supplementary, advance, or release calls, since their fixed insurance grants them certainty of cost through the "once and for all'' payment of premium. As a result, charterers know in advance exactly how much their insurance protection will cost. However, it should be mentioned that standard surcharges and reinsurance, management or administration costs are very much an integral part of the premium charge.[687]

Similarly to what was mentioned above for charterers as mutual members, fixed premium entries can also benefit from the quality of service provided by these Clubs. Besides, this is one of the Clubs' most defining characteristics, as it is well known that P&I Clubs are unique in the insurance industry, playing a pivotal role in handling all types of maritime claims as well as casualties, vessels and cargoes.[688] It should be mentioned at this point, though, that this is not always the case in practice, as the qualitative provision of services is highly relative and varies depending on the P&I Club.[689]

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[684] See, for example, "Gard: Comprehensive Charterers' Liability Cover" (2013) available <http://www.gard.no/Content/67630/Comprehensive%20Charterers%20Cover%20%202013.pdf>, accessed 12 March 2020, p. 4.
[685] *Supra*, fn. 666, p. 79.
[686] See, for example at "Swedish Club: Charterers' Liability All-in-One Cover" (February 2016), available <https://www.swedishclub.com/media_upload/files/factsheets2015/TSC%20Charterer%27s%20brochure%202016-02-22%20web.pdf> , accessed 12 March 2020, p.2.
[687] *Supra*, fn. 651, p. 56.
[688] Frans Malmros, "Fixed premiums, mutuals and the future of P&I'', in Zarach S. (ed.), *BIMCO Review 2000* (Book Production Consultants 2000), p. 168-169.
[689] As reported to the author by a charterer insured with an IG Club.

Along with the qualitative service comes further the financial strength that these Clubs have which allows them to offer securities that are widely acceptable in the market.[690] The robust character of the security provided by IG Clubs is also evidenced by the high credit ratings that most of them present based on Standard & Poor's (S&P) evaluations in 2019 (as per the table below). Thus, where a claim is made directly against charterers, either by shipowners or a third party, in respect of a covered risk, most clubs will provide security if the charterer's assets are threatened to be detained.[691] Yet, attention should be paid in cases that present a conflict of interest for the club which can endanger charterer's support, if the nature of the association as "owner-friendly" is being considered.[692]

IGA CLUB	**S&P Rating**
American	BBB-
Britannia	A
Gard	A+
Japan	BBB+
London	BBB
North of England	A
Shipowners	A
Skuld	A
Standard	A
Steamship Mutual	A
Swedish	A-
UK	A
West of England	A-

[690] William Moore, "Fixed premium and commercial P&I market overview'' <http://www.american-club.com/files/files/fixed_premium_commercial_PI_market.pdf>, accessed 12 March 2020, p. 7.
[691] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 380.
[692] This issue is further discussed later in this chapter.

On the other hand, this option does not come without downsides for charterers. In fact, there are particular characteristics of this type of insurance that can create significant difficulties to charterers. Firstly, it could be argued that with regards the cover's scope usually provided by these Clubs to their fixed chartered entries, it presents greater flexibility than the one offered to their mutual chartered entries, as the Clubs are not bound by the mutuality principle. Therefore, they are transformed into commercial insurers which allows them to negotiate whatever terms they consider preferable. In fact, some of them tend to use *''one-size-fits-all''* covers[693] which protect charterers against a wide range of risks adjusted to their liabilities. However, the rules concerning the formation of the policy must still comply with the general rules of the Club which are invariably decided by bodies consisting mostly of shipowners, as explained above.[694] Whilst, the "umbrella" covers can sometimes become dysfunctional for charterers who are looking for tailor-made protection against certain risks only, as the width of the former might increase the cost of the insurance to the detriment of the charterer. Therefore, irrespective of how broad the cover might be in this case, it could still leave charterers exposed to peculiar liabilities arising from the terms concluded each time, unless otherwise negotiated with the insurer at an extra cost.

Secondly, in respect of the high (re)insurance limits that are available under this option, they could still be found outside the Group, as it will be discussed below. But even so, such limits are not traditionally necessary for the majority of charterers who are mostly working with smaller specialist ships, unless of course they are big charterers operating on large, sea-going vessels[695] which usually present a significantly greater risk profile. Though, in such cases in practice most charterers again will elect to insure themselves on comprehensive terms which go beyond the traditional P&I risks and outside the Group's reinsurance agreements.[696] Either way, it should be remembered that high limits come usually at a higher cost[697] and that alone could be an important disadvantage for charterers for whom price comes usually first.

Nonetheless, the most crucial "flaw" of this option for charterers is the very nature of shipowners' P&I clubs and the interests they represent. It has been mentioned several times that the main intention behind the creation of these clubs was to safeguard shipowners. These

[693] See, for example, the Swedish Club's Charterers' Liability All-in-One Cover; also, see *supra*, fn. 690, p. 8.
[694] Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p.483.
[695] Such as cruise or passenger ships as well as oil tankers.
[696] *Supra*, fn. 691, p. 370.
[697] "The importance of the charterer's liability insurance'', <https://opensea.pro/blog/charterers-liability-insurance>, accessed 12 March 2020, p. 4.

associations are founded as much as controlled by shipowners. Therefore, it is undisputable that they constitute "servants" of the former[698] and will always promote their interests which will be a priority for them not only in relation to administrative matters, but in terms of claims' satisfaction as well. Even their standard rules have been formed in such a way so to fit shipowners' needs, as charterers can exercise little influence only on Clubs' general policy. As a result, it could be reasonable for charterers' acceptance by them to be treated with scepticism.

Respectively, it has been firmly supported that IG Clubs see charterers as an easy source of additional P&I income which could explain why pure charterers' business is within their spectrum of interest for so many years.[699] This admission can actually be accurate, if it is seen in combination with other commercial factors and particularly the general competiveness of the insurance market. Fixed premium entries have been calculated so to ensure that mutual members will incur no losses at all and so, the original intention of the Clubs when accepting the former in their business is to quote higher rates than the anticipated mutual cost in order to benefit their mutual members who can now take advantage of the sums paid in advance by the fixed members.[700] Also, for instance, it was mentioned above that these Clubs invariably operate on the basis of mutuality in the sense that they constitute non-profit associations. Thus, by operating simultaneously as fixed profit-making insurers, even through a separate entity which is still owned by them, they can recover all their potential profits being "lost'' due to mutuality restrictions. Besides, the principle of mutuality does not allow free competition among IG Clubs, unless it concerns the rating business in so far as the rating relates to management costs; otherwise, an uncontrolled rate cutting would harm the stability among the Clubs as well as the Group.[701] That was further approved with the 1999/329/EC decision[702] of the European Commission which exempted the Group's restrictions on competition among its Clubs from the scope of art. 85(3) of the EC Treaty on the basis that these restrictions were indispensable to the shipowners' benefits which are ensured by the operation of the Group.[703] Although this exemption was agreed to remain active until 2009, the situation is still the same,

[698] Peter Crichton, "The ever-changing world of the protection and indemnity mutuals'' in Zarach S. (ed.), *BIMCO Review 2000*, (Book Production Consultants 2000), p. 162.
[699] Gavin Ritchie, "Ten questions about the International Group of P&I Clubs", *The Charterers' Club Newsletter* (June 2013) <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/ten-questions-about-the-international-group-of-pi-clubs/>, accessed 12 March 2020.
[700] *Supra*, fn. 691, p. 69.
[701] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996),p.134.
[702] Cases No IV/D-1/30.373 and No IV/D-1/37.14.
[703] More information can be found in "European Commission clears amended agreements of the International Group of P&I Clubs – IP/99/230" (16 April 1999), available <http://europa.eu/rapid/press-release_IP-99-230_en.htm>, accessed 12 March 2020.

after the Commission decided in 2012 to terminate the investigation conducted about P&I Clubs since 2010, as there was no conclusive evidence to support the opposite.[704] Nonetheless, this arrangement forces the Clubs to cover their management costs out of their investment income and therefore, once again, the only way for these Clubs to generate fast more profit is through their operation as fixed premium insurers for charterers who are being seen now as a balancing source of income. Moreover, this way is sometimes the most effective means of them showing a premium growth compared to their previous year[705] which helps them also maintain their good reputation in the market. So, the charterers insured with them need to make sure that their premiums are not being used to cross-subsidise large high-risk fleets belonging to mutual members which may easily place a burden on the Clubs' financial performance[706] and respectively on their claims' satisfaction.

But, chartered entries can benefit Clubs so much as they can harm them and as a consequence, it is justified why they might be also seen with hostility by Clubs' members so to supress their interests or their protection within a Club. That can happen, for example, during inflationary periods where the level of settlements may increase dramatically during a policy period;[707] or, when the Club buys additional reinsurance from commercial insurers for the charterers yet it loses money due to poor underwriting results or selection of an unresponsive reinsurer. In these cases, even though all claims brought against the club come out the same pool, fixed premium assureds are excluded from further contributions and so, the whole financial burden of any losses will be borne by the mutual members (i.e. shipowners) through supplementary calls. Besides, on the grounds of non-profit making, the mutual members' obligations are limited to paying calls to meet the claims, the reinsurance as well as the administrative and management costs. So, respectively, this means that the Club cannot afford a loss that exceeds its premium revenue, otherwise its balance will be overturned. Yet, these events can disturb Clubs' balance by jeopardising their solvency, especially when the number of fixed premium entries is great.[708] Thus, having the Clubs known the risks of such exposure, might wish to eliminate charterers from their Club to the biggest possible extent. This, in fact,

[704] More information about the matter can be found in IP/10/1072.
[705] *Supra,* fn. 699.
[706] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 56.
[707] *Supra,* fn. 691.
[708] *Supra,* fn. 699.

could perhaps justify why the number of such entries in these Clubs is always predetermined and usually considerably small.[709]

Another case that illustrates the active promotion of shipowners' interests through these Clubs emanates from the way they are structured internally. More specifically, as noted earlier, P&I Clubs are managed by their Board of Directors whose members are selected by Clubs' members and which is vested with extended discretion to decide upon the majority of decisions being made within the Clubs, such as the admission of new members, the allocation of Club's funds, the risks insured, or the settlement of its members' claims.[710] Therefore, similarly to mutual charterers, and also considering the relatively small number of fixed (chartered) entries that each Club is allowed to have, it could be reasonably assumed that pure fixed charterer's representation in the Clubs' main decision-making procedures is minimal, if non-existent. This argument is further supplemented by the fact that fixed charterers are not even regarded as true members in all purposes related to the Club's administration,[711] as they are always subject to separate conditions regarding their insurance. While, sometimes Club rules even deprive them from any voting rights at its General meetings, especially when they are requesting insurance protection for less than one year,[712] or accept them only insofar as the shipowner of their chartered vessel is also a Club member.[713] Either way, though, so long as members' voting rights are determined by the overall amount of the entered tonnage insured with the Club,[714] it follows that only big fixed charterers will be able to represent themselves in the aforesaid procedures, whereas smaller or voyage charterers will be most likely excluded, as it has been already mentioned.

Also, such misrepresentation of charterers within the administration of these Clubs affects at the same time the satisfaction of their claims. Charterers traditionally constitute a minority group within these Clubs and even though they are accepted as "special members", it could still be argued that they will be treated as outcasts, as it is very likely that priority will be given to shipowners whose main interests the Club represents. Also, exactly due to the parties'

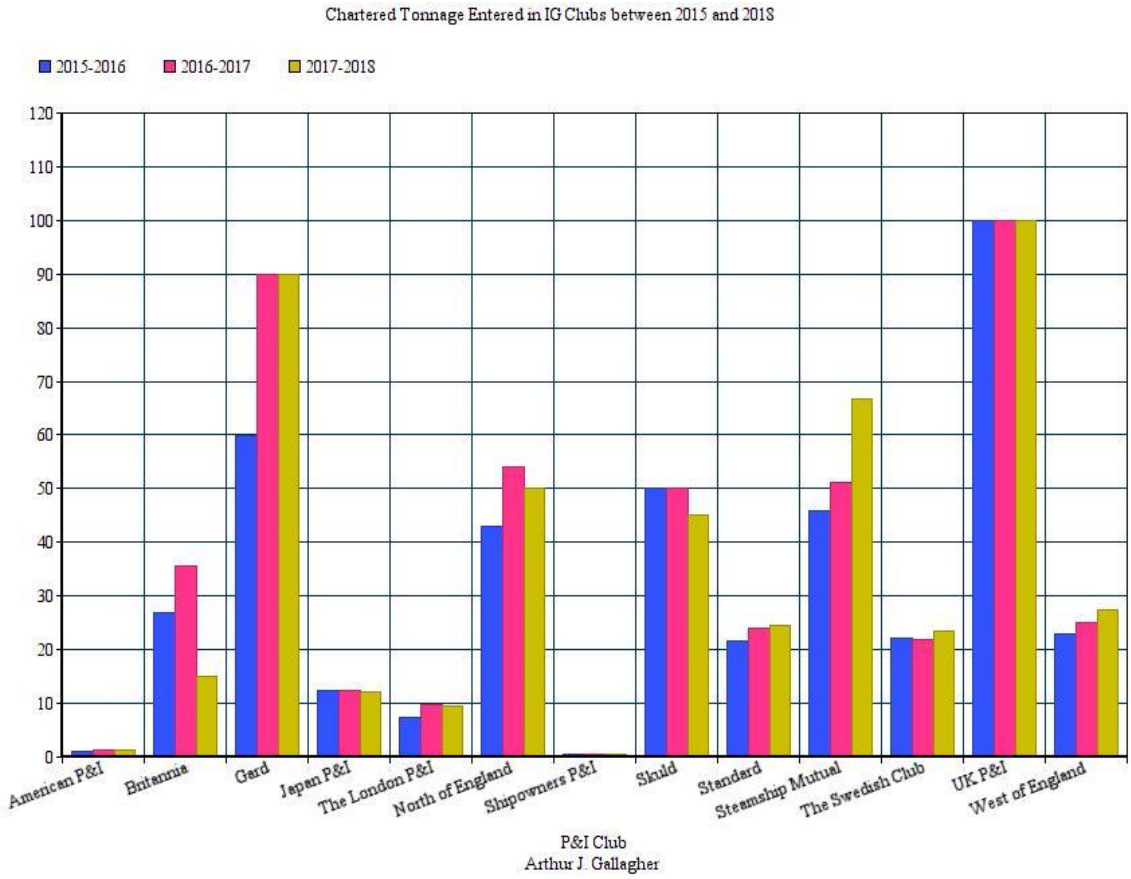
[709] However, this is not the only reason why Clubs accept only a limited number of "special entries". *Supra, fn.* 706, p. 40.
[710] *Supra*, fn. 701, p. 13.
[711] *Corfield v. Buchanan* (1913) 29 TLR 258 and *In re Arthur Average Association (De Winter and Co's Case)*(1876) 34 LT 942; 3 Asp MLC 245.
[712] Although this restriction applies usually to all members of the Club, as the Clubs' Statutes do not distinguish in their Articles, it is clear that the impact will be greater in case of charterers, as they are more likely to be in need of a short-term insurance. See respectively, art. 1.1.2 and 1.2.8(a) of Skuld's Statutes 2018; see also, s*upra,* fn. 701, p. 12
[713] *Supra*, fn. 706, p. 39.
[714] S*upra*, fn. 701, p. 12.

opposing interests, it will not be surprising if at some point shipowners and charterers will be found in opposite sides during a charterparty dispute. In such occasion, though, the Club will be in a difficult position, as it will have to keep both of its members satisfied. However, there are certain reasons that could justify the Club's favouring position towards shipowners, rather charterers.[715] First of all, it should not be forgotten that when Clubs operate as fixed premium insurers do not differ from a commercial insurer. Therefore, recovery of charterers' claims is absolutely discretionary, as there is no "natural" obligation for the association to support them, contrary to what applies to shipowners. In addition, the fact that disputes between the Clubs and their members are usually resolved first by the Clubs' committee which again will be probably consisted mostly of shipowners, leave charterers with little hope that their claim will be supported and therefore their only option will be to resort to arbitration which is, however, time and money consuming.

Notwithstanding the considerable "weaknesses" of this option as far as it concerns charterers, it has been noticed that today a significant number of the total number of the Clubs' tonnage comes from their chartered entries,[716] as the table below indicates. However, it is not clear from the sources whether these numbers represent solely the chartered fixed or mutual entries, or the reinsured chartered entries, or both, nor it is known the size/type of the charterers that these numbers reflect.

[715] When, for example, both the shipowner and charterer engaged in the dispute are insured by the same P&I Club. In these cases, the claims department of the Club will facilitate both members, yet they will be handled by separate individuals within the department for fairness purposes. Even this sort of arrangement, though, does not really change the conclusion suggested above.

[716] For example, in Steamship Mutual P&I Club, charterer's business represents the one third of the overall Club's business. See respectively at "Steamship Mutual P&I Club: Charterers' Liability Cover", available <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 4 and "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020.



Source: Arthur J. Gallagher: Marine Pre-renewal Review 2017 [717]

Nonetheless, it is quite interesting to mention that this number is rising continuously from 1998 until today, with the exception only of the period between 2010 and 2013 where a small drop was noticed, as the table below indicates. But again, that fact alone is only indicative of the Clubs' popularity among charterers, since this rise can also be the result of other factors which cannot be revealed through these numbers. For example, the Clubs might have accepted less charterers to be insured with them, yet with bigger tonnages; or, they might have included both mutual and fixed chartered entries, overall so to present an upward trend.

[717] Arthur J. Gallagher, "Marine P&I pre-renewal review 2017", available <https://www.ajg.com/media/1701899/marine-pi-pre-renewal-review-2017.pdf, accessed 12 March 2020, p. 27-51.

Source: P.L Ferrari & Omni P& I Market Review 2019/2020 [718]

Overall, with regards the type of charterers that usually find refuge within the IG Clubs, it is supported that the majority of those constitute charterers who are also shipowners themselves and have their vessels entered in any of these clubs.[719] For them, their status and influence within the Club is not really affected, as they continue to be treated favourably, either as mutual or fixed members. That explains, therefore, their preference to P&I clubs even when operating as charterers. Furthermore, usually large charterers, such as operators of oil, gas and chemical carriers, oil companies and commodity traders as well as dry bulk and container operators,[720] are also attracted by these Clubs due to their reputable status within the market. But, apart from them, to IG Clubs additionally resort smaller traders or operators. Yet, the latter are rare, mostly because they feel as "second class citizens'' within the Club compared to shipowners, as it has been supported.[721]

[718] The table reflects the chartered GT entered with IG Clubs. See in "P.L Ferrari & Co and OMNI P&I: P&I Market Review 2019/2020'', available <https://www.appleyardlondon.com/main>, accessed 12 March 2020, p. 57.

[719]"The importance of the charterer's liability insurance'', <https://opensea.pro/blog/charterers-liability-insurance>, accessed 12 March 2020, p.1.

[720]"Gard: Comprehensive Charterers' Liability Cover" (2013) available <http://www.gard.no/Content/67630/Comprehensive%20Charterers%20Cover%20%202013.pdf>, accessed 12 March 2020, p. C; also, supra, fn. 716, p.4.

[721] This is the personal view of an individual working for an IG Club.

Therefore, it could be concluded that shipowners' P&I Clubs create generally a hostile environment for charterers whose needs will always come second, as they represent merely a minority in these Clubs, while their interests will rarely coincide with the ideas that the latter represent. The benefits of certainty, high limits, security and qualitative service should also not play an important role in charterer's decision, as they all can be alternatively found in the commercial market as well, in fact at a lower sometimes cost. Especially, though, in respect of the service provided, it would be completely wrong to support the superiority of Group Clubs over commercial insurers, as their staff is usually recycled within the same market.[722] Besides, this option does not even seem to please mutual members either, who are noticing charterers penetrating gradually their own associations, de-stabilising the operation of their Group by introducing new exposure parameters. At the same time, within the general context of market competition, mutual P&I insurers are trying to challenge commercial insurers on the grounds of premium price and service provided. However, price competition sometimes is detrimental to the quality of the service which inevitably has to loosen up too, in order to meet the competition's demands. But this fact is obviously not welcomed by any of the Clubs' members who now realize that this is not what they are paying for. On the top of that, the tactic of mutual clubs coming together in joint ventures or alliances with corporate players purporting to combat the threats of fixed insurers can adversely disturb the Clubs' stability and even worse, result in a complete take-over of their freedom from the latter.[723] Therefore, it is believed that this arrangement long-term will not be very beneficial either to charterers or shipowners, as both parties' interests will be compromised one way or another. Either way, this option remains dysfunctional for the charterers' majority which are mainly smaller traders chartering vessels for their businesses and which are seeking insurance protection invariably outside the IG, as it will be seen below.

4.1.2 Commercial insurers

Due to the disadvantages that IG Clubs present in practice, many charterers invariably resort to insurers outside the Group within generally the commercial insurance market which can also offer charterers liability cover both on mutual and fixed premium basis.[724]

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[722] Gavin Ritchie, "Ten questions about the International Group of P&I Clubs", *The Charterers' Club Newsletter* (June 2013) <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/ten-questions-about-the-international-group-of-pi-clubs/>, accessed 12 March 2020.

[723] *Supra*, fn. 629, p. 3.

[724] It has been supported that the total charterers' liability market gross premium in 2008 was estimated to be about US $300-350 million per annum, from which, about 20-25% was covered by non-IG insurers, meaning

4.1.2.1 Mutual premium insurers

When it comes to mutual premium insurers in particular, they essentially operate under similar to the IG Clubs principles, in the sense that their members constitute both the assured and insurer and have to contribute to the company through their annual or supplementary calls. Also, there is no demand for profit making, since there are no shareholders to be satisfied.[725] Yet, contrary to IG Clubs, such insurers are freed from any restrictions that the IG Agreement has imposed on the former, so they can freely compete the other general commercial insurers in the market. Also, as there is no common pool to support their risk exposure, they seek and arrange for their members' reinsurance themselves.

The positive element of these insurance providers for charterers is first of all the stability they offer to the insured by distributing the cost of their members' liabilities among each other. Also, the prospect of the annual calls being returned to the members in the form of dividend after a profitable year plays a significant role to charterer's decision which has to pay otherwise once and for all and with no returns for insurance in the fixed premium market. In addition, the fact that there are certain mutual insurers which do not underwrite owners' P&I risks eliminates the possibilities of conflicts of interest.[726] But most importantly, it is the insurers' freedom to form their covers with no risk constraints that provides the assured with the flexibility to adjust the covered risks each time to its needs.

On the other hand, there are also significant disadvantages that negate completely the aforesaid strengths of this option and which are mostly associated with the fact that such insurers have a constrained underwriting as well as financial capacity. In other words, since these insurers operate outside the IG, their ability to undertake risks will be limited to the amount of the contributions made by their assureds. Consequently, this means that not only the insurance, but also the reinsurance limits provided will be formed based on their above capacity. However, it should be borne in mind that as they operate on individual basis and capacity, in order for them to ensure high limits of protection to their members and equivalent reinsurance, on competitive (compared to the fixed premium insurers) terms, the annual calls are expected to be relatively high. This expensive form of insurance, though, comes on the top of any additional calls that the assured charterers might be obliged to pay, if need be, and that

charterers' liability insurers outside the IG of P&I Clubs. See respectively, Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 163.

[725] See, for example, the Maritime Mutual, which constitutes a mutual Club based in New Zealand.

[726] An example of such insurer is the Norwegian Hull Club which constitutes a mutual club, whilst insuring on fixed premium basis.

generally increases the overall cost of their insurance. Furthermore, given that the insurer's priority would be to safeguard its stability and continuity, it is expected that the number of entries will be very limited and most likely subject to strict entry requirements.[727] In respect of the service and security provided, they both are highly questionable and subject to the experience and reputation of the commercial insurer in the market.

As a result, it is believed that for all these reasons this option is not very popular among charterers who seem to disapprove generally any type of insurance provider that exposes them to further calls, disallowing them to predict in advance the overall cost of their purchased insurance. Besides the high insurance cost, the uncertain quality of the services provided constitute another deterring factor for charterers in respect of this insurer type.

4.1.2.2 Fixed premium insurers

Another option outside the IG Clubs that is traditionally available to charterers is the commercial fixed premium insurers. The latter have a long-standing presence within the insurance market and constitute business entities operating within or outside Lloyd's market that look at multiple lines of insurance, offering cover either for marine or non-marine risks.[728] The operation of these providers is quite straightforward, as they work essentially like profit-making machines that are allowed to compete each other freely in the market,[729] and they are managed by a body of stakeholders, the agents of which perform their businesses by communicating with the assured's broker.[730]

Particularly with regards CLI, it is presumed that commercial insurers commenced targeting charterers around the same period with IG Clubs. Hence, once charterer's liabilities under charterparties expanded and market's awareness in respect of charterer's exposure increased, various commercial insurers started also to emerge in different areas across the world, such as in Netherlands, United Kingdom, Scandinavia, America, Russia, or South Korea, purporting to address to all types of charterers worldwide, away from the mostly

[727] See, for example, the cover provided by the Maritime Mutual which is only available through formally approved brokers and producers who have been carefully selected for their market expertise and specialist knowledge of marine liability insurance. More information can be found in
"Maritime Mutual: Charterers liability insurance", available <http://www.maritime-mutual.com/>, accessed 12 March 2020.
[728] Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p.21.
[729] *Ibid*, p.20-21.
[730] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 63.

European-centralised IG Clubs. Interestingly, the upward trends that charterer's liability showed especially the last decades led to the market's development which resulted finally in a "new entrant storm"[731] with new forms of insurers continuingly appearing as a consequence also of the increasing demand that broadened even more the spectrum of insurance providers available to charterers.[732] These newly created insurers in their turn developed their own characteristics by targeting particular types of customers and offering custom-made services as a response to the constantly changing needs of the market. Based on the research conducted, examples of this type of new emerging forms which were targeting, among others, charterers, are specifically a) insurance companies managed by general agents (Managing General Agents – MGAs) and b) specialist charterer's insurers, and will both be examined later in this chapter.

The opening of the market towards charterers was of course seen positively by them, especially by those who felt that IG Clubs could not satisfy their demands. Thus, notwithstanding that commercial fixed premium insurers showed from the very beginning of their evolvement a great enthusiasm in offering their services mostly to smaller ship operators and charterers,[733] most likely due to their constrained capital capacity,[734] their popularity nowadays continues to increase among all charterers on the basis that they offer protection on different and -to some extent- more favourable to charterers terms, compared to the latter's other options described earlier.

Thus, similarly to the fixed premium insurance offered by IG Clubs, the insurance provided by commercial fixed premium insurers also ensures certainty of cost for charterers who pay once and for all for their cover. Further, as they are not restrained by any competition limitations, they invariably offer customised products and services purporting to address the most unique risks that charterers might encounter.[735] Accordingly, their covers and policy wording are negotiated every time with the particular charterer on its own merits. So, it is adapted to the particular trade and its needs as well as to charterers' budget, whenever

[731] *Supra, fn*. 728, p. 16-17.
[732] It has been supported, actually, that the commercial insurance market has more than doubled in size since 2009, with seventeen non-IG P&I fixed premium and charterer's liability specialist markets competing for business and with more new entrants than exits in this industry sector the past five years. See, *ibid*. p. 22.
[733] *Supra, fn*. 728, p.5.
[734] *Ibid*, p. 22; similarly also in Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 32 and 35.
[735] William Moore, "Fixed premium and commercial P&I market overview'' <http://www.american-club.com/files/files/fixed_premium_commercial_PI_market.pdf>, accessed 12 March 2020, p.15.

possible.[736] This characteristic, actually, gives them superiority over the IG Clubs, because it provides charterers with great negotiation freedom which is extremely important to them, given the peculiarities that different vessels, cargoes or charterparties might present. Besides, acquiring an insurance protection tailored exactly for the type of trade charterers are engaged in, or for the contractual obligations or risks they undertake,[737] is very effective moneywise as well. Because too much insurance can be a waste of money, whereas too little might either leave them unprotected, or necessitate the purchase of additional insurance at extra cost.

Another advantage of the general commercial insurers is their big number in terms of quantity and their multifaceted forms with which they exist in the market, as opposed to the thirteen IG Clubs which remain static and constrained by the limitations imposed on them by the IG Agreement. That extra plurality gives charterers the option to seek for protection on more competitive terms, as apart from the policy wording, they can always negotiate the amount of their insurance premium and conclude on decent prices, particularly when the competition is increased and the demand is high.[738]

Furthermore, it is noteworthy that the (re)insurance limits that such providers offer are usually the same or even higher than the IG Clubs, reaching sometimes one billion US dollars merely for a liability cover.[739] This is understandable, if it is considered firstly that the limits are defined by the insurer's overall capital volume and the size of the company; and secondly that some of these insurers are colossal companies[740] which either have committed a huge capital to the purposes of their business, or are backed by major capital providers, with no capacity constraints, so the (re)insurance limits they offer are equivalent to the amount of liability they can cover based on their available funds.[741]Although very high insurance limits are not traditionally necessary for the charterers' majority, such option is important to be mentioned when commercial fixed premium insurers are compared with IG Clubs, especially

[736] "Navigators P&I: Protection and Indemnity Cover", available <http://www.navg.com/resources/Navigators_Protection&Indemnity(P&I)Cover.pdf>, accessed 2 February 2017, p.3.
[737] For more details regarding particularly the differences that these options present if compared to each other, see the following chapter.
[738] *Supra*, fn. 734, in Heinz E. Gohlish, p. 26.
[739] See, for example, the Navigators P&I or the Norwegian Hull Club.
[740] Such as Allianz Global Corporate & Specialty.
[741] *Supra, fn.* 734, p. 35 and 32.

if it is taken into account the increased demand for higher insurance limits by charterers, after the "*Ocean Victory"* case.[742]

The way commercial fixed premium insurers are organised constitutes another positive element that should be considered. Contrary to IG Clubs where the insurer is also the shipowner/assured, in case of general commercial insurers, their shareholders are not related to the assured. So, incidents of conflict of interest will rarely arise, whilst the decision making procedures will remain uninfluenced by the shareholders' individual pursuits, because any decisions will be usually authorised solely by experienced underwriters and claims professionals of the company itself.[743] In that sense, it could be argued that general commercial insurers create a more neutral insurance environment for charterers, as they are more in control of their own destiny. Therefore, the satisfaction of charterers' claims is better safeguarded.

Last, with regards these insurers' reliability and credibility, it is believed that it varies depending on the size and financial background of each company as well as its capital surpluses and reserves.[744] Obviously, the bigger and older the company is, the more credible it will be on the grounds that it has an established reputation in the market. However, this is not always absolute, as it was noticed that even smaller and comparatively new entities in the market present a positive and rapid development with their financial strength being equal or even better sometimes than IG Clubs.[745] Overall, though, as the table below also indicates, in terms of security invariably these providers are robust enough to ensure charterers' protection whenever the need arises. It should be noted, however, that here only a very small portion of them has been randomly selected and taken into consideration.

Commercial Insurer	**S&P Ratings**
Advent Underwriting	A+
Allandia Marine	A-
Allianz Global Corporate & Specialty	AA

[742] [2017] UKSC 35; [2015] EWCA Civ 16; [2015] 1 Lloyd's Rep. 381 (CA); [2013] EWHC 2199 (Comm.).Although the Supreme Court found that charterer's duty to nominate safe port was not breached, the dispute caused concerns to charterers regarding the way their duty is normally exercised and the risk of them being found liable for such breaches. Therefore, they now seek higher insurance limits for their liability cover, based on the information provided to the author by a specialist charterers' underwriter.
[743] *Supra,* fn. 736, p.2.
[744] *Supra*, fn. 730, p. 52.
[745] See for example the Navigators P&I which was established in 2004 as well as the Norwegian Hull Club which was established in 2001 and are both rated already with "A" by Standard & Poor's.

Amica	A
British Marine	A+
Chabb	AA
Ingosstrakh Insurance Co.	BBB-
International General Insurance (IGI)	A-
Korean P&I Club (mutual)	A-
Navigators	A
Norwegian Hull Club (mutual)	A
Rosgosstrakh Ltd	BB-

Nonetheless, this option does not come free of weaknesses for charterers. Though, it should be noted that these disadvantages are mostly relative to the company's size and therefore, they do not invariably apply to all the providers within this category.

Hence, the most usual issue related to this form of insurers is the cost of services and cover they provide. There is a general belief that acquiring insurance in the commercial insurance market is usually the most expensive option, mostly because it includes profit-making elements.[746] But, this is not unjustifiable neither entirely accurate. As mentioned above, there are commercial insurers which offer very high (re)insurance limits to their customers. Therefore, it follows that the higher the limits a charterer demands, the more expensive his insurance would be. This reasonable conclusion is further supported by the nature of the insurance itself. Commercial insurers when underwriting on fixed premium basis are unable to go back to their assureds asking for additional premium when claims have been proved to be excessive.[747] Therefore, as they do not have any other safety net apart from their own accumulated capital,[748] it makes sense to charge their services at a higher sometimes cost, as that would secure the continuity of their business as well. However, since the majority of charterers are not usually in need of such high limits, it is expected that the cost of their

[746] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 35.
[747] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 30.
[748] *Supra*, fn. 746, p. 35.

insurance will be affordable, depending also on their negotiations with the insurer. Furthermore, thanks to the market's plurality where insurers of all sizes are contesting a piece from the profits,[749] charterers can resort to smaller and recently established insurers which offer covers at low prices and under more competitive terms.[750] Either way, the point is that charterers at the end will take what they have paid for. But since the cost of premium is always of great importance for charterers and is invariably negotiated first, it is expected that the overall expense of their insurance protection will accordingly be one of their decisive factors when choosing their insurance provider. Besides that, it needs to be remembered that premium prices are also adjusted based on the market's conditions, so if the market is under recession, it is presumed that very cheap premia will be prevalent as an effort to attract more charterers.

Another issue that might arise in respect of such insurers is the quality of the service they provide to charterers. It is believed that there is room to support that particularly big commercial insurers whose business is expanded over a great variety of different fields operate mostly on profit-making basis and so, they are not able to develop the required expertise to deal with their clients' different needs in the best possible way and tend to adopt a more passive attitude towards charterers' claims once they have secured their contract of insurance. But again, this is not entirely justified, as there are small commercial insurers which are still trying to build up their own reputation in the market and attract more customers. For that reason, they are making sure that their personnel is highly experienced and knowledgeable of the insurance market and their clients' needs. Furthermore, sometimes charterers' decision about their insurance provider can be entirely subjective and dependant on the business relationship they have established with their insurer. Therefore, charterers' reaction to the quality of the service provided to them might be judged on the basis of their previous experience with this insurer and not solely on general objective standards.

In addition to the above, the restrictions that some commercial insurers impose on charterers regarding the type or size of vessels which they are willing to insure constrain slightly charterers' options within this market. For instance, the Navigators provide protection only to charterers of small to medium-sized vessels,[751] while British Marine insures chartered

[749] "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p.20.
[750] *Supra, fn*. 746.
[751] *Supra,* fn. 736, p. 2.

ships up to GT 10.000, or in excess of GT 30,000 yet only on a selective basis.[752] Similarly, also Rosgosstrakh Ltd, which is a major insurance provider in Russia, targets mostly small to medium sized vessels, up to 25.000 GT with worldwide trading.[753] This can be a considerable limitation for some charterers operating within certain areas only, seeking for a localised insurance solution. However, as the charterers' majority are traditionally small operators, most likely such restriction will not have an impact on them.

Last, when it comes to the satisfaction of charterers' claims and their payment, it needs to be borne in mind that there is no established or proven security system applying to fixed premium (commercial) insurers, apart from the bank guarantees, contrary to the strong LOUs usually provided by IG Clubs. Therefore, albeit the previously mentioned high security ratings of such insurers, their provision will depend on the discretion of the insurer's bank. Yet, this procedure is often time and money-consuming and could delay claim payments.[754]

Overall, similarly to IG Clubs, commercial fixed premium insurance providers are not perfect to all kinds of charterers, given the conditions described above. Nonetheless, it is noteworthy that this market area has undoubtedly showed some progress the last decades in relation to charterers and created a friendlier and more accessible environment of high quality services. It has been explained elsewhere in this chapter that one of the reasons that contributed to the delayed development of charterer's liability was, among others, brokers' unwillingness to work with charterers, as they were seen as non-profitable business. As a consequence, the charterers resorting first to the commercial insurance market for protection were mostly big commodity traders who had sufficiently large and well known businesses,[755] capable of attracting brokers' attention and affording not only the expensive brokerage commissions, but the high cost of commercial insurance cover as well. This result was further facilitated by the market's centralised nature, as all its insurers were concentrated in London, excluding in a sense transactions with charterers outside Europe. However, the market has significantly evolved since then, while the numerous commercial insurers existing nowadays led to the creation of a worldwide communication network, so that the location of charterers is no longer an issue. Consequently, it is presumed that nowadays there are definitely more charterers being

[752] See "OMNI P&I Report 2016", available <http://www.omniltd.com/en/publications/p-i-reports>, accessed 12 March 2020, p. 48.
[753] Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 48-49.
[754] *Supra*, fn. 746, p. 43.
[755] *Supra*, fn. 747, p. 39.

insured with such providers than before, although the exact number of them cannot be very easily identified due to the big number of commercial insurers offering such services worldwide. But on the basis that the number of those offering charterer's liability insurance remains still increased, it could be safely asserted that there is a demand from charterers' part as well.

A) Insurance companies managed by general agents (MGAs)

It was said that charterer's commercial fixed premium insurers appear in practice under various forms, two of which are insurance companies managed by general agents and specialist charterer's insurers. As all of them constitute, in essence, commercial fixed premium insurers, there will be inevitably an overlap between them at some points, as it will be seen later. However, it is considered preferable to treat them separately for two different reasons. Firstly, because each of them due to their peculiar characteristics contributes to a different, yet significant, level to charterers' decision-making regarding their search for the right insurance provider. Secondly, because each of them attracts different types of charterers. Therefore, it is believed that their individual examination will provide a more complete view of the factors that influence charterers' insurer decision.

Starting with the MGAs, their development was triggered by the overall expansion of the commercial insurance market and the creation of more elaborate insurance structures which very rapidly established their own territory and claimed part of the market's overall profits. Hence, MGAs constitute one of those newly emerged structures that are nowadays regarded as the "*third insurance sector"*.[756] Specifically, they are individual or business entities appointed by an insurance company with the purpose of conducting and arranging insurance contracts, acting always as the insurer's agent.[757] So, they operate like a peculiar type of insurance broker vested with binding underwriting authority directly from their insurer. Therefore, they generally act as a fronting company for the insurer and simultaneously provide the assured with evidence of cover within their defined underwriting authority and handle its claims.[758]

[756] For more information on the nature and structure of MGAs, see respectively David Coupe and Grace Shek, "Establishing an MGA in UK", available <https://ec3consultants.co.uk/insight-commercial/31-establishing-an-mga-in-the-uk.html>, accessed 12 March 2020.
[757] Supra, *fn.* 753, p. 21.
[758] *Ibid*.

The rationale behind MGAs' creation is linked with the greatest strength of this insurance option. Thus, the main idea was to form insurance bodies which could perform the duties of a traditional insurance company by operating, however, mainly within niche and specialist markets.[759] This would allow the insurance companies to expand their business markets without the need to set up their own distribution channels or use their own resources and technical knowledge to open and man independent offices. To this end, it could be argued that MGAs look like specialist insurers, yet without having their own capital to manage. Consequently, this distinctive characteristic of theirs benefits charterers, as it offers them qualitative and more specialised, maritime-related services provided by experienced personnel which is able to handle effectively maritime disputes. That element might be absent from a traditional big commercial insurer, as highlighted earlier.

It would seem also that MGAs could constitute for charterers a more accessible solution, since they operate on a worldwide basis, independently from their insurer whose location now does not hinder charterers from finding an effective insurance provider. The fact that such agents are usually smaller companies could furthermore facilitate small brokers across the world which work on behalf of smaller charterers and do not usually have easy access to the big insurance market, so they find difficulties in attracting big commercial insurers for their clients' needs. But most importantly, this arrangement services the commercial insurers themselves which although might not possess the proper expertise within their home or regional offices, they can still make profit by using MGAs, as their intermediaries, at definitely lower cost, instead of developing this expertise in-house.[760]

Similarly to commercial insurers, another advantage of MGAs is the high (re)insurance limits they are able to provide to charterers. It has been mentioned above that MGAs act as intermediaries between the assured and the insurance company they represent. This means that they do not have their own capital capacity and therefore, the amount of liability they can underwrite depends on fund restraints that are imposed by the main insurer. Thus, depending on the commercial insurer's size, charterer's liability (re)insurance limits offered by MGAs will vary accordingly and can range from fifty or one hundred million (US) dollars[761] to one

[759] See, respectively more about cover holders in <https://www.lloyds.com/market-resources/delegated-authorities/compliance-and-operations/about-coverholders>, accessed 12 March 2020.
[760] *Ibid*.
[761] See, for example, the limits offered by Carina and DUPI Charterers' Liability respectively for charterer's liability cover.

billion (US) dollars.[762] Although the norm for charterer's liability does not seem to exceed the five hundred million (US) dollars.[763] Either way, these limits are more than enough to cover charterers' needs; therefore, such providers can constitute an attractive alternative for them.

The close dependence of MGAs upon their commercial insurer gives them leverage in respect of the power of their security as well. If the insurer they are acting for holds a robust and high-rated financial security, its MGAs will most likely hold the same degree of financial strength. In fact, it seems that the available to charterers MGAs offer them insurance protection of high-standards security, similarly to their other insurance providers examined above and so, that adds another reason why they constitute good refuge for charterers' protection.

Managing General Agent (MGA)	**S&P Ratings**
Carina (for Lloyd's syndicate)	A+
Eagle Ocean Marine (for American Club)	BBB-
Hanseatic Underwriters (for Lloyd's syndicate)	A+
Hydor AS (for Brit syndicate)	A+
Lodestar Marine (for RSA)	A

Moreover, since MGAs do not form an insurer themselves, it follows that the terms under which they offer such insurance will be subject to the principles of the insurer they represent. Therefore, they underwrite on fixed premium basis which offers charterers certainty of cost, as the premium has been calculated based on their own merit, without exposing them to any future costs. But most importantly, it is their flexibility in respect of the covered risks and its policy wording that makes them so attractive to charterers, similarly to all fixed premium insurers, as they provide charterers with comprehensive covers based on their needs.

Also, the fact that they operate in large numbers and on multiple locations creates a plurality in the market which in its turn increases the competition with each other, allowing

[762] See, for example, the limits offered by Hydor AS (for Brit syndicate) and Lodestar Marine (for RSA).
[763] See, for example, the limits offered by the Charterers' P&I Club, the Eagle Ocean Marine and the Hanseatic Underwriters.

charterers to seek for insurance protection on reasonable prices too, subject to the considerations noted above in respect of commercial insurers.

However, it is noteworthy that MGAs get paid a commission for their underwriting services.[764] Consequently, as their profit depends ultimately on the business they attract, it would be reasonable to expect that they will try to include the former within the price of their insurance, increasing perhaps its overall cost. Another weakness that MGAs present, is the limitations they impose on the type and size of the chartered vessels that can insure, like all commercial insurers,[765] or, on the waters that the chartered vessel can trade.[766] But, it is believed that the most important flaw of MGAs emanates from their own nature as insurers' intermediaries. Thus, notwithstanding MGAs' underwriting and quoting authority, there are insurers which are not willing to grant broader responsibilities to their MGA, such as the settling of claims which remain with them.[767] This means, however, that even though charterers develop a close contact with their MGAs, they maintain a completely impersonal relationship with the body in charge of decision-making in relation to the satisfaction of their claims. As a result, that might not only lead to delays, but can jeopardise the certainty of their protection as well.

Despite the aforesaid disadvantages, it seems that MGAs constitute nowadays one of the most usual insurance provider and refuge for charterers, with the premium they earn from charterers' entries representing a considerable deal of the commercial market's overall charterers' premium.[768] This trend, however, is justifiable on the basis that the majority of charterers constitute small or medium size traders and so, the principles under which the MGAs

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[764] Benoit Carrier, Aon Benfield, ''MGAs: How they work, industry results, market trends'' (October 2017), <https://www.casact.org/community/affiliates/MAF/1017/MGA.pdf>, accessed 12 March 2020.

[765] For instance, Carina provides charterers with P&I cover for ships up to 5.000 GT or up to 6.500 GT, if part of a fleet; while, Lodestar's Marine tonnage threshold is 10,000 gross tons for tankers/passenger vessels and 20,000 gross tons for all other vessels, save ''general cargo and bulkers'' for which they insure up to 40,000 gross tons vessels. See, respectively in supra, fn. 753, p. 30-31; "Lodestar: a star that leads or guides- Protection and Indemnity", available <http://www.lodestar-marine.com/uploads/_downloads/LODESTAR_brochure.pdf> , accessed 12 March 2020, p. 4. Similarly, Hanseatic Underwriters is targeting small and medium size general cargo and container vessels, as well as liquid cargo and dry bulk. See ,respectively "Hanseatic Underwriters brochure", available <https://hanseatic-underwriters.com/wp-content/uploads/2016/04/Hanseatic_Underwriters_brochure_web_EN.pdf>, accessed 21 August 2017, p. 5.

[766] For example, Eagle Ocean Marine ''intends to cater mainly to the needs of the operators of smaller ships in local and regional trades'', whereas in respect of worldwide operators, its cover is available only if they are not based in United States or trading exclusively in US waters.

[767] Also, when an MGA has only binding authority, it is the insurer who does the underwriting job. So, the insurer can also cancel the policy when they review the risk after binding. See respectively, *supra, fn.* 764; see further, "How a managing general agent business model works'' (May 2018) <https://www.superioraccess.com/managing-general-agent/ >, accessed 12 March 2020.

[768] See in combination with the tables at p. 147 regarding the insurance premium income of the Charterers' P&I Club and RaetsMarine which constitute MGAs specialising in charterers' risks.

offer them insurance protection matches with their demands, while its significant advantages outweigh any weakness they might present. It is only the large operators who are usually reluctant to choose MGAs due to the limitations imposed on the entered vessels' size. Though, it is believed that the latter does not really affect the balanced allocation of charterers within the insurance market, because, big charterers often prefer being insured either within an IG Club, or by a general commercial insurer, for the reasons explained earlier.

B) Specialist charterers' insurance providers

The last insurance option available to charterers is specialist charterer's insurance providers. As explained earlier, these insurers constitute commercial fixed premium insurers and operate usually with the form of MGAs. Therefore, they could be regarded as an extension of the previous option, with their operation rules being applicable here as well. However, unlike any other MGA, their business is orientated solely to charterer's liability risks and therefore, their assureds are only charterers. This distinctive characteristic of theirs explains also why they are being mentioned separately at this part and not along with the MGAs above. Typical examples of such MGAs are the Charterers' P&I Club in London and the Charterama BV, DUPI Charterers Liability and RaetsMarine (until 2017)[769] in Rotterdam.

The charterers' advantages of having their own insurance facility is of undoubted value as they offer similar services with the previous insurance providers, but in a unique way. Hence, apart from the benefits of the contract's flexibility and the cost certainty they provide, their strongest benefit that makes them so attractive to charterers is their highly specialised services. In fact, as they deal only with charterers, their satisfaction will be inevitably a priority for them. So, it is respectively expected that the personnel engaged in such activities will be experienced and competent to deal with charterers' matters and actively provide them with the required assistance throughout the negotiation of their cover and their claims handling procedures. Furthermore, the fact that they have built a worldwide network of correspondents and that their operation base is located in various areas makes them easily accessible to all charterers, while

[769] RaetsMarine BV were independent underwriting agents of Amlin Corporate insurance BV before they were absorbed Amlin Europe N.V in 2013. In 2016, Amlin was acquired by Mitsui Sumitomo Insurance Company, as a wholly owned subsidiary of MS & AD Insurance Group Holdings which is one of the world's top 10 leading specialist insurers. Thus, since the 1st of January 2018 the brand name RaetsMarine has been officially dissolved, while the company continues today to offer fixed premium insurance, yet as a division of the MS & AD Insurance Group. See respectively, *supra*, fn. 753, p. 46.

the London-based Charterers P&I Club gives them some leverage in a market dominated by shipowners' Clubs.[770]

Despite the highly qualitative services these providers offer, it is expected that they would normally come at a high cost as well. However, this does not seem to be necessarily the case. Actually, as these companies have been recently emerged in the market, with the exception of Charterers' P&I Club, they are still trying to establish their own territory by competing at the same time not only the traditional commercial insurers, but the IG Clubs as well. As a result, charterers can find in them a robust insurance protection at a competitive and affordable price. Besides, due to the market's recession the last few years, a significant drop has been generally noticed in charterers' premia which consequently allows the latter today to arrange their insurance covers at a very low cost.[771]

(See below the average premium per vessel, as it was presented in Charterama BV, the Charterers' P&I Club and RaetsMarine respectively).

Source: Arthur J. Gallagher - Commercial P&I Market Review 2017

[770] In fact, it has been supported that the existence of an exclusively charterers' club in London could be considered as a negotiating forum in charter disputes which is also strategically placed in order to keep a watch over the process of litigation and/or arbitration into which charterers may enter in protection of their rights and entitlements under their charterparty contracts. In Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 145.

[771] For example, it is noteworthy that based on information acquired by an individual working for such providers, there are nowadays insurance covers for charterers that could be purchased for the price of five hundred pounds.

Also contrary to the previous providers, they do not impose any restrictions on the size of the chartered vessels or their trading areas and their covers are usually referring to a wide range of vessels, from dry bulks and tankers to container vessels or specialist crafts.[772] While, in respect of the financial security they provide, it is again very strong, as their ranking ratings compete the ones of the previous options, if they are not higher.

Specialist charterers' insurer	S&P Ratings
Charterama BV (for RSA)	A
DUPI Charterers Liability (for Lloyd's)	A
The Charterers' P&I (for MunichRe)	AA-
RaetsMarine (now MS Amlin)	A+

On the other hand, though, just like all the other options, this one presents its own weaknesses too. As we are dealing essentially with MGAs, there is again the issue of remoteness between the assured and the main insurer, as charterers are dealing only with the insurer's intermediary. Also being a commercial insurer, their underwriting capacity might be restrained due to the limited capital funds they have available. The latter in combination with the recent rise and development of such insurers in the market justifies to a certain extent the slightly lower limits of insurance they offer to charterers, as opposed to the other providers. Therefore, here, it has been noticed that charterer's liability cover limits ranges between one hundred[773] and five hundred million US dollars, instead.[774]

Nonetheless, from the research evidence, it seems that specialist charterer's liability underwriting agents are dominant in charterers' preferences, as the number of vessels insured with Charterers' P&I Club, which still remains the leading non-IG specialist charterers liability underwriter,[775] as well as Charterama BV and RaetsMarine are following a continuously rising

[772] "Raets Marine: Charterer's liability hand-out" (2014), available <https://www.raetsmarine.com/sites/default/files/default/files/cl-handout_2014_0.pdf>, accessed 19 June 2017. Also, "DUPI: Charterers Liability Cover" available <http://charterers.dupi.com/our-cover/cl-cover/>, accessed 12 March 2020.

[773] See, for example, the DUPI Charterers Liability whose standard charterer's liability cover goes up to one hundred million dollars with an option to rise it up to three hundred and fifty million dollars. Whist, the Charterama BV offers liability covers up to three hundred and fifty million dollars.

[774] For instance, the Charterers' P&I Club and RaetsMarine.

[775] Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p.16-17.

trend from 2009 to 2016, as the table below indicates. This is not a surprising conclusion, though, if it is taken into account that most charterers are either small or medium level traders, probably not very well connected due to their remote location or their recent emergence in the market, a combination of factors which makes it more difficult to attract any other insurance provider among those mentioned above. But, assuming that the development of specialist charterers' insurance providers is just due to the aforementioned reason would be entirely misleading. Conversely, it is the clear priority and the high-standard services they ensure to charterers that gives them a significant precedence over the other options, as they essentially allow charterers to have the same opportunity of arranging their own liability insurance, as an owner would have done with his own, at a competitive price accompanied by a strong security. Whilst, the lower insurance limits do not hinder charterers' effective protection, since their exposure to various liabilities does not seem so far to exceed these levels; on the contrary, it could benefit charterers by allowing them to save money.

Number of Chartered Vessels Insured (USD)

Insurer	2009	2010	2011	2012	2013	2014	2015	2016
Charterama BV	2,500	4,000	5,800	8,300	9,000	9,000	10,000	10,000
The Charterers P&I Club	11,000	11,500	11,000	12,000	12,500	12,200	13,000	15,000
RaetsMarine	18,061	22,371	23,783	23,000	21,000	21,500	21,000	20,000

Source: Arthur J. Gallagher – Commercial P&I Market Review 2017 [776]

5. Conclusion

Although the concept of liability insurance emerged relatively recently in the marine insurance industry as far as charterers are concerned, it managed to develop fast and established its position within the insurance world by creating multiple insurance providers that operate both on fixed and mutual premium basis, under similar with shipowners' insurers terms, with fixed premium insurers, however, being prevalent.[777] Also, it was noticed that despite the plurality of charterers' insurance providers, there is no single ideal option for all charterers, as

[776] *Ibid.*

[777] Similarly also in Steven J. Hazelwood, David Semark,, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p.370, where it is supported that charterers prefer being insured on a fixed premium basis, irrespective of the type of the cover and the insurer provider.

they all come with their own strengths and weaknesses. This is further evidenced by the fact that there is still a charterers' minority which prefers to trade uninsured,[778] indicating perhaps that there is no good insurance option for them.

Nonetheless, it should be remembered that charterers today come in all shapes and sizes, so when their insurance options are being evaluated, such assessment should also reflect the needs and characteristics of each type of charterer. Thus, albeit the flaws that all current providers present, each of them corresponds effectively to certain types of charterers. Therefore, when seen as a whole, it could be argued that they form ultimately an adequate system for charterers' insurance protection on the grounds that allow every charterer to find a type of insurer that matches his needs. If it is also considered that contrary to the past, nowadays only a small number of charterers do not have a liability insurance, it is clear that insurance market is heading towards a positive direction in relation to charterers. But, as it was noticed at the beginning, the insurance market cannot remain static and adapts to the industry's trends. Therefore, it would not be surprising if in the future further changes take place within the charterer's liability insurance market, with new parameters coming into play in respect of their insurance options.

[778] *Ibid*, p. viii.

V. CHARTERER'S LIABILITY INSURANCE (CLI): THE COVER

1. Introduction

Undoubtedly, finding the right insurance provider is of extreme importance for all charterers irrespective of their size, type, or kind of cargo they are trading. But, it is also of equal value in charterers' priorities finding a cover whose scope will not only reflect their needs, but also correspond to the majority -at least- of their liabilities, as they appear nowadays in practice and have been explained in detail in the previous chapters. So, this chapter will be concentrated on the presentation as well as interpretation of the main risks that are traditionally included or excluded under a CLI contract. Also, it will elaborate on the conditions under which such cover is usually provided to them in practice.

It needs to be highlighted, though, that the following presented results are stemming from the research and analysis that has been conducted on twenty three different covers that are available today by the thirteen IG P&I Clubs and other general commercial insurers of all kinds (i.e. MGAs, specialist underwriters), either on mutual or fixed premium basis. To that end, they constitute merely a guideline as regards what the main rule could be, as there might be numerous other policy variations used in the market, depending each time on the insurer's type.

2. The charterer's liability insurance (CLI) cover

2.1 The type of the contract and the assured

Before the analysis of charterer's liability cover, it is interesting to clarify first the type of the contract in this case, although it might seem that there is no room for any arguable doubt on this matter. More specifically, in order for the charterers' contract with their insurers to be treated as a contract of insurance, it must impose an obligation upon the insurer to indemnify the assured in the event of a loss from an insured risk, provided that the other contractual provisions have been fulfilled, similarly to any other contract of insurance. Therefore, there must be a legally enforceable agreement in order to properly refer to it as a "contract", whereas mere promises of the insurer to indemnity the assured upon its discretion cannot be regarded

as such insurance contracts.[779] However, as in shipowners' P&I cover, the decision for providing compensation under CLI cover is vested on the insurer who will decide according to what is promised within their agreement. So, it could be argued that CLI should not be regarded strictly as a "contract of insurance". Yet, this would not be correct, as it was decided in "*Allobrogia*"[780] that the agreement between a P&I Club and its member, at least in respect to direct claims being brought against the Club, is considered as a "contract of insurance" within the ordinary legal terminology and despite that Third Parties (Rights Against Insurers) Act 1930 contained no definition for it. Therefore, the same could apply by analogy to charterer's case in relation to all of their insurance providers. Also similarly to shipowners' P&I insurance, to the extent that CLI is a marine insurance contract,[781] it follows that it is subject to the rules of MIA 1906 and the Insurance Act 2015. Therefore, the assured's duty of fair presentation of the risk and the principle of insurable interest apply equally here as well.

When it comes to the type of the assured that the CLI protects, it is interesting to note first a terminology matter that usually arises in practice and relates to this definition. It has been explained earlier that charterers can resort in various insurance providers seeking for protection either on mutual or fixed premium basis which in their turn operate under their own rules and conditions. Consequently, it follows that these providers adopt also different terms as regards their "customers". It has been noticed, for example, that although P&I Clubs generally operate in a manner akin to other commercial insurers, their formality of operation differs.[782] Thus, Clubs do not issue policies *per se*, but the ships are "entered" (i.e. considered insured) if the Club accepts the vessel,[783] whilst the insureds are invariably referred as "members". On the contrary, commercial insurers' policies prefer the use of the term "assured".[784]

Despite the terminological differences, which have solely operational importance, all CLI covers seem to refer to "charterers", as the title of the cover besides states. Yet, although the name of the cover is broadly worded, indicating for no exclusions, in fact, CLI cover is only

[779] *Medical Defence Union Ltd v. Department of Trade* [1979] 2 WLR 686; *Rafter v. Solicitors Mutual Defence Fund* [1999] 2 ILRM 305 and *C.V.G. Siderurgicia Del Orinoco S.A. v. London Steamship Owners' Mutual Insurance Association Ltd* [1979] 1 Lloyd's Rep. 557, 580 as found in *supra,* fn. 777, p. 46.
[780] *In re Allobrogia Steamship Corporation ("The Allobrogia")* [1979] 1 Lloyd's Rep. 190.
[781] Sections 1, 3(1) and (2)(c) of MIA 1906.
[782] Raymond P. Hayden, Sanford E. Balick, "Marine insurance: varieties, combinations and coverages'' (1991-1992) 66 Tul.L.Rev. 311, p. 326.
[783] *Ibid.*
[784] Compare, for example, the wording used in Class 2, clause 7 of the Charterers P&I Club, Terms and Conditions 2018, according to which *"an assured only has insurance…"* with the one used in Chapter A, rule 1, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019, according to which *"…the member shall have the burden of proving ….".*

available to time or voyage charterers, as well as to "space" and "slot" charterers, either they are chartering or sub-chartering the vessel.[785] The same applies to sub-charterers operating under one of the above capacities, as there is no express exclusion for them in any of CLI policies. On the other hand, bareboat charterers are expressly excluded under the above policies and irrespective of the insurance provider, on the basis that they are eligible to purchase a shipowner's P&I cover, as they face not only employment, but also navigational risks.[786]

However, charterer's insurance providers often impose further restrictions on the type of the aforesaid charterers that are willing to insure. These restrictions are mostly related to the size of the chartered vessel to be insured, her type or trading area. As this matter has been mentioned elsewhere,[787] here it suffices to observe generally that commercial insurers mainly refer to charterers of small or medium size vessels by imposing certain limitations on their maximum gross tonnage to be insured.[788] Yet, there are still some exceptions to this observation, as some insurers, such as the Charterers P&I Club, or RaetsMarine and Hydor AS, which provide no limits on the vessel's type, size, territory[789] or age.[790] Contrary to the majority of commercial insurers, P&I Clubs seem to create a "friendlier" environment, as they are open

[785] Although the definitions of "charterer" vary from insurer to insurer or P&I Club, the categories of charterers falling within this definition remain the same. See, for example, in Appendix 1 of Skuld Charterers' Cover, Terms and Conditions 2018, according to which "charterer" is "*a charterer of a vessel, or part of a vessel, other than a bareboat or demise insured by Skuld under the T&Cs…"*, or in the Definitions of the Charterers P&I Club, Terms and Conditions 2018, according to which charterer means "*in relation to an insured ship, time charterer (other than a bareboat or demise charterer), voyage charterer (whether under a contract of affreightment or otherwise), charterers in partnership or space charterer by or on whose behalf the same has been provided with Insurance by the Underwriters"*. Similarly also under clause 25 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, where charterer is "*a party to a contract for the use of or service by an Insured Vessel on the basis of a voyage between port or places, or for a designated trip or period, or for use of part of an Insured Vessel for the carriage of Cargo between ports, or for the carriage of a specified quantity of Cargo between ports or places"*.

[786] See, for example, the definition of "owner's entry" in Gard Rules 2017 where it is stated that such entry is *"an entry affected by an owner, bareboat or demise charterer or operator of the ship…"*.

[787] See Chapter IV, at p. 147.

[788] For instance, British Marine insures small to medium size vessels, up to 30.000 GT, Carina up to 5.000 or 6.5000 GT, Navigators up to 10.000 GT, Lodestar Marine up to 4.000 GT for non-tankers and up to 10.000 GT for tankers and Eagle Ocean Marine up to 1.500 GT. See respectively, supra, fn. 775, p. 28, 30, 40 and 42. See also, "OMNI P&I Report 2016", available <http://www.omniltd.com/en/publications/p-i-reports>, accessed 12 March 2020, p.48-50.

[789] *Ibid, A.J. Gallagher*, p. 36, 46 and 54.

[790] It has been argued that both Hull and P&I insurers would insure a vessel at the age of 15 on more onerous terms, if not at all. The same applies to charterer's case as well. However, considering that the past decades the prevailing trend was to send vessels for scrap at a very older age, this standards was not really maintained. See respectively Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 106. Conversely, today, with the decrease that took place in vessel prices, the strict regulatory framework imposed on vessels for their emissions and the protection of environment, as well as the great gap between the supply and demand in vessels led to the withdrawal and scrapping of a significant number of vessels which eventually brought further a balance between supply and demand. Therefore, considering the current market circumstances, it is presumed that the average age of a vessel that could be insured will be brought back to the initial standards.

to charterers of all types and sizes.[791] It is assumed that such trend comes mostly from their ability to afford generally larger claims. Moreover, with regards the type of insured vessel, it is commonplace among all charterer's insurance providers to insure from worldwide operators of liquid cargo vessels, tankers, containers or bulkers to coastal crafts or fishing vessels.[792] However, there is no protection under CLI covers when the vessel to be insured is a passenger vessel or one that carries an US flag[793].

2.2 The cover scope

2.2.1 Risk assessment process

The way charterer's insurance market operates in practice on both mutual and fixed premium basis has been already thoroughly analysed. Also, it was concluded that the majority of charterers nowadays seem to be invariably insured on fixed premium basis, paying once and for all for their insurance. Consequently, this renders charterer's liability underwriting work extremely important, as on one hand insurers should evaluate and price accurately the charterer's risks; and, on the other hand, they should secure adequate reinsurance protection for themselves, since there will be no further chance to charge extra or seek for compensation for unforeseen developments, after the fixed premium has already been paid. To complicate things even more, liability underwriters should also cope with the difficulty of ascertaining the overall value of the assured's liability exposure which is not so readily quantifiable, as opposed to hull or cargo insurance where the assured's exposure represents exactly the value of the subject matter at risk (i.e. hull or cargo).[794] As a result, charterers' underwriters will always perform a very thorough risk analysis on each individual case which is a very subjective process

[791] Like Gard AS or Steamship Mutual P&I Club. See, "Gard: Comprehensive Charterers' Liability Cover" (2013) available <http://www.gard.no/Content/67630/Comprehensive%20Charterers%20Cover%20%202013.pdf>, accessed 12 March 2020, p. 1 and "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020, p. 2.

[792] See, for example, "Hanseatic Underwriters brochure", available <https://hanseatic-underwriters.com/wp-content/uploads/2016/04/Hanseatic_Underwriters_brochure_web_EN.pdf>, accessed 21 August 2017, p. 5 and *supra*, *fn*. 789, p. 34 and 38.

[793] The same also applies in case that the vessel is trading within US waters. See, for example, clause 13, section 12 of Charterers P&I Club, Terms and Conditions 2018 and *supra*, *fn*. 789, p. 42, and fn. 788, p. 50.

[794] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 29.

that very much depends on a large number of individual factors which are going to be discussed below.

A) The charterparty

Undoubtedly, the most vital document not only for charterers, but their underwriters as well, is the charterparty in place. Whilst, where more charterers interact with each other by way of contracting sub-charters, it follows that the underwriters will consider the terms concluded under these sub-charters too and whether they are time or voyage charters. Essentially, what matters the most for them when assessing the charterer's risk profile is identifying charterer's operating liabilities and practices, as they arise under all these different contracts. It is always examined, for instance, whether and to what extent the charterer could incur liability for damages to the hull of the vessel; or, what the charterer's exposure is with regards the cargo operations and whether he is responsible for stevedores, or if a Clause Paramount or the Inter-Club Agreement have been incorporated into the contract; what type of safe port/berth warranty has been provided by the charterer and last, whether charterer has undertaken any obligations to indemnify third-parties and in which circumstances.

B) The bill of lading

The other key document that is taken into consideration by charterer's underwriters when evaluating his risk exposure is the bill of lading. Through this, the former will be able to clarify the relationship between the cargo owner and cargo carrier and so, ascertain the extent to which charterer is susceptible to further liabilities.[795] For example, it will be examined whether charterer is also presented as carrier or merely as an "agent'' under the bill, or whether he owns any of the cargo on board of the vessel. As it will be seen later, this is particularly important in relation to charterer's insurance protection against cargo liabilities, because there are several exclusions which affect charterer's position, especially when he is also the "carrier" under the bill of lading.[796]

[795] *Supra*, fn. 790, in Heinz E. Gohlish, p. 145.
[796] I.e when he is entitled to sign the bills of lading, or the Master on his behalf, and his name appears in the face of it.

C) The applicable law

To the extent that charterers are usually found in the middle of a contractual chain by interacting with various entities for the purposes of the performance of the agreed voyage, it is expected that their exposure to liabilities will be further affected by the terms agreed on each of these contracts. One of these terms, though, that plays an important role to the ascertainment of charterer's overall exposure is the arbitration clause which designates each time the law governing the charterer's contracts. For instance, the charter's applicable law might be different from the one applying to charterer's insurance contract. In addition, if the international character of the maritime adventure is considered, it follows that charterers will be subject to the individual legislations applying to the area of the vessel's trading. Therefore, since all these different potentially applicable jurisdictions can alter charterer's liability exposure, their insurers' interest in examining the applicable law clauses when defining the scope of CLI is easily justified.

D) Commercial, economic and operating variables

Other factors that play a significant role in defining charterer's risk exposure can range from commercial to economic ones. It has been mentioned above that charterer's obligations under a charterparty will be examined each time on individual basis by an underwriter. Yet, this is justified not only because of the application of freedom of contract principle, where every party can decide on whatever terms it wishes, but also because of the constant commercial and economic changes occurring within the shipping industry itself. Thus, for example, charterer's exposure is also dependent upon the allocation of negotiation power between the parties, the conditions of freight and cargo market, as well as the rules of supply and demand in the particular trade that charterer is engaged in, and generally on the global shipping developments. Although all these might not seem directly related to charterer's business, they constitute in their turn an indicative measure of how likely the owner might be willing to pursue his own interests or exercise his recourse rights against the charterer. So, in that sense they could add to charterer's risk exposure.

Additionally, integral part of the underwriting procedure is traditionally the examination of charterer's identity,[797] his business background and most importantly his claims' record.

[797] Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p. 482.

Apart from that, the volume of the chartered tonnage to be insured, the vessel's trading area, the type of cargo and whether it is loaded on-deck, the characteristics of the ship that is planned to be chartered for the particular maritime adventure,[798] the number of vessels being insured and the type as well as age and flag of the insured vessel are going to be considered.[799] The insurer might also request to know the extent and nature of any other insurance cover that has been purchased for the insured vessel by the shipowner (e.g H&M), or whether the assured is interested in excluding certain cargo, passenger and crew liabilities. To that extent, it could be argued that the underwriting procedure for charterers does not differ from the one followed in case of shipowners.

2.2.2 The included perils

Despite these general conditions taken into account before charterer's liability policy is concluded, the focus of the involved parties is of course concentrated on the exact scope of the cover offered and the risks falling within its "umbrella protection".

Although charterers and shipowners have conflicting interests under a charterparty, they are both, in fact, in a very similar position when it comes to the commercial employment of the vessel. For example, they both face similar legal liability as ship operators, while the charterer has an akin contractual liability as a common carrier of cargo for freight.[800] Consequently, it follows that charterers will be exposed to many risks that are same with shipowners.[801] So, it is expected that their insurance covers will be to some extent similar, especially if it is considered that shipowner's P&I insurance and CLI constitute both covers against third-party liabilities. In addition, charterers might be exposed as much as shipowners and therefore require

[798] E.g her class or her compliance with international conventions. See respectively, DUPI Charterers Liability Insurance Conditions (August 2016), p. 147 and 145; also, Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 80 and 373.
[799] The same was further confirmed by information provided by a charterer's liability underwriter. Also, see i*bid, supra, fn.321*, in the Steamship Mutual Club, p. 14.
[800] Supra, fn. 790, in Heinz E. Gohlish, p. 38.
[801] Similarly it has been supported in "Skuld: Charterers and traders P&I and FD&D – Fact Sheet", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_Fact_Sheet_web.pdf?epslanguage=en>, accessed 18 August 2017, p. 1; and in Raymond P. Hayden and Sanford E. Balick, "Marine insurance: varieties, combinations and coverages'' (1991-1992) 66 Tul.L.Rev. 311, p. 331; and also in "Carina: Guide to P&I Insurance", available at <https://www.carinapandi.com/assets/Uploads/documents/Guide-to-PandI-v01.pdf>, accessed 9 June 2017, p. 3.

similar cover, in cases that the law equates them and their liability to shipowners in respect of the insured vessel.[802]

In fact, as it will be proved later, there are many of the traditional P&I risks included in shipowners' P&I policies that are often equally applicable to charterers.[803] This is probably the main reason why most mutual P&I clubs offer full shipowner type P&I cover to charterers by way of a general deeming provision which covers the charterer in respect of risks which an owner would normally be covered for by his Club.[804] Even so, though, there are also added considerations that apply only to charterers, such as the safe port warranty, for which insurance is still necessary and falls outside the traditional P&I shipowner's policy.[805]

In particular with regards the scope of CLI cover, it generally reflects the liabilities a charterer undertakes under the charterparty. But due to charterer's more limited obligations, when compared to shipowners, and his more clearly defined role in marine transportation,[806] his liability cover will usually be narrower than a shipowner's P&I insurance.[807] Besides, this is also justified on the basis of charterer's more limited interest in the operation of the vessel which renders inapplicable many risks for which the owner requires usually coverage.[808]

Hence, it has been noticed that based on the policies used nowadays in practice either for voyage or time charterers, the CLI cover can be divided into three general classes of risks: a) hull, b) cargo and c) protection and indemnity (P&I).[809] From these, hull and P&I classes come always under the nature of a liability insurance. Whereas, cargo class can be either a liability

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[802] That happened in the American case *Martin & Robertson Ltd v. Orion Insurance Company Ltd* [1971] AMC 15 where it was held that a charterer's liability policy insuring against the liabilities normally covered by the P&I Club terms with the limitation clause deleted is not subject to an implied warranty of seaworthiness and covers the charterer for loss of cargo due to unseaworthiness of the vessel with owner's privity. See respectively, *supra,* fn. 798 in Steven J. Hazelwood, p. 373.

[803] For instance, similarly to shipowners, charterers seek insurance protection for various third-party liabilities, such as pollution, cargo damages. *Ibid*. Same supported also in "Charterer's liability blowing in the wind", *Maritime Journal* (21 May 2012) <http://www.maritimejournal.com/news101/insurance,-legal-and-finance/charterers-liability-blowing-in-the-wind>, accessed 12 March 2020.

[804] See, for instance, rule 4, section 2(A) of the Shipowners' Club Rules 2018, or Rule 19, clause 24 of Britannia Rules of Class 3, P&I and List of Correspondents 2017 and Rule 19(25) of North of England P&I Club Rules 2018/19.

[805] *Supra, fn*. 801 in Raymond P. Hayden, p.331.

[806] Graham Edmiston, "Charterers need more effective lobby", *The Charterers' P&I Club Newsletter* (November 2004).

[807] *Supra, fn.* 797, p. 483 and *fn.* 798, p. 80.

[808] For example, a charterer will rarely be interested in acquiring cover in respect of expenses made for the vessel's crew, their repatriation, or for wreck removal costs. See respectively, *ibid, fn*. 797, p. 373, and *fn.* 798, p. 484 respectively.

[809] There is no great difference in terms of insurance between voyage and time charterers, notwithstanding that the former will have a different risk profile to the latter. But, since both of them are likely to be exposed to any or (at least) some of the risks included in all the three classes, their cover scope is treated in similar terms. See, supra, fn 790, p. 162.

insurance, similarly with the other two previous classes, or otherwise, an all-risks insurance[810] depending firstly on whether the charterer is also the owner of the cargo on board and secondly, on the negotiated wording of the policy agreed.[811] These three classes are usually combined under a single cover[812] whose exact terms have been concluded freely in an open form by the parties in line with the provisional character of CLI. However, it is noteworthy that in practice there are times where the price of CLI is not affected from the charterer's decision to withdraw a class of risks from his liability cover.[813] For that reason, it is considered obviously preferable for charterers to purchase the whole "liability package", even if it looks at first place that they will not need such extensive protection. After all, there is no harm in acquiring extra protection at no extra cost.

So, in this section it will be examined the exact scope that these three classes can usually take in practice and it will be also provided an analysis of the risks that fall within them. Whenever necessary, a distinction will be further drawn between fixed and mutual insurers, as this sometimes can affect the content of charterer's protection.

2.2.2.1 First class: Liability in respect of damage to an insured ship (DTH)

Contrary to what applies to shipowners, protection against hull damages invariably constitutes an integral part of every CLI cover, either the charterer is insured with an IG Club or within the non-mutual commercial insurance market.[814] The reason for that lies on charterers' lack of any proprietary interest in insuring the hull of the vessel itself, as opposed to shipowners who seek for the same reason H&M insurance, which is essentially a "property cover".[815] Charterers, though, need only protection against their liability for hull damages, as there are many times that they can be found liable for partial or even total loss of the vessel

[810] *Ibid*, p. 63
[811] For example, as it will be explained in detail below, there are insurance providers that expressly exclude charterer's cargo liabilities from charterer's liability cover when the latter is also the cargo owner. In that case, charterer should purchase a separate cover as cargo-owner only, at an additional cost.
[812] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p.63.
[813] Information provided by a professional employed in the Charterers P&I Club.
[814] In fact, the realisation of the need for charterers' protection against hull related liabilities became more apparent during the period of market's inflation in 2009 which seems to have produced a spike in liability claims on behalf of charterers, especially in relation to hull. That combined with the massive daily hire sums of that time resulted in high claims even when a seemingly trivial damage to hull was being involved which necessitated some action that would ensure charterers protection. See, Carlos Vasquez, "FD&D – The essential tool to survival in difficult markets'', *The Charterers' P&I Club Newsletter* (July 2009).
[815] Robert T. Lemon II, Robert T. Lemon II, "Allocation of marine risks: an overview of the marine insurance package'' (2006-2007) 81 Tul. L. Rev. 1467, p.1468.

under the terms of a charterparty. So, it could be argued that, to a certain extent, voyage or time charterer's DTH cover is the equivalent of shipowners' H&M insurance. Except that it is considerably less expensive and constitutes always a liability insurance, as it is governed by a contract, and the charterer never assumes an insurable ownership interest in the vessel. Consequently, being always a liability policy, it would fit better within charterer's P&I policy, which has the same nature. Besides, if charterers' low exposure is taken into account, a stand-alone DTH policy for them would be of no interest for H&M underwriters due to the also low level premium charged.[816]

Although it is clear that charterers have a lower hull exposure than an owner, such exposure does not disappear completely, as they are taking on some of the owner's responsibility for the ship when signing the charter. Actually, it has been supported that at the moment, hull-related liabilities constitute the most common and most expensive claim for charterers, followed by cargo claims which are equally popular among charterers' insurers too.[817] Therefore insurance protection against such liabilities is considered crucial, especially if it is considered that more technologically advanced and newer vessels will be introduced into the market the forthcoming years increasing vessels' overall value.[818]

Specifically, under this class, the insurers' majority normally undertake to indemnify the charterer when the latter shall compensate the owner or disponent owner in respect of expenses incurred in repairing or replacing the insured vessel which was damaged, destroyed, or lost because of a peril for which the charterer is liable.[819] This further covers charterer's liability for damages caused to the ship's engine, hold, tanks, stores and generally her machinery,

[816] Supra, fn. 812,p. 48.
[817] Information provided by a professional employed in the Charterers P&I Club. Also, similarly in "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 6. About cargo claims, in *supra, fn.* 797, p. 484 and "OMNI P&I Report 2016", available <http://www.omniltd.com/en/publications/p-i-reports>, accessed 12 March 2020, p. 14 about cargo claims.
[818] A detailed discussion of this issue can be found in Chapter VII, in "3. The evaluation of charterers' liability insurance cover".
[819] Clause 9, section 1(A)(i) of the Charterers P&I Club Terms and Conditions 2018, rule 4, section 2(B) and rule 27(1) of the Shipowners' Club Rules 2018, Brittania Rules of Class 3, P&I and List of Correspondents 2017, section I, clause A.1.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Class A, clause 1.1 of Charterama Policy Wording 2017, Part 1, section 1.1 of RaetsMarine Liability policy for Charterers 2017, Part 1, clause 5.1.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 22(i)(a)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 11.1.a of the Norwegian Hull Club Charterers' Rules 2016, Rule 19(25)(b) of North of England P&I Rules 2018-2019, Rule 7, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, section A.IV, clause 1.1 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Rule 4, section 1 (B) in combination with clause B.1 of the Addendum for Charterers' DTH Cover of UK P&I Club's Rules 2017.

structure, equipment or fittings, as well as to the owner's property on board.[820] It should be noted, here, that the term "equipment" above might further refer not only to technical equipment, but also software equipment that might be used on board of the ship, as the covers do not seem to distinguish between these two. Thus, the DTH cover will be enforceable, for example, against losses or damages caused to the chartered vessel due to negligent stevedores during the cargo operations,[821] or very often due to unsafe ports/berths and unsuitable bunkers, or loading of dangerous or inherently flawed cargo on board. The same will be also triggered in case the vessel's engine is damaged due to charterer's order for slow steaming. In addition, the protection is usually extended so to include costs and expenses incidental to the physical damage for which the charterer is found liable,[822] such as dry-docking, tug or labour costs.[823] Similarly applies in respect of surveyors', experts' or engineers' fees as well as of legal disbursements the charterer has to incur as a result of such damage.[824] This part would further include charterer's proportion of general average, salvage charges as well as salvage contribution in respect of hire, freight and/or bunkers.[825] Similarly, charterer's liability to indemnify or pay another party for its general average or salvage contributions levied upon or

[820] See, for example, rule 4, section 2(B) and rule 27(2) of the Shipowners' Club Rules 2018, section I, clause A.1.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), section 1.1 of RaetsMarine Liability policy for Charterers 2017, Part 1, clause 5.1.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 22(i)(a)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 11.1.a of the Norwegian Hull Club Charterers' Rules 2016, Rule 7, section 1 and Appendix II, section 4 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[821] Similarly in *the Polemis v. Furness, withy & Company Limited* [1921] 3 KB 560 where it was found that charterers were responsible for the total loss of the vessel caused by fire triggered by a spark due to the benzene and petrol carried on holds of the vessel. The charterers were found vicariously liable for the negligence of their workmen who should have predicted such danger when loading the cargo on the vessel, and have taken appropriate precautionary measures.

[822] Rule 4, section 2(B) and rule 27(3) of the Shipowners' Club Rules 2018, Brittania's Rules of Class 3, P&I and List of Correspondents 2017, Rule 19(24)(B).

[823] See, "Skuld: Charterers and traders P&I and FD&D – Fact Sheet", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_Fact_Sheet_web.pdf?epslanguage=en>, accessed 18 August 2017, p. 3; "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p.11- 12.

[824] See, section I, clause A.1.5 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Rule 11.1.e of the Norwegian Hull Club Charterers' Rules 2016. Also, Jack Marriott-Smalley and Edward Atkins, "Club cover for charterers" in "*Standard Club's charterer's bulletin"* (August 2017), available at <http://www.standard-club.com/news-and-knowledge/news/2017/08/charterers-bulletin-august-2017.aspx> , accessed 12 March 2020, p. 2.

[825] "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020, p.2. See also Appendix II, section 7 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Rule 4, section 1(B) in combination with clause B.4(c) and (d) of the Addendum for Charterers' DTH Cover of UK P&I Club Rules 2017.

attributable to the entered vessel falls under the scope of the cover too.[826] When the hull damage is due to poor bunkers, apart from the engine's repair costs, the cover includes further the cost of bunkers' removal, replacement and disposal as well as the engine's, tanks' and pipelines' cleaning in order to avoid or minimise the damage already caused to the vessel or her stores and equipment.[827] The cost of time during barging operations and labour to repair the ship as well as off-hire costs are part of the cover too.[828] On the other hand, when it comes to the value of the bunkers removed or their replacement costs, these are typically excluded unless otherwise provided in the policy.[829]

However, apart from these risks which constitute the standard basis of protection under this class and contrary to a usual hull policy, there are many insurers which are willing to provide an even broader cover by including also the financial losses charterers suffer directly as a result of such hull damages.[830] These would normally include damages for delay, detention, hire, lost profits and loss of use, extra bunker consumption, or demurrage incurred for the period the vessel is being repaired or withdrawn until she fulfils again the conditions of overall seaworthiness. Nonetheless, any other similar economical loss giving rise to a claim that it is not related to the entered vessel, but to the cargo carried on board (e.g when the cargo is rejected at the discharge port without the vessel's fault, and the discharge is delayed until alternative buyers are found)[831] remains traditionally uncovered.[832]

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[826] See, for example, clause 22(i)(d) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 4, section 1 (B) in combination with clause B.4(a) of the Addendum for Charterers' DTH Cover of UK P&I Club's Rules 2017. Also, in *supra, fn*. 824, The Standard Club's Bulletin.

[827] See, for example, clause 22(i)(b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 4, section 1 (B) in combination with clause B.5 of the Addendum for Charterers' DTH Cover of UK P&I Club Rules 2017.

[828] "Charterers and the UK Club" available at <https://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest_Publications/Charterers/CHARTERERS%20BROCHURE%202013.pdf>, accessed 12 March 2020, p. 2.

[829] See, for example, Niccole Lian, "Demystifying DTH cover" in "*Standard Club's charterer's bulletin"* (August 2017), available at <http://www.standard-club.com/news-and-knowledge/news/2017/08/charterers-bulletin-august-2017.aspx>, accessed 12 March 2020, p. 12. For more details see also the next chapter.

[830] *Supra*, fn. 815, p. 1477. But, the opposite in Clause 9, section 1(A)(ii) of the Charterers P&I Club Terms and Conditions 2018, West of England Club Rules of Class 1&2 2018, Rule 3(B)(2), section I, clause A.1.4 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Class A, clause 1.2 of Charterama Policy Wording 2017, section 1.2 of RaetsMarine Liability policy for Charterers 2017, Part 1, clause 5.1.2 of Skuld Charterers' Cover Terms & Conditions 2017, clause 22(i)(a)(ii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 11.1.c of the Norwegian Hull Club Charterers' Rules 2016, Appendix II, section 5 of the Swedish Club Rules for Charterer's Insurance 2018/2019, section A.IV, clause 1.2 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Rule 4, section 1 (B) in combination with clause B.2 of the Addendum for Charterers' DTH Cover of UK P&I Club's Rules 2017.

[831] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p 379.

[832] More details below in the Excluded Risks section, at 199.

Moreover, similarly to a H&M policy,[833] under this class charterers could be further reimbursed, yet not very frequently, for the expenses reasonably incurred in determining whether a hull damage or loss has been actually caused by them and the outcome is finally negative.[834] It is noteworthy that the introduction of these risks in charterers' cover was prompted around 90s when charterers' insurance protection was severally refused in similar circumstances, leaving them exposed to substantial expenses. More specifically, around the same period of time, a vessel entered by a disponent owner, who had her sub-chartered to the Canadian Department of Agriculture for a voyage (Quebec/Egypt) with grain, was put to load at a berth in Quebec. Two days into loading, the master thought that she ran aground. However, what in fact had happened was that the keel had iced up so, the ship had, as it were, become "glued" to the ground, preventing further loading. As a consequence, the vessel had to be removed from the berth, taken up river, de-iced and eventually returned to complete loading. This procedure resulted in seventeen days of delay during which the disponent owner continued paying hire, apart from the considerable expenses incurred for hiring divers, surveyors and ice experts to identify the cause of the incident. The owners alleged that the berth was unsafe and sought compensation from charterers who in their turn claimed protection from their insurer. At that time, however, their insurer did not allow the recovery of these expenses on the basis that charterers' cover provided only for risks arising as a result of a physical damage to the vessel. Therefore, since no such damage had been identified during the investigation, charterers were not allowed to benefit from their insurance protection.[835] Although eventually a settlement was reached, since then charterers' need to include these risks in their liability cover became apparent. Yet, notwithstanding their inclusion nowadays in the CLI, charterers are still not protected against the commercial losses suffered throughout this period of investigation in the form described above as they remained outside the cover's scope.[836] Therefore, in the incident described above, even if the disponent owner was entitled to get reimbursement for the expenses incurred during the investigation, he would not be able to recover any extra hire paid for this period of time. However, these losses are nowadays covered under an additional cover which is discussed in detail later in this work.[837]

[833] *Supra*, fn. 815, p. 1468.
[834] See, for example, Clause 9, section 1(B) of the Charterers P&I Club Terms and Conditions 2018 and Section A.IV, clause 1.3 of Similarly in Rule 11.1.d of the Norwegian Hull Club Charterers' Rules 2016 where experts' and surveyors' fees and disbursements will covered only when they arose in relation to the alleged hull damage.
[835] As described in Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 146.
[836] Clause 9, section 1(B) of the Charterers P&I Club Terms and Conditions 2018.
[837] See Chapter VI, in 3.4 "Charterer's loss of use cover".

In an charterer's extended cover it will be also added protection against *"charterer's liability to owners for extraordinary costs and expenses reasonably incurred for the purpose of averting or minimising physical damage to and/or loss of the chartered ship'*'[838] and/or her equipment, stores and supplies.[839] Another extension of this class might cover towage expenses as well, but only insofar as charterer's liability for them arises out of physical damage to or loss of the insured vessel and provided that her owners agreed to such towage.[840] Even further, it has been noticed that sometimes, especially in IG Clubs' CLI policies, it is stated that their hull cover is automatically extended to encompass charterer's hull related liabilities and costs or expenses arising as a result of war or strike risks, the scope of which is defined generally under the main P&I cover offered by these insurers.[841]

Although the protection offered under this class does not vary significantly from insurer to insurer, there is one substantial difference that is worth mentioned and is related to the nature of the insured risk here. To be more specific, it was severally mentioned that IG Clubs per definition have been primarily created purporting to offer insurance only against P&I liabilities and on a mutual basis, whereas property damage remained excluded, as it could be insured within the proprietary market through H&M insurance which was already well developed.[842] Consequently, when IG Clubs introduced CLI, they could not go against their own fundamental principles. Thus, this type of risk was excluded from the general marine P&I policies.[843] As a consequence, IG Clubs have created special provisions for chartered entries,[844] according to which charterers' hull related liabilities are separately insured with commercial insurers, contrary to what applies to the other classes mentioned below.[845] Effectively, they always constitute what the Clubs call a "contractual'' risk. Thus, P&I Clubs do not insure this risk directly, but may have an arrangement with a commercial insurer for which he may act as

[838] See, respectively, section I, clause A.1.3 of London P&I Club Charterers'' CSL Cover Terms & Conditions Version 1.01 (February 2018), Appendix II, section 7 of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[839] Similarly also in Part 1, clause 5.1.3 of Skuld Charterers' Cover Terms & Conditions 2017, Rule 11.1.b of the Norwegian Hull Club Charterers' Rules 2016, Rule 4, section 1 (B) in combination with clause B.3 of the Addendum for Charterers' DTH Cover of UK P&I Club's Rules 2017.
[840] See, for example, clause 22(i)(c) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[841] See, for example, Appendix II, section 8 and 9 of the Swedish Club's Rules for Charterer's Insurance 2018/2019. Also, *supra,* fn. 824, The Standard Club's Bulletin, p. 2.
[842] Similarly in Norman J. Ronneberg Jr., Norman J. Ronneberg Jr., "An introduction to the Protection & Indemnity clubs and the marine insurance they provide'' (1990-1991) 3 U.S.F.Mar.L.J.1, p. 10.
[843] *Supra,* fn. 831, p. 378.
[844] See, for example, rule 19(25) of North of England P&I Rules 2018-2019 and Rule 4, section 1 of UK P&I Club Rules 2017.
[845] *Supra,* fn. 843.

agent.[846] But, despite that DTH cover is an extension of the regular P&I cover that Clubs' offer,[847] the above arrangement indicates that hull risks are in effect non-poolable and so, they are excluded from the scope of the high limits offered by the International Group under the form presented in the previous chapter.[848] As a consequence, separate limits are sought for them by the Clubs at charterer's extra cost. On the other hand, it has been noticed that commercial insurers include these risks in their standard CLI cover with the difference that the protection granted against all risks, including hull, comes solely on a fixed premium basis.

2.2.2.2 Second class: Liability in respect of the cargo carried on board

The second class of risks that is traditionally found in CLI cover, irrespective of the type of the insurance provider, includes charterer's liability in relation to the cargo carried or intended to be carried on board the insured vessel. Clearly, although charterer's insurance is primarily a liability insurance, his insurance risk for the cargo is more complicated, as it could take the form either of a liability insurance, or an "all-risks" exposure, if the charterer is also the actual owner of the cargo.[849] Though, it is only the former that is covered under his CLI, as the latter excludes liabilities that arise in relation to the charterer's cargo on board. Such liabilities are traditionally included in an additional specialist cover,[850] as it will be discussed later.[851] Additionally, the cover extends so to include any cargo related expenses incurred as a result of charterer's liability for it at first place.

Generally, it could be argued that the charterers' covered cargo risks can be divided into two categories, depending on the form through which their coverage is granted under the CLI. Hence, it has been noticed that there are cargo risks for which insurance protection is provided automatically, as opposed to others whose coverage lies completely upon the insurer's discretion. The exact scope of the above two categories of cargo risks is considered below.

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[846] Heinz E. Gohlish, Charterers' liability insurance: Essential best practice, (Witherbys Insurance 2008), p. 148.
[847] *Supra, fn*. 829.
[848] For more details, see in Chapter IV, "The shipowners' P&I Clubs (the IG Clubs)", at p 117-121.
[849] *Supra, fn. 846,* p. 57.
[850] Usually discounted. It has been supported in i*bid*, p. 62 that usually charterer's insurers offer a premium discount to the charterers who are also insured with them as cargo owners purchasing the specialist cargo owners' insurance cover.
[851] For more details, see the next chapter in 3.3 "Cargo owner's liability cover".

A) Standard covered risks

Starting with the standard covered risks, they typically include charterer's liability for the cargo's loss, shortage, or damage.[852] That would normally occur, for instance, during the cargo handling operations, when the charterer or his agents fail to properly load, stow, lash, carry, keep or care for the cargo and as a result, the cargo is destroyed, lost or contaminated. The reasons that could trigger such results are numerous and range from choosing the wrong type of container to store the cargo and safely secure its stowage, to failure to ventilate or check regularly the temperature of cargo holds. Similarly applies when charterers fail also to discharge or deliver the cargo on board. Nonetheless, the extent of charterer's exposure to such cargo risks varies each time, depending on the type of the traded cargo. Thus, for example, charterers of ships carrying liquid cargoes are less exposed to shortage risks compared to their dry cargo counterparts. Specifically, liquid cargoes due to their very nature can be harmed only by their contamination while in transit. [853] But, this liability under the charterparty will lie most likely on shipowners, rather charterers. On the other hand, dry cargo charterers are regularly faced with cargo's damage arising mainly due to all sort of mistakes their stevedores can make especially during cargo operations. That could include, for example, stowing heavy containers on the top of light ones, or placing inflammable cargo in high temperature holds.

In addition, the cover almost invariably protects charterers against their liability for delivering the cargo with delay,[854] when, for example, they order the vessel to proceed with slower speed, or when due to the unavailability of the berth, the vessel's arrival is delayed. The CLI also includes protection in case the cargo is lost, shortened, damaged, or delivered late out of unseaworthiness or unfitness of the insured ship.[855] Although the duty to provide a sea or cargoworthy vessel lies on the shipowner under a charterparty, it is presumed here that the reference to the fitness and seaworthiness of the vessel concerns instances where the risk occurred because of charterer's inability to provide or describe accurately the cargo aboard, affecting, hence, the choice made as to the type of the chartered vessel.

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[852] See, for example, Clause 9, section 4(B)(i) of the Charterers P&I Club Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 14(A) of the Shipowners' Club Rules 2018, Part 2, clause 6.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 21(xiii)(a) of Steamship Charterers' Cover 2017/2018.
[853] *Supra*, fn. 835, p. 148.
[854] See, for example, Clause 9, section 4(B)(i) of the Charterers P&I Club Terms and Conditions 2018, Part 2, clause 6.1 of Skuld Charterers' Cover Terms & Conditions 2017. Similarly under clause 21(xiii)(a) of Steamship Charterers' Cover 2017/2018 where although delay is not expressly mentioned, it can still be covered as "*other responsibility''* arising out of any breach of the assured's cargo handling obligations.
[855] Ibid, in the Charterers P&I Club Terms and Conditions.

Another type of risk that constitutes often part of this class is the so-called "extra cargo handling costs" necessarily and reasonably incurred in direct connection with or, as a consequence of handling and disposing of cargo. Depending on the insurance provider, the spectrum of liabilities and costs falling within this section can sometimes be either very broad, extending generally to those arising due to cargo's damage aboard or due to a hull damage which would be covered under a hull policy.[856] Alternatively, it can be very specific and so, restrictive to certain costs only. For example, these include expenses incurred in order for the damaged or worthless (grain) cargo to be disposed or discharged, when, for instance, is damaged due to water ingress in the container, as a result of stevedore's fault while discharging, or due to condensation. Yet, protection is granted against these costs only if they are additional expenses which exceed those that would have been normally incurred in any event under the contract of carriage, had the cargo not been damaged.[857] For example, that would include expenses made during charterer's effort to find a salvage buyer for the damaged cargo as well as costs for storing it until a buyer is found. Moreover, a similar exception leaves outside from the cover any ordinary expenses made in relation to the vessel's operation and trading, or in order for the vessel to become cargoworthy.[858] At the same time, insurers usually impose a further restriction on the cover's scope according to which protection is granted solely when the assured charterer has no recourse right to recover these costs from any other party.[859] Whereas, there are often even stricter policies which narrow down the cover scope, so to provide protection just in case that such expenses were not caused because of the charterer's direct negligence subsequent to the cargo's loading onto the vessel.[860] Another instance, where protection is offered to charterers again only against additional costs for which they do not have a recovery right is if the consignee fails to remove or collect the cargo at the port of delivery or discharge, subject also to the fact that such costs do not exceed the costs of the proceeds of cargo's sale.[861]

In relation to the risk above, it has been noticed that it is mostly covered under the policies provided by IG Clubs and not by other commercial insurers. Thus, in terms of charterer's

[856] See, for instance, Part 2, clause 7.1.1 and 7.1.2 of Skuld Charterers' Cover Terms & Conditions 2017.
[857] See, for example, Clause 9, section 4(B)(ii) of the Charterers P&I Club Terms and Conditions 2018, clause 21(xiii)(b) of Steamship Charterers' Cover 2017/2018.
[858] See respectively in *supra*, fn. 856, clause 7.2.3 and 7.2.4.
[859] See respectively in Rule 4(2)(a) in combination with Rule 2, section 14(B) of the Shipowners' Club Rules 2018, Part 2, ibid clause 7.2.1, clause 21(xiii)(b) of Steamship Charterers' Cover 2017/2018
[860] See, for instance, Clause 9, section 4(B)(ii) of the Charterers P&I Club Terms and Conditions 2018.
[861] See, for example, Rule 4(2)(a) in combination with Rule 2, section 14(C) of the Shipowners' Club Rules 2018. Similarly in Part 2, clause 7.1.3 of Skuld Charterers' Cover Terms & Conditions 2017, clause 21(xiii)(c) of Steamship Charterers' Cover 2017/2018.

protection, the importance of the inclusion of such risk in CLI and consequently the effectiveness of charterers' protection will depend mostly on whether the assured charterer appears to be also the carrier under the bill of lading. It is interesting to note, though, that although commercial insurers do not include this risk in the main scope of their liability cover, they provide generally protection when the charterer is also the shipper of the cargo at an extra fixed cost.

Overall, when it comes to the legal basis that is required in order for charterer's cargo liability to be covered, it suffices if the latter arises either contractually, in the form of a breach of charterer's obligations normally under a contract of carriage (e.g charterparty, bill of lading, waybill) issued in respect of the goods shipped.[862] Or, it can further arise by way of indemnity when it has been agreed that the charterer will be obliged to pay damages or compensation to the shipowner for the costs the latter incurred in respect of the cargo carried,[863] pursuant his obligations under a contract of carriage (e.g bill of lading).[864] Particularly in the dry cargo trade, in charters such as NYPE or Baltime, for example, charterer tends to absorb cargo liabilities according to the contract or through the incorporation of the Inter-Club Agreement, as it was seen in the second chapter of this work.[865] Thus, charterer's protection will be activated when the vessel is threatened to be arrested at the port of discharge by the cargo owners due to cargo's shortage and the shipowner demands security from the charterer for any cargo claim presented against him. Similarly also applies in case where the cargo is lost at sea and the Authorities require security from the shipowner that he will find and recover the lost cargo who will later turn against his charterer for a counter-security in respect of the costs he will incur for the above. Such liability will be covered even if the owner's compensation is being sought in tort, due to charterer's negligence, or on a statutory basis providing for strict liability, as the cover's wording does not seem to distinguish among them.[866] This could mean, therefore, that even in case that the cargo claim is unsecured and cannot be recovered from the shipowner, the charterer is still protected under his insurance policy, if liability ends on his shoulders. It is clear further that the same overall protection will be granted to a sub-charterer in relation not only to cargo liabilities towards the disponent owner, but also towards the owner of the insured vessel.[867] Similarly, the CLI extends to protect charterers against cargo liabilities emerged due

[862] See, for example, Clause 9, section 4(A)(i) of the Charterers P&I Club Terms and Conditions 2018.
[863] As discussed in Chapters II and III, under "Liability arising from cargo operations''.
[864]See, for example, Clause 9, section 4(A)(iii) of the Charterers P&I Club Terms and Conditions 2018.
[865] See in Chapter II, at p. 31.
[866] See, for example, Clause 9, section 4(A)(ii) of the Charterers P&I Club Terms and Conditions 2018.
[867] Ibid, Clause 9, section 4(A)(iv).

to a negligent act or fault of persons acting on their behalf rendering them vicariously liable for the former's conduct.

It should be also clarified that the crucial period for such protection to arise extends between the shipment of the cargo onto the ship and its discharge from her,[868] whereas any cargo liability occurring before and after that period of time will be covered only subject to the insurer's prior written consent, as it will be explained later.

B) Discretionary covered risks

In addition to the previously described standard cargo risks within charterers' cargo class, the latter can be often broadened through the inclusion of extra risks whose cover depends on the discretion of the insurer or the Club's Board of Directors.

Such risks include, for example, cargo loss, shortage, damage or delay arising as a result of a combined transport or through transport bills of lading, or generally contract of carriage, when more than one means of transportation are involved in cargo's transfer.[869] It is interesting to note that insurers' discretion to include this risk in CLI cover is a relatively recent development, as it allegedly appeared in 1995, largely as a result of the containerisation[870] and charterers' intense demand for their cover's enlargement, so to meet the requirements of the increasingly sophisticated methods of international transport.[871] Thus, contrary to the norm of the past, where any form of transhipment was considered deviation from the contract of carriage and therefore was excluded from the policy, since 1995 charterer's insurers started gradually to adopt a more liberal approach towards deviations and were prepared not only to accept such risks under an ordinary cover, but also to protect their assureds' new responsibilities.[872] Consequently nowadays, charterer's protection is triggered when the cargo is damaged during road haulage from a factory to the loading port. However, in this case,

[868] Ibid, Clause 9, section 4(C)(i).
[869] Clause 9, section 4(C)(ii)(a) of the Charterers P&I Club Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 14(D) of the Shipowners' Club Rules 2018, clause 21(xiii)(d) of Steamship Charterers' Cover 2017/2018.
[870] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 159.
[871] "Raetsmarine: Marine liability policy for charterers 2017 – Circular", available <https://www.raetsmarine.com/sites/default/files/default/files/marine_liability_policy_charterers_circular_2017_0.pdf>, accessed 3 August 2017, p. 1.
[872] *Supra*, fn. 870, p. 148 and 159.

charterer's protection will be subject to proof that his liability arose while the cargo was loaded on board and before its discharge, which is often impossible to prove.[873]

At the same time, some insurers provide further protection against the incidental to the former storage liabilities arising due to cargo's transit that do not fall, though, within the cover period for the standard cargo risks as described above.[874] Nonetheless, covering the latter liabilities is usually subject to further conditions, such as time or location.[875] Hence, at the end, the scope of this protection might be very narrow and difficult for the charterer to benefit from. Another included risk of similar type with the above is storage risks that are not incidental to the cargo's transit and refers to liabilities that incurred in the course of cargo's carriage, but only for the period before the very first loading and after the very last discharge.[876]

Furthermore, it is common for both commercial insurers and the Clubs to provide upon their discretion cover against cargo liabilities and expenses arising as result of the use of paperless trading systems for the cargo's carriage.[877] The introduction of this risk within CLI cover reflects the insurers' intention to stay in line with the market trends and respond to the changes occurred a few years ago in respect of the bills of lading and their replacement by electronic documents, after the appearance in the market of various electronic (paperless) trading systems.[878]

Although the wording used differs among the different insurance providers, it is interesting to note that the same principles seem to be followed when it comes to its interpretation as well as application. Firstly and most importantly, the scope of protection here is limited only to liabilities that would have arisen and been covered had a paper trading system been used, instead. In other words, the charterer's protection is provided only in relation to these liabilities

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[873] *Supra* fn. 869, the Charterers P&I Club Terms and Conditions.
[874] Ibid, clause 9, section 4(C)(ii)(b).
[875] For instance, the above clause of the Charterer's P&I Club cover, protection is granted when the risk occurred "*for a period of up to seven days between the two transits''* and "*where such storage is within the port area''* or otherwise in a secured storage space.
[876] *Supra*, fn. 874, section 4(C)(iii)(a) of the Charterers P&I Club Terms and Conditions 2018.
[877] Clause 9, section 4(D) of the Charterers P&I Club Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 14, proviso (ix) of the Shipowners' Club Rules 2018. Opposite, though, under Part 2, clause 6.2.17 of Skuld Charterers' Cover Terms & Conditions 2017 where different wording is used indicating that this risk is normally excluded from the cover, unless the paperless system is approved first by the Club.
[878] These systems came into effect in 2013, while nowadays, there are generally two such systems that are generally approved by the P&I Clubs as well as the insurance industry: the Electronic Shipping Solutions (known as the ESS system) and the Bolero system administered by Bolero International Ltd. See, respectively, "P&I Circular 2256/2013: Updated ESS DSUA version 2013.1: Electronic (Paperless) Trading Systems — Electronic Shipping Solutions and Bolero International Ltd" (Swedish Club, February 2013), available < https://www.swedishclub.com/news/circulars/p-and-i-circulars/updated-ess-dsua-version-2013-1-electronic-paperless-trading-systems-electronic-shipping-solutions-and-bolero-international-ltd>, accessed 12 March 2020.

and costs that would have been normally covered under the traditional transactional system.[879] Secondly, the cover will be granted only if an approved electronic system has been used, replacing the paper documents for the sale of goods and their carriage by sea. However, this requires further the new system to be able to produce the same effect as its previous paper one in order to be fully enforceable. Therefore, it needs to work as a document of title, receipt of goods and evidence of a contract of carriage, as a bill of lading would do.

From the above, it is clear that the result of narrowing down the application of this clause is not as beneficial as it was expected to be for charterers. Although, the clause was initially incorporated into the policy, purporting to ensure charterer's protection against the new risks emerged with the use of these electronic systems, it finally left charterers significantly exposed to a broad range of whole new technological risks that have a non-P&I nature. As a consequence, charterers might not be protected in case their liability arises due to breaches of confidentiality undertakings as well as obligations to maintain computer links.[880] The same will also happen if they fail to install and maintain an updated anti-virus software, or keep private keys and unique identifier codes secret.[881] However, it has been noticed that the fraudulent diversion of hire and freight is becoming increasingly common. Recently, for example, hackers infiltrated an email system to find out the details of business contacts and emailed later the charterer impersonating the accounts department of a payee to redirect the payment by either attaching an invoice with a specified bank account, or requesting hire to be paid into a different account than normal. Actually, it is interesting to note that the email address used by hackers was almost identical to the email address of the true counterpart, with only a small variation which could easily go unnoticed. As a result, the charterer made a payment that never reached the shipowner's account, so the latter claimed breach of his charter obligations and withdrew the vessel from his service until the charterer paid again the hire.[882] Unfortunately, the charterer was not able to recover such expenses through his liability insurance on the basis that such risk did not have a P&I nature falling within the scope of paperless trading provision. Also, they were related to the cyber risks exclusion usually found in CLI policies, which is further

[879] *Ibid,* the Shipowners' Club Rules 2018, clause 6.2.15 of Skuld Terms and Conditions 2017 for Charterers' cover, clause 33.1.13 of Norwegian Hull Club Charterers' Rules 2016, clause 4.2.8 of RaetsMarine Charterer Liability Policy Terms 2017.

[880] Atousa Khakpour, "Cyber security risks for charterers" in "*Standard Club's charterer's bulletin"* (August 2017), available at <http://www.standard-club.com/news-and-knowledge/news/2017/08/charterers-bulletin-august-2017.aspx> , accessed 12 March 2020, p. 14.

[881] Laura Starr, "E-bills of lading come of age" (2017) 31 MRI 89.

[882] Similar incidents have also been reported to other insurers who have confirmed with the author the accuracy of this threatening trend and the anxiety it causes to charterers. See also, ibid, p. 13; also, "E-fraud", (North of England P&I, January 2016), available < https://www.nepia.com/articles/e-fraud/>, accessed 12 March 2020.

discussed below.[883] But, it was suggested that he would be protected against costs incurred in respect of a charterparty dispute relating to this event under his FD&D cover.[884] The increasing trend of such events alerted the shipping and insurance industry as a whole which started to produce guidelines and warnings for the involved parties related to their daily business transactions. Nonetheless, we would expect the insurance market to take more drastic measures in the face of threats emanating from the advanced progress of the technology, so to protect its assureds. However, given that coverage of these risks could result otherwise in an indefinite exposure for insurers, such narrow interpretation seems reasonable.

Last, another point which needs to be highlighted is that charterers are generally entitled to recover expenses incurred in respect of their cargo liabilities as described above, even when they own the lost, damaged or shortened cargo. In fact, the majority of charterer's insurance providers expressly state that "*if any cargo lost or damaged on board of the insured vessel is the property of the assured, he shall be entitled to recover from the company the same amounts as would have been recoverable if the cargo had belonged to a third party (…)".*[885] This should not be confused, though, with the liabilities that fall within the additional cover of the charterer when he is also the cargo owner which typically refer to situations where the charterer's cargo is responsible for the damage caused resulting in charterer's liability.

To conclude, cargo risks constitute undoubtedly one of the most fundamental classes in the CLI and are usually scrutinised by the insurer, before it enters into the agreement. Therefore, it follows that the final scope of this cover might be adjusted each time to the needs of the assured and the parties' negotiations. Consequently, although the standard risks that have been presented above might represent the essence of this class, its actual scope can be finally even broader, as there are many other risks which can be covered upon the exercise of the insurer's discretion.

[883] This exclusion is similar to the Institute Cyber Attack Exclusion Clause – CL. 380 usually used in practice.
[884] The scope of this cover is discussed in detail in Chapter VI, in 3.1 "Freight, Demurrage and Defence cover".
[885] See for example, section 4.2.5 of of RaetsMarine Liability policy for Charterers 2017. Same also in Section I, clause I.2.18 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) and clause 21(xiii)(d)(vii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

2.2.2.3 Third class: P&I liabilities

A) Liability in respect of persons on board

Similarly to the shipowner's classic P&I cover, charterer's liability cover also includes protection against people's risks. These would invariably refer to charterer's liability to pay any damages or compensation to any person on board of the insured vessel as long as they are not employed by the assured charterer.[886] Thus, such protection applies always against crew members and passengers[887] as well as against any other person who happened to be on the board of the vessel when the incident occurred (e.g surveyors, port workers, stevedores' family members).[888] With regards the risks in relation to which charterer's protection is granted, this arises only in cases of death, illness or personal injury.[889] We should note, though, that the same principle is being followed either when we have a general clause that includes all these persons, or when we find separate clauses concerning each of these entities independently.[890]

This arrangement is somewhat different from the one usually found in shipowners' P&I covers, where they invariably undertake to protect the crew employed on board of their vessel. It is assumed, however, that such differentiation emanates from the shipowners' obligation to comply with various international regulations (e.g Maritime Labour Convention) or collective bargaining agreements which impose on them minimum standards for the seafarers' employment. Yet, this does not necessarily mean that liabilities that arise for the charterer with regards people employed by him on board of the vessel cannot be equally included in his policy. In fact, such liabilities will be governed by a different clause under his policy which refers to liabilities that arise as a result of indemnities and contracts, since the charterer will be bound by the employment contract signed with them. As it will be explained later, such clause

[886] See, for example, Clause 9, section 2 in combination with Clause 13(6)(i) of the Charterers P&I Club Terms and Conditions 2018.
[887] It is interesting to note that under Chapter B, Rule 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019 charterer's liability for passengers' injuries, illness or death is expressly excluded.
[888] See, for instance, Clause 9, section 2 of the Charterers P&I Club Terms and Conditions 2018, clause 3.2 of Charterama General Terms and Conditions, Policy Wording 2017, section 2 of RaetsMarine Liability policy for Charterers 2017, Rule 22 of the Norwegian Hull Club Charterers' Rules 2016. But, opposite in Part 2, clause 9 of Skuld Charterers' Cover Terms & Conditions 2017 where it is merely stated that cover is provided for *"'liability for injury, illness or death of crew or any other person''*.
[889] *Ibid.*
[890] Usually in IG Clubs' Rules. See, for example, Rule 4(2)(a) in combination with Rule 2, sections 1, 2 and 3 of the Shipowners' Club Rules 2018, section I, clause B of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 21(ii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

provides protection against charterer's liability for loss of life, illness or personal injury that arose under contractual terms or by way of indemnity and is related to a casualty or services offered aboard of the ship.[891]

Once again, the extent of charterer's exposure to people's liabilities depends on various factors, the most important of which appear to be the type of trade that the charterer is engaged in, the terms of the charter and the applicable jurisdiction. For example, it is not very likely for an oil charterer to find himself liable for causing personal injury either to crew members or shore-based workers working on board, because the nature of this trade does not entail any handling or manual process. Though, the opposite can be supported in case of dry-cargo trading where the cargo handling operations require inevitably the involvement of manpower, increasing the likelihood of the occurrence of an accident (eg. a seaman is getting killed when a steel coil is dropped during discharge).[892] In this trade, it is also quite common to see charterers being held liable for injuries caused to third parties being on board of the vessel, other than seafarers, such as stevedores' family members who tend to travel along them during certain voyages. Last, in the event of a cruise charterer, the risk of him being liable for passengers' injuries is increased especially when the Athens Convention applies, either he is considered the carrier or the performing carrier.[893]

The applicable jurisdiction affects also significantly charterer's exposure to such risks, as there are times that a charterer is forced to join into legal proceedings, even in cases where he ought to have no liability for such an accident or injury.[894] The same risk exists when his liability arises on a statutory basis or is being sought outside the contract, on a tortious basis, or even more frequently by way of indemnity. Accordingly, it has been noticed, for example, that one of the most prolific jurisdictions for personal injury claims is that of the USA. This is mostly because US law allows injured maritime workers, whether crew or shore-based contractors, to seek remedies through the courts independently of any statutory compensation they might be entitled to and irrespective of whether there has been fault. In this case, although

[891] For more details, see at 2.2.2.3.c in "Liabilities arising from approved indemnities and contracts".
[892] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 149.
[893] Respectively, see article 1(1), 3(1) and 4 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974. See also in *Cruise and Maritime Services International Ltd v. Navigators Underwriting Agency Ltd (The "Marco Polo")* [2017] EWHC 843 (Comm) where it was examined whether the claimant who was the time charterers' co-assured under the latter's policy was the contracting carrier under Athens Convention and whether therefore his claim against his insurer for costs incurred in relation to the passengers could be recoverable under the time charterers' liability insurance. Another case where a cruise operator has been found liable for a passenger's injury as a contracting carrier under the Athens Convention is *Lawrence v. NCL (Bahamas) Ltd (The "Norwegian Jade")* [2017] EWCA Civ 2222.
[894] *Supra*, fn. 892, p. 9.

the shipowner seems to be the easy target, as his identity is easily identifiable and he has ultimate control over the vessel, the charterer remains equally exposed, if the former decides to turn against him for reimbursement under their agreement.

Despite charterers' varying exposure in the above cases, their insurance cover makes usually clear that their protection against these risks is not indefinite. On the contrary, it is stated that there shall be no cover unless the injury, death or illness *"arose out of negligent acts or omissions on board of the insured ship, or directly in connection with loading cargo onto or discharging it from (her)"*.[895] In addition, other insurers might provide that protection for such risks will be granted only in cases where the incident did not arise as a result of a collision,[896] on the basis that collision is usually the result of a navigational error for which normally owners are responsible.

When cover is granted, similarly to shipowners' case, the most usual expenses towards which the protection will be applicable include any medical costs incurred for the person's treatment as well as its repatriation, if the latter was required. Furthermore, cover is provided for crew wages, expenses for its substitution and funeral expenses in the unfortunate case where the crew has died whilst employed on board of the vessel.[897] The same also applies in case of any other person's death aboard. It is important further to note that often the assured charterer is entitled to claim reimbursement for expenses incurred as a result of such risks which caused delays or deviation to the planned voyage.[898] Thus, for example, if the vessel has to deviate from her destination in order for emergency medical treatment to be provided to a crew member or passenger, the additional charges incurred for bunkers, for collecting the substitute crew, or for port arrangements will fall within the scope of this risk and will be recoverable. In case of passenger claims, the insurers might further reimburse the charterer for any compensation paid to passengers as loss of enjoyment, arising usually from their liability in tort.

[895] Clause 3.1 of Charterama General Terms and Conditions, Policy Wording 2017. Similarly in section 2.2.1 of RaetsMarine Liability policy for Charterers 2017, Rule 22 of the Norwegian Hull Club Charterers' Rules 2016, clause 3.1 of DUPI Charterers Liability Insurance Conditions (August 2016) Clause 9, section 2 in combination with Clause 13(6)(ii),(iii) and (iv) of the Charterers P&I Club Terms and Conditions 2018. But, opposite in Chapter B, Rule 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[896] Clause 9 section 2 of the Charterers P&I Club Terms and Conditions 2018.

[897] See, for example, clauses 6-9 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017.

[898] See, respectively, Rule 2, section 4 of the Swedish Club Rules for Charterers 2018/2019, clause 21(ii)(a)-(d) and (g) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, section I, clause B(3)-(9) of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018).

Within the same category of risks falls also charterer's liability in respect of stowaways found on board of the vessel, as well as deserters, refugees and persons rescued at sea. The extension of their cover so to include such expenses was presumably the result of the general increase in stowaway and refugee activity that has been noticed the past years resulting respectively in the escalation of the claims' number with which charterers were faced.

As regards the cover's scope, although these persons are treated as crew members in the broad sense of the term, the insurance policies usually distinguish them from the other persons on board most likely on the basis that the cover available for them is subject to different terms than the ones applying to the actual crew members. Thus, charterers are protected against liability to the owner or disponent owner of the vessel for fines or expenses that arise due to the presence of stowaways or refugees on board, provided only, though, that these expenses are reasonable and were incurred by the owner on the basis of his legal liability and which cannot be recovered from the assured by any other party.[899] Such recoverable expenses could be, for instance, additional port charges as well as costs for the stowaway's landing and repatriation.[900] Although the shipowner might be responsible for the consequences of stowaways on board of the vessel, the charterer may also face similar liability in certain circumstances which are usually defined under their charter.[901] Such liability could arise, for example, when the stowaway is found in a container loaded on board and it is discovered that he was hiding there since the beginning of the loading operations when he managed to gain access after charterer's stevedores left accidentally some containers unlocked whilst waiting at port.

It is interesting to note also that in the majority of charterers' covers, it is expressly stated that the incorporation of BIMCO's Stowaways Clause for Time Charters (either 1993 or 2009) constitutes a condition precedent for charterer's protection.[902] The provision of such condition

[899] Clause 9, section 14 of the Charterers P&I Club Terms and Conditions 2018, Rule 2, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019, For example, clause 4.4 of Charterama General Terms and Conditions, Policy Wording 2017, Clause 3.10 of DUPI Charterers Liability Insurance Conditions (August 2016), Part 2, clause 10 of Skuld Charterers' Cover Terms & Conditions 2017, clause 11 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, clause 23.1 of the Norwegian Hull Club Charterers' Rules 2016, Section I, clause B.10 of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018), clause 21(ii)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

[900] "Skuld: Charterers and traders P&I and FD&D – Fact Sheet", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_Fact_Sheet_web.pdf?epslanguage=en>, accessed 18 August 2017, p. 3.

[901] *Ibid.*

[902] *Supra*, fn. 895, the Charterers P&I Club Terms and Conditions, the DUPI Charterers Liability Insurance Conditions (August 2016), the Norwegian Hull Club's Charterers' Rules.

certainly protects insurers which are, therefore, willing to undertake only the cost of certain liabilities as they arise under their allocation within these Clauses, but at the same time, places another burden on charterers who should ensure at the time of entering into the charter that they will not agree on incompatible to their insurance policy terms. Whilst, the fact that certain insurers accept only liability arising as a result of the incorporation of BIMCO's Stowaways Clause for Time Charters 1993 complicates things for charterers even further,[903] as it leaves them exposed to liabilities that could have arisen under the stricter and not so friendly to them 2009 clause.[904]

On the other hand, when it comes to people rescued at sea, there are not normally any such restrictions, as in case of life salvage all the parties involved in the maritime adventure should contribute proportionately to the expenses incurred for its purposes.[905] However, it is still required that the expenses incurred for life salvage are reasonable in order to be recoverable.[906]

Setting the above conditions aside, the expenses that are usually incurred in respect of these persons are similar to those incurred for any crew member and so, include medical expenses in case of personal injury or illness, expenditure made for their repatriation, and most importantly expenses arising as a result of vessel's diversion for their salvage or immediate medical treatment.[907] The latter will further include costs for extra fuel, insurance, wages, stores, port charges attributable to the diversion and directly connected to the causes mentioned. Nonetheless, once again, for such expenses to be recoverable by charterer's insurers, they should be firstly approved by them.[908]

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[903] For example, clause 4.4 of Charterama General Terms and Conditions, Policy Wording 2017

[904] It is reminded that Clause 1993 contained an obligation to the charterer to exercise only due diligence in preventing stowaway access to the ship by means of concealing away in the goods being loaded. On the contrary, Clause 2009 replaces this due diligence duty with a strict liability fault-based regime, so that if the stowaway is found to have gained access on board of the ship with the cargo or by any other manner connected with the charterers operations, the charterer will be considered in breach of the charter and has to indemnify the owner for the losses/expenses suffered as a result of it, irrespective of his fault. See, respectively the discussion on this matter in the "Stowaways Clause for time charterers'', (Charterers P&I Club's circular, February 2010) <https://www.themecogroup.co.uk/charterers-liability-insurance/publication/circular-003-2010-stowaways-clause-for-time-charterers/>, accessed 12 March 2020.

[905] Rule 2, section 3 of the Swedish Club Rules for Charterer's Insurance 2018/2019. Opposite under Section I, clause B.10 of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018).

[906]Clause 10 of Skuld Charterers' Cover Terms & Conditions 2017, clause 11 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, clause 21(ii)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

[907] But, opposite in clause 11 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017 and Section I, clause B.10 of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018), where diversion expenses are expressly excluded in relation to such risk.

[908] Rule 2, section 4 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 21(ii)(g)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

B) Liability in respect of property damage or loss

Among the most common and straightforward liabilities that charterers usually encounter is for damage to or loss of a third party property. Subsequently, it constitutes part of the standard risks included in their CLI cover. In fact, based on charterer's insurance policy such protection is granted irrespective of whether the damaged or lost property is onshore and fixed, or offshore and moveable.[909] Therefore, it includes damage caused to docks, fenders, buoys, pontoons, or wharves, or any other shore-based structures, resulted, for example, from the negligence of a docking pilot who was instructing the vessel during berthing and was previously selected by the charterer.[910] Similarly applies in respect of any equipment hired by the charterer for the purposes of a particular trade. It should be noted here that there are some insurers which distinguish between property on board of the insured vessel and any other property suffering such damage. This distinction does not affect, however, the overall protection of the charterer against such risks, as he remains covered for both either under one general clause or by two independent.[911]

Despite the provision of such protection, though, there are often certain conditions subject to which the former is offered that consequently narrow down its overall wide scope. The most straightforward one provides that protection refers only to property which is not controlled or possessed by the assured charterer.[912] However, this is not an absolute rule, as there are some insurers who are willing to cover such risk even when the damaged property belongs to the assured, as if the latter would have been covered had the damage occurred to the property of a

[909] See, for example, Clause 9, section 3 of the Charterers P&I Club's Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 8 of the Shipowners' Club Rules 2018.

[910] Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p. 484 and 505.

[911] Invariably it is the cover of the IG Clubs that provides two distinct clauses, whereas fixed premium insurers tend to use one general clause that includes both occasions. See respectively, Rule 4(2)(a) in combination with Rule 2, sections 8(ii) and 17 of the Shipowners' Club Rules 2018, section I, clauses D and K of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018). Opposite, though, under clause 9, section 3 of the Charterers P&I Club's Terms and Conditions 2018, section A.I, clause 1 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, Rule 15 of the Norwegian Hull Club Charterers' Rules 2017, Rule 6, section 1 of the Swedish Club Rules for Charterers 2018/2019, clause 22(vii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, section 3.1 of RaetsMarine Liability policy for Charterers 2017.

[912] See, for instance, Clause 9, section 3 of the Charterers P&I Club Terms and Conditions 2018, Part 1, clause 12 of Skuld Charterers' Cover Terms & Conditions 2017, section 3.2.2 of RaetsMarine Liability policy for Charterers 2017, Clause 3.2 of Charterama General Terms and Conditions, Policy Wording 2017, Rule 6, section 1 of the Swedish Club Rules for Charterers 2018/2019. But, opposite in clause 3.2 of DUPI Charterers Liability Insurance Conditions (August 2016).

different third-party owner.[913] Cover for such damage is further excluded when protection is granted under a different risk under the policy, such as collision, towage or pollution.[914] But, the most typical exclusion provides that no claim shall be recoverable when "*liability arises under the terms of any contract or indemnity which would not have (otherwise) arisen but for those terms",*[915] unless the insurer has previously agreed in writing. This exclusion is in line with the principles insurers follow in respect of shipowners' liabilities and is reasonable, as insurers usually offer an additional cover for the assured's "contractual" liabilities.

C) Liability arising from approved indemnities and contracts

It is also common to find in CLI cover a clause providing protection against liability arising under the terms of an indemnity or contract, given or being made by the assured, and related to the services provided on board of or in connection with the insured vessel or resulted from a casualty on board, such as during ship-to-ship transfer operations or cargo blending.[916] Coverage is subject to the insurer's prior written agreement, while the protection's scope is usually limited, so to cover exclusively liabilities for loss of life, injury and third party's property loss or damage.[917] For example, there are times where a person is injured and although its claim is brought against the shipowner, the charterer is found liable by way of recourse only because of the charter terms they had agreed upon. This can happen when the terms of the charter provide that the charterer should hold harmless the owner in relation to injuries caused to persons that belong to charterer's group, irrespective of parties' fault. Thus, if a charterer's contractor falls inside the ship's cargo holds which were left mistakenly open by crewmembers,

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[913] Rule 4(2)(a) in combination with Rule 2, section 8(B) of the Shipowners' Club Rules 2018, clause 22(vii)(b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Section I, clause D.1.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018).

[914] Rule 4(2)(a) in combination with Rule 2, section 8(A)(ii) of the Shipowners' Club Rules 2018, clause 22(vii)(a)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Section I, clause D.1.1.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), section 3.2.3 of RaetsMarine Liability policy for Charterers 2017, clause 3.2 of Charterama General Terms and Conditions, Policy Wording 2017.

[915] Section 3.2.1 of RaetsMarine Liability policy for Charterers 2017. Similarly also in Rule 4(2)(a) in combination with Rule 2, section 8(A)(i) of the Shipowners' Club Rules 2018, , clause 22(vii)(a)(iii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Clause 3.2 of Charterama General Terms and Conditions, Policy Wording 2017.

[916] "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 10.

[917] See, for example, Clause 9, section 6 of the Charterers P&I Club's Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 11(A) of the Shipowners' Club Rules 2018, section 6 of RaetsMarine Liability policy for Charterers 2017, Section I, clause H.1.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018).

and the vessel is later arrested at the port by the contractor's lawyers who are claiming compensation on his behalf, the charterer will be liable for the delay and the costs arising therefrom, irrespective from the fact that the injury resulted ultimately due to owner's negligence.[918]

In fact, it is interesting to note that it has been noticed that continuing efforts have been made by shipowners to shift liability for loss of life or personal injury and illness of longshoremen and other persons on board doing charterer's work.[919] This is exactly what happened in a similar case where a US longshoreman got injured in the port of Seattle while he was directing the positioning of steel pontoons and a piece of dunnage wood supporting the bottom pontoon broke under the weight resulting in the pile of four pontoons crashing to the deck, crushing the longshoreman's toes who was standing close to the pile. The vessel was chartered under a "Baltime" charter, containing a London arbitration clause and allowing shipowners to claim indemnity from charterers in the event of an accident arising due to the master's compliance with the charterer's orders. The injured stevedore was employed by the charterer and when the US court found against the shipowner, the latter sought later reimbursement for the compensation amount against charterers in London where the arbitrator found against the charterer on the basis that his orders were the proximate cause of the injury, despite his effort to persuade the arbitrator that the US court has erred in finding the owners responsible at first place.[920]

Despite the above protection offered to charterers, it has been noticed that there are certain insurers which expressly exclude charterer's coverage against liabilities that arise under a charterparty of the entered vessel to which the charterer is party.[921] Besides, the willingness of charterers' insurers to expose themselves to risks that charterers have undertaken under their contracts is not generally welcomed. That is actually why they invariably require the assured

[918] A similar example can be found in *supra,* fn. 916, p. 8 where it is suggested that the charterer's cover will respond to costs incurred in relation to a stevedore injury occurred during cargo operations for which the charterer has agreed to be solely responsible under the NYPE charter form.
[919] *Supra*, fn. 910, p. 484.
[920] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 149-150.
[921] See particularly clause 21(x)(a) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

to request their approval in advance. Or, others also might expressly mention that coverage will be granted only upon their discretion.[922]

But, generally speaking, as long as the terms of any contract or indemnity are such that they do not impose on the assured any liability for third party actions, and do not waive or limit the right to exclude or limit their rights of recourse otherwise available, or if such terms are "knock for knock'', they will be acceptable and the respective liabilities will be also covered.[923] It is common, for example, in practice for a charterer to want to load two different oil cargoes of different specification into the same tanks. In that case, the shipowner will request a letter of indemnity from the charterer for this operation and any liabilities that might arise for the charterer as a result of this cargo blending will be covered under his policy, provided that the letter of indemnity signed does not impose on the latter any liability for actions of third parties, and does not waive or limit any rights of recourse he might have.[924]

Even in the scenario, though, that the insurer disagrees with the protection, this does not necessarily mean that charterers run the risk of being left unprotected against such liabilities. In fact, it is often stated that when the insurer does not approve the terms of an indemnity contract, it may nevertheless be able to extend charterer's cover subject to the payment of an additional premium.[925] It is further possible for these different approaches to be combined, in case, for example, where from the overall liabilities arising, the insurer accepts coverage against some of them, but claims additional premium for those that exceed in its opinion the charterer's liability cover. It is interesting to point out here, though, that contrary to English liability insurance covers, an American one will specifically exclude coverage for similar liabilities arising out of indemnity agreements.[926]

D) Liability for fines

The CLI policy provides also insurance coverage against the assured's liability to pay certain fines and penalties imposed by governmental or judicial authorities. In order for these fines to be recovered under the policy, they usually need to refer to the insured ship, or should

[922] Section I, clause H.1.2 of London P&I Club's Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) and clause 21(x)(a) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[923] *Supra,* fn. 916, p. 11.
[924] *Ibid.*
[925] *Supra*, fn. 922, the London P&I Club's Terms and Conditions.
[926] *Supra*, fn. 910, p. 484.

be imposed directly on the assured or their representative as well as on any person whom the assured charterer might be obliged to reimburse.

The scope of the cover in respect of this risk is quite standard and does not present any fluctuations among the different insurers. It traditionally includes fines for breaching custom or immigration laws and regulations as well as for smuggling. Further, it provides coverage in case that fines are imposed as a result of the assured's failure to maintain safe working conditions on or in relation to the insured vessel and for pollution, yet only if the insured has also cover for pollution risks and such fines are not covered therein. Protection is granted against fines related to the cargo on board, including but not limited to the assured's non-compliance with regulations for cargo's declaration or documentation and for cargo's short or over-delivery as well. That could occur, for instance, when the custom officers decide to open a container on board and realize that it does not match to the cargo manifest, so they impose a fine on the shipowner who will turn later against the charterer by way of recourse. Again, coverage for these risks is subject to charterers' insurance protection against cargo damage, shortage, loss or delay in the form described earlier. Last, as it would be expected, the cover provides protection for fines imposed on the assured for any negligent acts of his servants or agents[927] occurred in the course of their duties in respect of the insured ship.[928]

It is interesting to note that the list of fines covered under the scope of this risk is normally exhaustive, therefore charterers remain unprotected towards any other type of fine that has not been expressly included in their policy. Considering, though, the rapid development of all countries' regulations, such exposure might be significant as the charterer cannot always be aware of or keep track of these changes. For that reason and in order to eliminate the danger of charterer's exposure to unpredictable fines, some insurers have introduced an "omnibus'' section just for fines which essentially extends their coverage to any other fine or penalty, insofar as the assured has proved before that he took steps to avoid the event that triggered the

[927] On the contrary, section I, clause L.1.2.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) is narrower providing protection for such risks only upon the discretion of the insurer or when the assured charterer was compelled by law to pay or reimburse such fine.

[928] See, for example, Clause 9, section 13 of the Charterers P&I Club Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 19 of the Shipowners' Club Rules 2018, Rule 9 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Clause 20 of Norwegian Hull Club Charterers' Rules 2016, clause 23 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, clause 21(xv) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 17 of Skuld Charterers' Cover Terms & Conditions 2017, clause 3.7 of DUPI Charterers Liability Insurance Conditions (August 2016), Section 13.1 of RaetsMarine Liability policy for Charterers 2017, Section I, clause L.1.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018). But, slightly narrower in clause 4.3.1 of Charterama General Terms and Conditions, Policy Wording 2017.

fine.[929] It should be pointed, though, that the wording of such clauses is usually interpreted narrowly, so to cover only fines related to the insured risks under the CLI. Therefore, any fines followed by the assured's breach arising from an operational matter will not fall within the ambit of this clause. For example, if the charterer is fined by the Authorities because after the discharge of dangerous oil residues carried on board of the vessel, he decided to store it at berth, in a non-controlled area where it could easily leak at sea and cause pollution, this fine will not be covered under the fines' "omnibus" clause, because his covered liability stops at the point of cargo's discharge, as previously noted.

Although the extended coverage depends upon the insurer's discretion, it certainly benefits the assured who is more relaxed in respect of his reimbursement prospects. On the other hand, however, such rule creates further uncertainty and maybe unfairness, as the standards under which such discretion is being exercised are blur and sometimes affected by commercial factors and the business relations of the parties involved. In any case, though, it is clear that there is no coverage for fines imposed due to the assured's intentional fault, or due his involvement in criminal activities, for overloading the vessel and trading outside the agreed areas, or not having the right certificates relevant to his operation on board.[930]

E) Liability arising as a consequence of a collision

A standard CLI cover will almost certainly provide coverage against some risks that the chances of charterers being found liable for them are not very high. One of these risks is charterer's liability for damages arising as a result of a collision between the insured and a third-party vessel.[931]

As explained in the earlier chapters of this work, the charterers' undertakings on board of the insured vessel are usually limited to operational matters or matters relating to her employment. Therefore, claims arising out of collision should normally be made against the

[929] For instance, see Rule 9(2) of the Swedish Club Rules for Charterer's Insurance 2018/2019, Rule 4(2)(a) in combination with Rule 2, section 19(E) of the Shipowners' Club Rules 2019, clause 22(xv)(e) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018 and Section I, clause L.1.2.1 of London P&I Club Charterers'' CSL Cover Terms & Conditions Version 1.01 (February 2018).

[930] Rule 9.3 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 23.5-23.7 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, section 13.2 of RaetsMarine Liability policy for Charterers 2017, clause 4.3 of Charterama General Terms and Conditions, Policy Wording 2017, Rule 4(2)(a) in combination with Rule 2, section 19 (E) of the Shipowners' Club Rules 2018.

[931] Same supported in "Skuld: Charterers and traders P&I and FD&D – Fact Sheet", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_Fact_Sheet_web.pdf?epslanguage=en>, accessed 18 August 2017, p. 3.

shipowner who is responsible for navigation. Thus, if the charterer gives an order concerning the operation or navigation of the vessel which the master should have denied, the liability remains on shipowner. It is interesting to note, however, that there are certain jurisdictions such as in Japan, which include the judicial concept of a charterer being found liable for collision damage.[932] The charterer's cover will also not respond to unlawful orders relating to the vessel's employment, even if the parties have agreed that the charterer will indemnify the shipowner if he complies, unless perhaps the charterer's insurer is aware of this charter condition and accepts to reimburse charterer for this additional risk. However, it is believed that in this case, as the charterer's liability would not have arisen but for the contract terms, his coverage might be justified under the "contracts and indemnities" clause or the extended cover usually provided in similar cases, as described above.

Nonetheless, there are times that the shipowner might turn against the charterer claiming compensation for the collision on the basis that the latter occurred due to charterer's intervention. The most usual example of such occasion is when the charterer nominates an unsafe or unsuitable for the vessel port. For instance, when the vessel arrives at the nominated port and it is found that the water is not as deep as required for the vessel and so, she loses steerage and eventually collides with the vessels berthed along her side. Under these circumstances, if the owner of the other vessel seeks indemnification for the losses suffered, he will turn most likely against the owner of the insured vessel who will later turn against the charterer who nominated the port at first place. Another situation which can trigger charterer's liability for collision is when the charterer supplies the vessel with bad fuel due to which the vessel's engine suddenly stops, causing her to start drifting uncontrollably and collide with a nearby vessel.

No matter how rare or often such incidents are, they can be very costly for the charterer as his liability can range from small claims, such as equipment damage, to very big ones, such as hull damages or wreck removal. But even if that happens, the charterer will be covered under his liability policy for any loss or damage caused to the owner of the other vessel or any other party whose interests are affected by the accident. That would of course include damages to the vessel itself or her cargo or other property on board. Also, it will cover his liability to indemnify the owner of the vessel for costs and expenses incurred in respect of wreck removal, if the vessel is declared a constructive total loss, or otherwise, expenses made for the marking,

[932] This phenomenon is very rare though. See, supra, fn. 920, p. 151.

lighting or destruction of any obstruction caused by the collision. Furthermore, charterer's cover in respect of that risk is broad enough to include commercial losses arising due to delay or the vessel's loss of use as well as general average or salvage costs paid by those interested in the cargo or property carried on board, or even expenditure to prevent or limit pollution caused by the other vessel due to the accident. When, for example, as a result of the collision the third-party vessel is grounded in a channel and closes the port, liability might arise towards the owner of the harbour, wharves or other vessels.[933] Thus, if the other vessels at port are delayed or the port remains closed for a period of time, the loss of time or income incurred by these parties will be covered under CLI policy. However, it should be clarified that economical losses which the shipowner or charterer of the chartered vessel might suffer as a result of such incident are not covered under the CLI, unless there is express agreement that the risk of delay will be an included risk. Otherwise, normally, the charterer can be protected against these losses under the additional loss of use cover.[934]

Lastly, the CLI cover for collision protects charterers against liabilities arising in relation to the people on board of the other vessel, including damages for personal injury or loss of life, repatriation or substitute expenses.[935] It is worth noting at this point that if it is proved that the liability of the collision should be shared between the involved vessels, it follows that charterer's liability to cover the respective damages will be proportionate to the insured's vessel's fault. Also, there are some insurers which clarify that even in cases that the other vessel belongs to the same owner as the insured ship, charterer's cover will still apply under the same terms as if the other vessel belonged to a third party.[936]

[933] Example given in *supra,* fn. 931, p. 5.
[934] See Chapter VI, in 3.4 "Charterer's loss of use cover".
[935] Clause 9, section 5 of the Charterers P&I Club Terms and Conditions 2018, section I, clause C of London P&I Club Charterers'' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.3 of Charterama General Terms and Conditions, Policy Wording 2017, section 5 of RaetsMarine Liability policy for Charterers 2017, clause 21(v) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 15 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Clause 14 of Norwegian Hull Club Charterers' Rules 2016, Rule 6, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 11 of Skuld Charterers' Cover Terms & Conditions 2017.
[936] See respectively clause 21(v)(d) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

F) Liability related to towage contracts

Another risk that traditionally falls within every CLI policy is liability arising as a result of a towage contract in which the charterer is considered an involved party.[937] The scope of the cover provided here varies, as it is divided often into two categories, dealing with the customary towage and any other towage respectively, similarly to shipowner's P&I liability.

When it comes to the former category (i.e customary towage), the terms under which the cover applies are straightforward and generally refer to any liability that can arise from the contract of towage of the insured ship, save for the usual costs of such services.[938] Nonetheless, there are also some insurance providers which prefer to narrow down the spectrum of such insurance protection by granting it only when the insured vessel was towed for the purpose of leaving/entering a port or manoeuvring within the same during her ordinary course of trading, or when the liability arose in the ordinary course of the vessel's trading if she is habitually towed from place to place.[939] This follows generally the prevailing trend appearing also in the shipowner's P&I cover where there are no restrictions imposed. This is justified probably on the grounds that when vessels have to be towed due to their nature, such as barges, or when towage is required for harbour manoeuvre, the assured cannot really negotiate the terms of towage and therefore, merely accepts the conditions offered by the service provider. Therefore, the insurer tends not to put restrictions on which terms the assured must agree upon.[940]

However, the insurers' position changes in the face of liabilities arising under contracts for non-customary towage, such as ocean tows. Here, the charterer will be generally insured against towage liabilities (but not its cost), so long as the insurer has agreed in writing to provide such cover either the assured is the charterer of the towed or the towing vessel.[941] The rationale behind this differentiation emanates most likely from the general practice according

[937] Contrary to the majority of charterer's liability insurance policies, under Skuld Charterers' Cover Terms & Conditions 2017 there is no cover protection for charterers against towage related liabilities.
[938] See, for example, Clause 9, section 9(A) of the Charterers P&I Club Terms and Conditions 2018.
[939] See respectively sections 9.1.1. and 9.1.2 of RaetsMarine Liability policy for Charterers 2017, clause 3.6 (A) of DUPI Charterers Liability Insurance Conditions (August 2016), clause 3.6(I) and (II) of Charterama General Terms and Conditions, Policy Wording 2017, clause 21.1.1 of Norwegian Hull Club Charterers' Rules 2016, Rule 11, section 1(a) of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[940] "The Standard's Bulletin, Special Edition, Offshore" (27 October 2008), <https://www.standard-club.com/media/23580/CT_SB_OFFSHORE_oct08_disclaimer.pdf>, accessed 12 March 2020, p.4.
[941] See, for example, Clause 9, section 9(B) and (C) of the Charterers P&I Club Terms and Conditions 2018, clause 3.6 of Charterama General Terms and Conditions, Policy Wording 2017, sections 9.1.3 and 9.2 of RaetsMarine Liability policy for Charterers 2017, clauses 3.6(B) and (C) of DUPI Charterers Liability Insurance Conditions (August 2016), clauses 21.1.2 and 21.1.3 of Norwegian Hull Club Charterers' Rules 2016, Rule 11, sections 1(b) and 2(b) of the Swedish Club Rules for Charterer's Insurance 2018/2019, Section I, Clause F of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018).

to which the shipowner is usually in charge of entering into contracts for the provision of towage services. Therefore, when the charterer steps into the shoes of the shipowner and agrees for the chartered vessel either to tow or to be towed by another vessel, the insurers by providing their approval want just to ensure that the charterer will not agree on more onerous terms than a shipowner would have done, as now they have the opportunity to negotiate more acceptable terms compared to a customary towage.

More specifically, in case of towage by the insured vessel, it is very important for the charterer and his insurer to ensure that the contract signed allocates the liability between the hirer and owner of tug based on a knock-for-knock (KFK) regime, or at least that it takes the form of a standard towage contract approved by insurers' majority. Such contracts are typically the Towcon, Towhire, Supplytime 1989 and 2005 and the UK Standard Towage Conditions (UKSTC).[942] These clauses usually protect the tugowner's group (and so its charterer) against damages caused to the tow and her cargo, or the hirer's property even when caused due to tugowner's or his agents' negligence, while sometimes they might be even friendlier and protect him against any liability for any damage caused by the tug hirer to his property too. It follows that charterer's liability exposure in this case will be certainly more limited and foreseeable, therefore even if his insurance cover does not provide any protection against towage risks,[943] he will not be left dangerously exposed. The only exception that is usually found in charterer' policies and allows them to enter into towage contracts performed by the assured ship without their insurer's former consent is in case of towage for salvage of property or life at sea.[944]

On the other hand, in case of towage of the insured vessel, the charterer's position is more difficult as he represents now the hirer of the tug and therefore, his exposure will be similar to the one described above on the basis that a KFK clause or a standard recognised towage contract has been agreed. Thus, for instance, if the charterer has agreed for the insured's vessel towage under the UKSTC, without obtaining first the tow's owner's authorisation, then for any liabilities the latter might be found liable under the towage contract jointly and severally with

[942] This idea is usually adopted by the IG Clubs as these contracts contain a clear knock for knock clause that fulfils the characteristics defined under the Pooling Agreement.
[943] Such as under Skuld Charterers' Cover Terms & Conditions 2017 where there is no cover for charterers against towage related liabilities, or under clause 29 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017 which does not seem to cover towage related liabilities arising from towage by the insured ship.
[944] See, for example, clause 21(xi)(b)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 11, section 2(a) of the Swedish Club Rules for Charterer's Insurance 2018/2019.

the charterer of his vessel,[945] he can later claim reimbursement against the charterer for breach of their contract which will be covered under the CLI. It should be noted, though, that there are some insurers which allow charterers to agree on any other form of towage contract subject to the condition that it affords them with equivalent or better protection than these standard forms.[946]

However, in both cases charterer's exposure can be magnified under jurisdictions that do not support the enforceability of KFK clauses and render such contracts void. For example, in Australia there are certain statutory obligations which the parties cannot contract out with the use of a KFK clause. Also, in the Middle Eastern countries it is questionable whether a KFK clause that excludes parties' liability in case of gross negligence would be enforceable by the court. Similarly applies under the Colombian and Chilean law with the latter equating gross negligence with fraud; therefore, any liability clause will be valid only if it refers to ordinary negligence. As a consequence, the liability will be allocated based on parties' negligence and the terms defined by the applicable each time law. For that reason, it is presumed that cover might be reserved in the above cases, unless the insurer has previously reviewed and approved the contract subject to such KFK clauses in respect of a non-customary towage.

G) Pollution liability

Although there are not many cases where charterers were found responsible for pollution, several attempts have been made in recent years to hold them liable for such risk. In fact, there are many ways through which such liability can result in their shoulders, including but not limited the nomination of unsafe port, or loading of dangerous cargo or suppling defective bunkers on board of the insured vessel. The applicable jurisdiction constitutes a defining factor of such liability as well. Thus, for example, in USA under OPA 1990 and other national regulations, it is allowed for claims to be brought against operators or charterers in addition to those against owners.[947] Last, obviously, the extent of his liability will depend also to a great extent on the type of trade the charterer is engaged in and subsequently the type of the chartered

[945] See clause 2 of UKSTC.
[946] See respectively clause 29.3 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017.
[947] Similarly also in Japan, Alaska, California and Washington. See, *supra*, fn. 931, p. 3; "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 9.

vessel as well as the type of the charterer himself. Thus, for example, the charterer of a tanker vessel faces a higher exposure to pollution incidents compared to the charterer of a bulk carrier or container vessel. Also, a time charterer is more likely exposed to pollution risks than a voyage charterer, as he provides the bunkers on board.

In light of this exposure, charterer's risk for pollution liabilities as well as for costs arising therefrom are invariably included in every CLI policy and have almost always the same straightforward scope, irrespective of the insurance provider. So, first of all, the CLI covers charterer's liability for loss, damage, death, personal injury, or contamination caused as a result of the discharge or escape of oil or any other substance from the insured vessel, similarly to the shipowner's P&I policy. A common scenario in practice where such liability usually arises is when oil is spilled to the sea during the bunkering operations as a result of the supplying hose getting burst. Coverage is further provided against expenses incurred for any measures taken purporting to avoid or minimise the extent of pollution, such as salvor's special compensation, as well as its derivative loss or damage, whilst it extends further to any liability for loss or damage caused to third party property as a result of such measures, such as costs for cleaning the berth, the harbour and any adjacent ships. Moreover, liability, costs and expenses made in order for a pollution or the threat of it to be eliminated or prevented, such as clean-up costs, fall also within his insurance coverage. Thus, if during the discharge of oil cargo the hose bursts due to an incorrectly closed valve on the shore tank by mistake of the receivers for which the charterer is liable and oil leaks at sea and on land, the charterer will be protected against the costs made for cleaning the oil residues and other costs incurred due to the delay caused following this incident.[948] It should be highlighted, though, that coverage for such costs is provided either the assured acted on his own initiative, or in compliance with a government order, subject to the fact that they are not covered under any other insurance.[949]

However, charterer's protection is expressly excluded against such costs or expenses when they arise due to the assured's interest/ownership of the cargo.[950] Similarly applies also based

[948] *Ibid*, Skuld's Fact Sheet.
[949] Clause 9, section 10 of the Charterers P&I Club Terms and Conditions 2018, Section I, Clause E of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.7 of Charterama General Terms and Conditions, Policy Wording 2017, clause 10.1 of RaetsMarine Liability policy for Charterers 2017, clause 3.4 of DUPI Charterers Liability Insurance Conditions (August 2016), clause 13.1 of Skuld Charterers' Cover Terms & Conditions 2017, clauses 19-22 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, clause 19.1 of Norwegian Hull Club Charterers' Rules 2016, clause 21(vi) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[950]Clause 10.2.1 of RaetsMarine Liability policy for Charterers 2017, clause 3.7 of Charterama General Terms and Conditions, Policy Wording 2017, clause 13.2.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause

on some insurance policies in case that the liability arose due to the non-incorporation of the non-amended York Antwerp Rules, which would have been recovered otherwise by the shipowner in General Average.[951] But most importantly, there is no coverage against pollution liability when it arises under the Oil Pollution Act (OPA) 1990 that applies in United States of America as this regime is believed to be very litigious.[952] The latter exception is considered one of the most onerous for charterers who are trading in this area as their exposure is high if it is taken into account that under this jurisdiction charterers are usually susceptible to more liabilities. It is noteworthy, though, that usually only fixed premium insurers tend to include such exclusion in their policies, whereas IG Clubs remain silent as to this matter. Even though they might sometimes impose certain conditions upon which they will grant their protection for such risks in relation to vessels trading in US waters. These could require, for instance, the assured to declare in advance how many times the vessel is planned to travel within this area, the type of voyages performed, or the payment of an additional premium.[953] For that reason, it is expected that charterer's decision about his insurance provider will depend on whether he is susceptible to pollution liabilities as well. If so, he might elect an IG Club, otherwise it is also quite usual for these charterers to purchase additional protection in an effort to limit the risk they are exposed to.

H) Liability arising from the removal of a wreck

Another very onerous risk to which charterers are exposed, yet not very often in practice, is liability for the removal of a wreck. It is interesting to mention that as regards the scope of this risk varies significantly under the various CLI covers provided by different insurers, notwithstanding some common fundamental principles that all of them place. This, of course, plays a very important role to charterers who, therefore, need to consider carefully their potential exposure.

More specifically, every CLI cover will invariably provide coverage against liability for costs and expenses incurred in the raising, removal, destruction, lighting or marking the wreck

19.1.1 of Norwegian Hull Club Charterers' Rules 2016, Rule 5, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[951] Clause 21(vi)(i)of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 13.2.3 of Skuld Charterers' Cover Terms & Conditions 2017.

[952] Clause 19.1.2 of Norwegian Hull Club Charterers' Rules 2016.

[953] See, Richard Williams, Richard Williams, "Gard guidance on maritime claims and insurance", (April 2013) <http://www.gard.no/Content/20823111/Gard%20Guidance%20on%20Maritime%20Claims_final.pdf>, accessed 12 March 2020, p. 294.

of the insured vessel insofar as such actions are compulsory by law.[954] This can happen, for instance, when the vessel sinks due to the use of unsuitable cranes during discharging, as a result of charterer's misdeclaration of the actual weight of the container lifted which eventually affects vessel's stability. In this case, the port authorities are entitled to request the removal of the wreck under the Nairobi International Convention on the removal of wrecks, or based on the law of the jurisdiction where the incident occurred. Typical expenses that fall within this category which are consequently covered under charterer's policy are, for example, survey expenses conducted for the identification of the wreck's location, expenditure for the hiring of special equipment for underwater scanning or lifting operations, costs for the use of specially trained personnel such as divers or marine consultants in order for the wreck to be removed with the most efficient way possible. At the same time, charterer's cover further extends often so to include liability that arises as a result of the presence of the wreck, or due to its removal or destruction as well as liability that relates to charterer's failure to remove, destroy, light or mark such wreck.[955] These refer to cases where the presence of wreck constitutes a threat or obstruction to the navigation of other vessels sailing in its vicinity, as it can damage their hull or equipment if they get caught on the wreck. For example, when the vessel is sunk within a fishing area where fishing trawlers sail, there is a danger that their fishing gear or anchor could get tangled with the wreck, especially if the waters are not very deep. Similarly, applies also when the vessel is grounded in a location where seabed cables have been installed and her wreck destroys some by falling on them. Or even worse, in instances where the lost vessel was carrying fuel in her tanks and charterer's failure to remove it results in fuel's leakage at sea and eventually pollution of the area.

In addition to these risks, there are some insurers which expand the scope of their cover so to include the assured's liability for the removal not only of the assured ship, but also any

[954] Clause 9, section 7(A) of the Charterers P&I Club Terms and Conditions 2018, Section I, clause H.1.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.4 (I) of Charterama General Terms and Conditions, Policy Wording 2017, Clause 7.1 of RaetsMarine Liability policy for Charterers 2017, clause 3.5(A) of DUPI Charterers Liability Insurance Conditions (August 2016), Clause 14.1.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 21(xi)(a)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 17.1.1 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, clause 16.1.1 of Norwegian Hull Club Charterers' Rules 2016, Rule 7, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[955] See, for example, Clause 9, section 7(B) of the Charterers P&I Club Terms and Conditions 2018, Section I, clauses H.1.3 and H.1.4 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.4 (II) of Charterama General Terms and Conditions, Policy Wording 2017, clause 3.5 (B) DUPI Charterers Liability Insurance Conditions (August 2016), clause 21(xi)(b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 17.2 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, clause 16.1.2 of Norwegian Hull Club Charterers' Rules 2016, Rule 7, section 3 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

other vessel, or cargo, equipment or other property which is or was carried on board of the chartered vessel.[956] Of course, such extension is very crucial to charterers, especially if they are engaged in special operations requiring the use of particular and expensive equipment which they hire for the purposes of a voyage and need later to reimburse its owner for its property loss. That could happen, for example, when the charterer charters a dredger and hires additional dredging equipment on board of the vessel in case the vessel's breaks down during the course of her operations, and the latter is later lost during the voyage due to charterer's fault.

However, charterer's protection against the above risks is not unconditional. Thus, apart from the fact that the removal of wreck should be compulsory by law, the policy usually provides that in order for such liability or costs to be recoverable, the wreck should have occurred within the assured's policy period, while the costs cease to be covered if they have been incurred later than three or four years since the end of his policy.[957] Also, it is normally required for the assured charterer "*not (to) have transferred an interest in the wreck, if any, prior to the raising, removal, destruction, lighting or marking of the wreck or prior to the incident giving rise to liability, save by abandonment with the (insurer's) approval"*.[958]

I) Liability for salvage and general average contributions

It was mentioned in the first chapters of this work that both voyage and time charterers can be called to contribute to the shipowner's general average and salvage expenses arising from a casualty where some cargo was lost or the vessel suffered some damage. This risk is always included in the CLI, as these phenomena are quite frequent in practice, necessitating charterer's protection. Imagine, for example, a situation where the vessel's engine breaks down

[956] See, for example, Section I, clauses H.1.1. of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Clause 7.1 of RaetsMarine Liability policy for Charterers 2017, Clause 14.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 21(xi)(a)(ii) and (b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clauses 17.1.2 and 17.1.3 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Clause 16.1.1 of Norwegian Hull Club Charterers' Rules 2016, Rule 7, section 2 of Swedish Club Rules for Charterer's Insurance 2018/2019.

[957] Section I, clauses H.2.1.3 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.4 of Charterama General Terms and Conditions, Policy Wording 2017, clause 3.5(a) of DUPI Charterers Liability Insurance Conditions (August 2016), clause 21(xi)(a)(b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018. Similarly, also under clause 7.2.3 of RaetsMarine Liability policy for Charterers 2017.

[958] Clause 7.2.2 of RaetsMarine Liability policy for Charterers 2017. See also, clause 3.4 of Charterama General Terms and Conditions, Policy Wording 2017, clause 3.5(b) of DUPI Charterers Liability Insurance Conditions (August 2016).

and the master arranges for a tug to tow her to port where further temporary repairs will be carried out, before the voyage continues. In that case the owner of the vessel will declare general average and would be entitled to claim contributions for the costs of towage and costs incurred at the port of vessel's refuge from the parties that have interests in the vessel's cargo, including also the time charterer, as owners of the bunkers on board.[959] Similarly also applies in case where the containers on board of the vessel catch fire, jeopardising the vessel's safety, such as in the Maersk Honam incident, necessitating vessel's salvage. Once again, both the shipowner and the owner of the rescued cargo (including charterers) will be liable to cover proportionally these salvage expenses.

Usually, the parties that have an interest and so can be expected to contribute to general average include shipowners, charterers, cargo owners, freight holders and even those who have leased equipment to the ship. The charterer, compared to the above other entities, has probably the smallest interest in the venture in total monetary terms, as previously explained, unless he is also the cargo owner. As a result, his interest will be limited only to the value of the ship's bunkers that are owned by him, or to the freight earned by him up to the time the general average was declared but not yet collected.[960]

As regards the scope of the protection against such risks, again, it has been noticed that there is no uniformity, as the covers of various insurance providers range, being either very broad or narrow. Starting with the standard, yet more limited, version of such risks' cover that is found invariably in all policies, includes protection for the assured's proportion of general average, special charges or salvage in respect of the charterer's interest in freight or hire at risk and/or bunkers owned by him,[961] "*as stated in general average adjustment or as determined by a court, competent tribunal or independent adjudicator''*,[962] appointed by his insurer. In addition to the charterer's freight at risk or bunkers, there are some insurers which prefer to include charterer's general average contributions in respect of any property they have on board

[959] "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 12.

[960] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 11.

[961] Clause 9, section 11 of the Charterers P&I Club Terms and Conditions 2018, Rule 12, section 1 of Swedish Club Rules for Charterer's Insurance 2018/2019, Clause 17.1.1 of Norwegian Hull Club Charterers' Rules 2017, clause 22(ii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 16.1.1 of Skuld Charterers' Cover Terms & Conditions 2017, clause 3.8(A) of DUPI Charterers Liability Insurance Conditions (August 2016), clause 11 of RaetsMarine Liability policy for Charterers 2017, clause 3.8 of Charterama General Terms and Conditions, Policy Wording 2017.

[962] See respectively, clause 16.1.2 of Skuld Charterers' Cover Terms & Conditions 2017, Clause 17.1.2 of Norwegian Hull Club Charterers' Rules 2017.

other than cargo (eg. his equipment).[963] It is further often expressly stated that the protection for the risks described above will be only permitted, unless they can be recovered under any other insurance in place at the time they occurred.[964] Whereas, an even broader cover might offer coverage against such contributions which, however, the assured was legally unable to recover from the other cargo interests involved in the maritime adventure solely by reason of a breach of the contract of carriage,[965] such as the loading of dangerous cargo on board of the vessel.

Although charterer's exposure to such risk seems limited, as the amount of contribution that he will be called to pay is relatively small compared to the value to of the ship or cargo, it is still imminent and will always depend on the size of the damage sustained for which contributions are sought. Therefore, charterer's protection against this risk should always be part of his policy at least to the extent that covers his interest to freight, hire or bunkers.

J) Legal costs and various expenses

It has been mentioned several times that CLI does not cover only the liability risk that the charterer faces, but extends also to expenses and costs arising either in relation to such risks or independently. This section will be concentrated only on the latter category, with the different types of these expenses being analysed and their scope being examined through some practical examples.

The first type of expense that is invariably covered under charterer's insurance is the legal expenses. Although the assured charterer must at first defend himself against claims brought against him as a result of a casualty, he can traditionally recover later any legal fees or expenses incurred under his liability cover.[966] These expenses are usually approved in advance by the

[963] Rule 12, section 1 of Swedish Club Rules for Charterer's Insurance 2018/2019, Clause 17.1.1 of Norwegian Hull Club Charterers' Rules 2017, clause 22(ii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 16.1.1 of Skuld Charterers' Cover Terms & Conditions 2017.
[964] Clause 11 of RaetsMarine Liability policy for Charterers 2017, Rule 12, section 1 of Swedish Club's Rules for Charterer's Insurance 2018/2019.
[965] See, for instance, Section I, clause J of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 16.1.3 of Skuld Charterers' Cover Terms & Conditions 2017, clause 30 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Rule 12, section 2 of Swedish Club Rules for Charterer's Insurance 2018/2019, Clause 17.1.3 of Norwegian Hull Club Charterers' Rules 2017.
[966] See, for example, Clause 9, section 16 of the Charterers P&I Club Terms and Conditions 2018, section 12.1 of RaetsMarine Liability policy for Charterers 2017, clause 5.1 of DUPI Charterers Liability Insurance Conditions (August 2016), Rule 13, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Section I, clause O.1.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018),

insurer and normally include surveyors' costs or any expenditure associated with the investigation of the claim, as well as attorney's and litigation fees. Nonetheless, the cover's protection further applies to legal expenses incurred in order to prevent claims from arising, or limit the assured's potential liability.[967]

However, a distinction needs to be drawn here between the expenses that fall under this category and those covered under an additional Freight, Demurrage and Defence (FD&D) cover whose role and scope is analysed in the following chapter. As regards the legal expenses of the CLI, these extend only to those claims' legal expenses that are themselves insured against under the CLI cover.[968] On the contrary, an FD&D cover will provide protection against legal expenses that are left outside the scope of CLI cover, subject also to the condition that are expressly mentioned in the FD&D policy. That way, there is no overlap between the scopes of these two covers and therefore, any confusion can be easily avoided. Apart from this condition, it should be further clarified that charterer's reimbursement for any legal costs will only be accepted if the latter were reasonably incurred.[969] This means that the charterer has to prove that he had a good reason to make these expenses, such as his effort to prevent or amicably settle a claim against him, or limit his overall liability under a claim which has already arisen.

Another expense that falls within this category is damages or compensation and any other cost incurred by the assured as a direct result of the outbreak of an infectious disease either on board of the insured vessel, or sometimes ashore.[970] Such liability can arise, for instance, in cases that the charterer nominates a port or berth that is proved to be unsafe, or when infected or forbidden cargo has been loaded on board. The scope of this risk includes typically charterer's liability to pay for the quarantine, fumigation and disinfection of the insured vessel, her cargo, crew or passengers. This will refer to the cost of loading or discharging the cargo until the vessel is fumigated or cleaned, or the cost of supplying the crew on board during the period of quarantine, as well as the cost of towing the vessel at a special station or place following public health orders. The protection further extends so to cover fuel, insurance,

clause 24 of Norwegian Hull Club Charterers' Rules 2016, Part 1, clause 20 of Skuld Charterers' Cover Terms & Conditions 2017.

[967] See, for example, clause 24 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017.

[968] *Ibid*, the Charterers P&I Club Terms and Conditions. See also, Rule 13, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 5.1 of DUPI Charterers Liability Insurance Conditions (August 2016), clause 22(xix)(a) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

[969] Clause 24 of Norwegian Hull Club Charterers' Rules 2016, clause 20 of Skuld Charterers' Cover Terms & Conditions 2017, section 12.1 of RaetsMarine Liability policy for Charterers 2017.

[970] See, for instance, clause 3.9 of DUPI Charterers Liability Insurance Conditions (August 2016).

wages, stores, provisions and port charges. The same also applies for the costs incurred as a result of the vessel's deviation to a port or place of refuge due to the infection or quarantine until she resumes to her voyage. As regards these expenses, though, the protection of charterer includes only the net loss suffered by him. So, it covers only the excess amount that would have not been paid, had the outbreak not occurred.[971] Any expenses made purporting to eliminate or control the infection or disease constitute also usually a covered cost under the policy.[972] It is interesting to note that although the majority of insurers seems to adopt similar wording when it comes to the scope of this risk, some insurers on the other hand approach it in a narrower way, excluding any additional running expenses incurred for the ship as a result of the delay caused due to the disease.[973] Even further, there are also others which expressly deny protection in case the assured ordered the vessel to sail to a port or load cargo that he knew were infected and therefore, such expenses would have been inevitably incurred.[974] Or, others which grant reimbursement for such expenses only if they were "*reasonably and necessarily incurred in order to comply with the quarantine and disinfection requirements''*.[975] Such restriction, however, can sometimes cause further delays to the progress of the voyage since the charterer will have to think carefully whether his coverage will be jeopardised, if he incurs expenses that in the eyes of his insurer could possibly seem unreasonable. For that reason, it is common practice for charterers to seek confirmation from their insurers beforehand in respect of such costs.

In addition to the above, CLI provides protection against costs incurred by the assured in order to defend himself before a formal enquiry conducted by a government or a lawful authority of a country concerning the loss of or a casualty in which the insured vessel is involved and might potentially give rise to a claim against him.[976] Although enquiry expenses resemble to a great extent the legal costs in the form described earlier, it should be clarified

[971] See, respectively, Clause 9, section 8 of the Charterers P&I Club Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 13 of the Shipowners' Club Rules 2018, section 8 of RaetsMarine Liability policy for Charterers 2017, clause 3.5 of Charterama General Terms and Conditions, Policy Wording 2017, Part 1, clause 18 of the Norwegian Hull Club Charterers' Rules 2016, Section I, clause B.13 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), section A, clause 14 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, clause 21(xii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[972] *Ibid,* in British Marine Terms and Conditions.
[973] For example, Chapter B, Rule 10 of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[974] Clause 18.2 of Skuld Charterers' Cover Terms & Conditions 2017, Section I, clause B.13.1 of London P&I Club Charterers'' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 21(xii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[975] Clause 18.1 of Skuld Charterers' Cover Terms & Conditions 2017.
[976] Clause I, section M of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018).

that there is no overlap between their scopes. More specifically, enquiry expenses arise only at the early stage of the investigation of a casualty's cause before any legal proceedings commence. Also, they refer to events that involve the insured vessel and not directly the charterer, so the latter merely tries to protect himself and his interests by helping the authorities ascertain the circumstances of the incident. Similarly, though, to the legal costs' risk, enquiry expenses are covered only if they refer to a risk, liability or expenditure against which the assured charterer is protected under his insurance contract, while often they need to be approved in advance by the charterer's insurer.[977] In fact, there are times where the insured might be ordered by his insurer to carry out certain expenses that are considered necessary for the insured vessel or the insurer's interests. This sort of costs made under the insurer's direction are again justified and expressly covered under the majority of charterer's liability policies.[978]

Lastly, one of the most crucial expenses expressly included in the CLI cover are these made in charterer's effort to minimise or avoid any liability that could potentially give rise to a claim against him under his insurance. These expenses, though, should be extraordinary and should not have been incurred in the ordinary course of vessel's operation or trading. Therefore, any expenses that could have been recovered under general average, or are related to the condition of the vessel, her crew and equipment are normally excluded.[979] The provision of such protection is very important, if it is also considered that every insured has the obligation under section 78 of MIA 1906 to take steps to avert or limit to the most possible extent the losses suffered in the event of an accident. However, once again, coverage for sue and labour costs is subject to the insurer's prior agreement.[980] Also, there are times that the policy requires

[977] See respectively Clause 9, section 15 of the Charterers P&I Club's Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 20(A) of the Shipowners' Club Rules 2018, clause 21(xvii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, section 15 and 16 of RaetsMarine Liability policy for Charterers 2017, clause 5.2 of DUPI Charterers Liability Insurance Conditions (August 2016), clause 4.5 of Charterama General Terms and Conditions, Policy Wording 2017, clause 26 of the Norwegian Hull Club Charterers' Rules 2016, section A, clause 27 and 25 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017.

[978] Clause 9, section 18 of the Charterers P&I Club's Terms and Conditions 2018, Rule 4(2)(a) in combination with Rule 2, section 21 of the Shipowners' Club Rules 2018, clause 21(xix)(c) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Rule 13, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 21 of Skuld Charterers' Cover Terms & Conditions 2017, Clause I, section N of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018), section A, clause 28 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017.

[979] See, respectively, section A, clause 26 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, clause 19.2 of Skuld Charterers' Cover Terms & Conditions 2017.

[980] Clause 9, section 12 of the Charterers P&I Club Terms and Conditions 2018, section 12.1 of RaetsMarine Liability policy for Charterers 2017, clause 4.1 of Charterama General Terms and Conditions, Policy Wording 2017, Rule 13, section 2 of the Swedish Club's Rules for Charterer's Insurance 2018/2019, clause 19.1 of Skuld Charterers' Cover Terms & Conditions 2017, section A, clause 26 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, Clause I, section O.1.1 of the London P&I Club Charterers CSL Cover Terms & Conditions (February 2018).

the reasonableness of the cost in order to be recoverable;[981] whereas, it denies protection in case that the latter are related to bribery, blackmail or illegal payments.[982] Often, it might be further agreed that any benefit the charterer obtains in the form of savings or extra revenue, arising as a result of his actions to mitigate or avoid his liability will be deducted from the overall amount of his reimbursement in respect of his sue and labour expenses.[983] Of course, this restriction is absolutely justified, as otherwise the charterer would make profit out of his insurance. However, a marine insurance contract is merely an indemnity contract[984] in the sense that it purports to bring the assured in the position that it would have been had the insured risk not occurred. Therefore, any benefit that derives from the occurrence of an insured risk should be taken into account when the assured's reimbursement is being considered by its insurer.

2.2.3 The excluded risks

A) General exclusions

As it was already established, the CLI cover is not a blank contract offering unlimited and unconditional protection to the assured against any type of risk it might encounter. Thus, apart from the insurers' express reference to the covered risks that define, in essence, the limits of the assured's protection, there is also a list of certain express exclusions.

However, this comparative analysis does not purport to enumerate all the different exclusions that each individual insurer might implement in its CLI policy. On the contrary, its aim is to shed some light in the main aspects of charterer's cover and highlight any areas of potential exposure. As a consequence, the reference, here, to the excluded risks will be made only in respect of such risks which in the author's opinion present some interest on the basis that are directly related to the charterer's undertakings and can easily result in his exposure. Besides, as it will be explained later, one of the main general insurance principles that applies to charterer's case as well, is that protection will be granted only against these risks that are expressly included in the assured's policy. It follows, therefore, that the focus lies on what it is

[981] See, for example, Rule 4(2)(a) in combination with Rule 2, section 22(A) of the Shipowners' Club Rules 2018, clause 21(xix)(b) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, section 12.1 of RaetsMarine Liability policy for Charterers 2017, Rule 13, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 1, clause 25 of the Norwegian Hull Club Charterers' Rules 2016.
[982] *Ibid,* in the Shipowners' Club Rules 2018.
[983] See, for example, Rule 13, section 2 of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[984] Section 1 of MIA 1996.

considered an included, rather than an excluded risk. Either way, given that the majority of exclusions found in CLI policies repeat essentially the ones included in the shipowner's P&I cover, it means that there is no differentiation in the way they are interpreted in practice. Therefore, whatever applies to shipowners' case will be equally applicable to charterers as well.

Indicatively, such exclusions are typically the ones referring to liabilities that arise under section 55 of MIA (e.g ordinary wear and tear or inherent vice), or as a result of the assured's involvement in illegal or unlawful trading,[985] or its fraudulent or wilful misconduct,[986] as well as for war,[987] nuclear or chemical.[988]

Furthermore, it is common ground for the insurers to deny coverage in case that liability arises due to the assured's failure to comply with its insurer's orders or other regulations, such as the ISM or IMDG Code, or regulations that expose the insurer to sanctions.[989] Similarly also applies in case of charterers' failure to ascertain whether the entered vessel is adequately classed,[990] as that could result in extra delays in ports or even expose them to actions by state authorities, increasing, hence, the overall risk that his insurer has initially agreed to carry.

It is clear that in some respects, compliance in these situations is a difficult task for charterer, as he has no control over what the shipowner has done. Nonetheless, as his insurance protection is subject to such compliance, the charterer needs necessarily to be alerted and completely familiar with the maritime laws and conventions of the chartered vessel's flag.[991]

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[985] For instance, clause 13(3) of the Charterers P&I Club Terms and Conditions 2018, exclusion (g) of Charterama General Terms and Conditions, Policy Wording 2017, section 28.1.3 of RaetsMarine Liability policy for Charterers 2017.

[986] Clause 28.5.f of RaetsMarine Liability policy for Charterers 2017, clause 24.1.1 of Skuld Terms and Conditions 2017 for Charterers' cover, clause 25(ii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

[987] Similarly to H&M insurers. See, clause 13(14) of the Charterers P&I Club Terms and Conditions 2018 and rule 25 of the Shipowners' Club Rules 2018.

[988] Clause 13(15) of the Charterers P&I Club Terms and Conditions 2018, rule 26 of the Shipowners' Club Rules 2018.

[989] Clauses 13(19) and (22) of the Charterers P&I Club Terms and Conditions 2018, clause 1.16 of Charterama General Terms and Conditions, Policy Wording 2017, section 32 of Navigators P&I, Policy Wording 2017, clause 5.2 of Amica Conditions of Insurance (09/2009), clause 34.1.4 and 34.1.10(d) of Norwegian Hull Club Charterers' Rules 2016.

[990] Clause 13(17) of the Charterers P&I Club Terms and Conditions 2018, clause 24 of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, clause 34.1.4 and 34.1.10(d) of Norwegian Hull Club Charterers' Rules 2016.

[991] An example that indicates charterers' effort to protect themselves against such risks that fall beyond their control is the incorporation of a special ISM Rider Clause in their charter, according to which the owner is obliged to provide charterers with a copy of his compliance certificate. The same clause renders also owners responsible for any issue related to non-compliance with ISM Code. See supra, fn. 960, p. 79.

B) The risk of double insurance

The charterer's cover will be reserved in case of the application of another common exclusion, that of double insurance, according to which protection is not provided against amounts which could have been recoverable under any other insurance, or are in fact recoverable under the same.[992]

This exclusion is important for charterers as it might very easily jeopardise their whole protection if it is not taken seriously. To be more specific, it has been mentioned in the previous chapter that charterers under certain circumstances can appear as co-assureds in the shipowners' P&I cover through the misdirected arrow concept.[993] In this case, their protection is extended only to such risks that the main insured is covered against. Thus, if the charterer wishes to purchase its own liability insurance, there is a likelihood that these two different covers might overlap to some extent in respect of certain risks.[994] To complicate matters even more, we note also that the exclusion of double insurance is a general insurance principle that applies in the same way to shipowners' P&I cover too. Consequently, yet rarely, if the charterer is pursuing later reimbursement by either of his insurers, either as co-assured, or merely as an assured, he runs the risk of being denied protection from both of them due to the double insurance exclusion included in both of his covers. Therefore, it is crucial for charterers to be aware of the cover they are purchasing and the effect its provisions can have, so that they can avoid any such unwelcome effects, as it is clear that sometimes the more covers do not always finally result in a better protection.

[992] For instance, clause 13(1) of the Charterers P&I Club Terms and Conditions 2018, rule 23 of the Shipowners' Club Rules 2018, clause 1.7 of Charterama General Terms and Conditions, Policy Wording 2017, clause 33 of Navigators P&I, Policy Wording 2017, clause 18 of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, section C, clause 2 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017.

[993] See Chapter IV in "the issues of co-assurance and 'misdirected arrow'", at p. 109-111.

[994] That could happen easily, for example, with the covers provided by the IG Clubs which tend to make express reference to the main core of the shipowners' P&I cover in their special cover for charterers when they are describing their covers' scope. See, for instance, rule 4(2)(A) of the Shipowners' Club Rules 2018, section 24, rule 3(B)(1) of West of England Rules of Classes 1&2 2019, clause 70.1 of Lodestar Terms and Conditions (May 2017), clause 25(a)(i) of Navigators P&I, Policy Wording 2017, clause 29.1 of Carina Policy Terms and Conditions (5th edn.) 2016.

C) Exclusions related to cargo liabilities

Although the cargo exclusions found in charterer's liability cover repeat essentially the ones found in the shipowners' P&I cover,[995] they deserve to be mentioned separately at this point, as they impact directly upon charterers who are usually undertaking the cargo operations under the charter and so, their liability is indistinctly connected to them.

Thus, within the most usual cargo liability exclusions are those for wear and tear, war and strikes, unsuitable packing and inherent vice. In addition, other exclusions that are invariably added to the CLI are the ones referring to the carriage of valuable, rare, or perishable cargo;[996] or to those arising as a result of the vessel's deviation due to which the assured is deprived of its right to limit its liability or resort to the use of certain defences which would otherwise be available, had the deviation not occurred.[997] That could happen, for instance, when the charterer decides to carry unauthorised cargo on board of the vessel and orders the master to amend the vessel's route, so to accommodate the carriage of such cargo as well.

In addition to the above, there is invariably a set of standard exclusions incorporated to CLI policy that refer to the use of bill of ladings. This set of rules forbids first of all the delivery of cargo without the production of the relevant bill of lading as well as delivery to another person, other than the waybill holder.[998] Similarly also applies in respect of liabilities that arise as a result of the use of ante-dated or post-dated bills[999] or as a consequence of the assured's failure to describe properly the cargo or its condition.[1000] The exclusion of the above risks under the CLI is reasonable, if the charterer's duties under a voyage or time charter are considered. As explained in the first part of this work, there are certain orders relating to the issuance of bills which the master of the vessel is obliged to reject, such as issuing ante-dated or "claused" bills despite the cargo's poor condition. In these cases, as the liability is shifted back to the

[995] Same supported in Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 152.
[996] Clause 13(vi) and (vii) of the Charterers P&I Club Terms and Conditions 2018, class A, clause 2.4 of Charterama General Terms and Conditions, Policy Wording 2017.
[997] Clause 13(iii) of the Charterers P&I Club Terms and Conditions 2018, class A, clause 2.4 of Charterama General Terms and Conditions, Policy Wording 2017, section 2.4.6 of RaetsMarine Liability policy for Charterers 2017, section 10.9 of DUPI Charterers Liability Insurance Conditions (August 2016).
[998] Clause 13(9)(i)(a) and (f) of the Charterers P&I Club Terms and Conditions 2018, clause 2.4(c) and (d) of Charterama General Terms and Conditions, Policy Wording 2017, clause 4.2.1 (c) and (d) of RaetsMarine Liability policy for Charterers 2017, clause 6.2.15 of Skuld Terms and Conditions 2017 for Charterers' cover.
[999] Clause 13(9)(b) of the Charterers P&I Club's Terms and Conditions 2018, rule 3, section 3(a) of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[1000] Section A.1, clause 2.16(2) and (3) of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, clause 13(9)(i)(c) of the Charterers P&I Club Terms and Conditions 2018, clause 22(xiii)(viii)(e) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

shipowner in case his master complies with the charterer's order, there is no real exposure for the charterer to be covered. Besides, as the risk refers to a misrepresentation act on behalf of the charterer, it should not be covered under his insurance, as it constitutes an unlawful action which the insurer is not allowed to welcome. In respect of charterer's liabilities arising in relation to the bills of lading and charterer's orders that a master can obey in return of an indemnity (e.g delivery of cargo without production of bill), their exclusion is also reasonable, as they constitute a "contractual liability" in the sense that the risk would not have occurred, had the charterer not agreed on the above under the charter. Therefore, protection might be granted only if the charterer purchases an extension for his liability cover. Further, charterer's failure to load a particular type of cargo or discharge it at the nominated port and arrive timely at the loading port is an excluded risk.[1001]

Generally, the exclusions in connection with the bills of lading are more important in relation to those jurisdictions where the charterer is considered to be the bill carrier, despite the presence of an identity of carrier clause in it proving to the contrary and regardless of whether the document is signed by or for master on his authority.[1002] The issue that arises is concerned mostly with the package limitation that would be available to the charterer in this case. Whether such limitation is available to charterer as carrier will depend on the jurisdiction as well as the circumstances of the loss or damage. While, even if the limitation package prevails, the cost of defence will likely be greater for a charterer, who will probably be fighting the claim on two fronts (ie as charterer and as carrier), and at the same time he might be exercising his recourse right against a sub-charterer.[1003] As a result, he might be finally burdened with liabilities that sometimes are even beyond his control.

Nonetheless, the most important exclusion is the one that denies coverage for claims concerning liabilities or sums which would not have been payable by the assured, if the cargo had been carried on terms less favourable to the assured than those laid down in the Hague or Hague-Visby Rules.[1004] Although at first glance such an exclusion does not seem significantly

[1001] Clause 13(9)(i)(d) and (e) of the Charterers P&I Club's Terms and Conditions 2018, clause 4.2(e) and (f) of RaetsMarine Liability policy for Charterers 2017, clauses 33.1.4 and 33.1.5 of Norwegian Hull Club Charterers' Rules 2016.
[1002] *Supra*, fn. 995, p. 152.
[1003] *Supra*, fn. 960, p. 146.
[1004] Clause 13(9)(iv) of the Charterers P&I Club Terms and Conditions 2018, clause 4.2.2 of RaetsMarine Liability policy for Charterers 2017, 33.1.6 of Norwegian Hull Club Charterers' Rules 2016, clause 22(xiii)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018, Section I, clause I.2.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 6.2.12 of Skuld Terms and Conditions 2017 for Charterers' cover.

problematic, as most charters will incorporate the application of these Rules so to comply with the relevant bill's provisions, its effect can be significant to certain types of charterers who tend to trade under different terms. For instance, charterers involved in the offshore industry tend to conclude on contracts where the apportionment of their liabilities is somewhat different to the one provided under the Hague or Hague-Visby Rules, such as under the Supplytime form. This happens because such contracts incorporate usually the so-called "knock for knock clauses''[1005] which render charterers liable for any damage caused to their property, or injury suffered by their agents, irrespective of the negligence of the involved parties, as opposed to the fault-based regime established under the Hague and HVR. In these circumstances, charterers should be vigilant, as their insurance protection will extend only to such liabilities that would have been covered as if Hague or HVR were in force. Whereas any other liability or expense beyond these Rules will be usually excluded, unless the assured's insurer finds otherwise.

It is interesting to note, though, that both insurers and charterers are usually aware of this issue and it has been noticed in practice that they have developed different ways of overcoming it. For example, there are some insurers who agree to offer extended protection to charterers relating to liabilities arising due to onerous contracts, such as those providing for a KFK clause, subject always to their prior approval, or to the fact that this excess protection will be limited to the amount agreed in the assured's certificate of entry.[1006] On charterers' part, it has been noticed that they developed certain tactics purporting to evade such exposure whenever such extended protection is not available to them. Thus, there are times that charterers might require protection against their insurers for their whole liability, notwithstanding how more onerous it might be when compared to the Hague or HVR regime, claiming that the basis of their protection emanates from a damage caused to a third party property on board of the vessel, which is also covered under their insurance, as it was seen above, yet it is free from such restriction. Imagine, for example, a scenario where the charterer is entered into a charter which includes a KFK clause, and decides to hire an additional crane which will help him complete the construction of an offshore dolphin faster. During the vessel's operation, though, a crew member misuses the crane due to his inadequate training and as a result, the crane, whilst

[1005] A 'knock-for-knock' clause in a contract usually intends to allocate parties' liabilities in a clear manner by providing that each party should bear responsibility for any damage or loss to its own property, or accident or injury to its own staff, without making a claim against the other party, irrespective of which party is at fault. The application of such clauses has been examined in the cases of *Transocean Drilling UK Ltd v. Providence Resources PLC (The "GSF Arctic III")* [2016] EWCA Civ372 and *Kudos Catering (UK) Ltd v. Manchester Central Convention Complex Ltd* [2013] EWCA Civ38.

[1006] See, for example, the Addendum for Charterers' DTH Cover of UK P&I Club Rules 2017 for more details.

moving, hits the dolphin's quay walls and from their contact its upper edge bends. Later, when the owner of the crane will claim damages against the charterer, who hired the crane at first place, the charterer will not be able to turn against the shipowner for compensation due to the effect of the KFK clause. Therefore, in order for the charterer to protect himself against such expenses, he will turn against his insurer seeking for compensation. The latter can also deny protection on the basis that the crane was "cargo'' and the charterer has agreed on less favourable terms that those indicated in his cover so, it would be an excluded risk. This is justified, if it is considered that under the Rules, the charterer would have been able to avoid liability by claiming that the carrier (i.e shipowner) breached his duty to provide a seaworthy vessel by employing incompetent crew. On the other hand, though, if there is no contract of carriage in place for loading and discharging the crane from the vessel, the charterers can claim protection on the basis of third party property damage and so, it would be their insurer's obligation to prove to the contrary.

Similarly, charterer's insurers sometimes seem to provide that charterer's protection is negated in relation to his cargo liabilities or expenses when the latter would not have arisen, had the charterer incorporated the Inter-Club Agreement (ICA) in his charter, or had not undertaken more onerous responsibilities than the ones allocated to him under the latter.[1007] That would happen, for example, if he had agreed to remain fully responsible for the cargo damage or loss, even when the cargo is damaged during discharging operations due to shipowner's fault.

D) Cyber risks

It is interesting to note that liabilities arising as a result of cyber-attacks to charterers' computer systems are usually expressly excluded by specialist charterer's underwriters.[1008] In fact, it has been noticed that the latter make express reference and incorporate in CLI the Institute Cyber Attack Exclusion Clause (CL.380),[1009] whereas most of them prefer to use the same wording as the above Clause providing that *"liabilities, losses or expenses directly or*

[1007] See respectively clause 13(9)(v) of the Charterers P&I Club Terms and Conditions 2018.
[1008] Clause 13(20) of the Charterers P&I Club Terms and Conditions 2018, section 28.3 of RaetsMarine Liability policy for Charterers 2017, section C, clause 14 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017, clause 42.2 of DUPI Charterers Liability Insurance Conditions (August 2016), Part 5, clause 40 of Norwegian Hull Club Charterers' Rules 2016, clause 25(7) of Lodestar Terms and Conditions (May 2017).
[1009] See, for instance, section 28.3 of RaetsMarine Liability policy for Charterers 2017.

indirectly caused or contributed to or arising from the use or operation, as a mean for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system"[1010] will be excluded. On the contrary, when it comes to IG Clubs such exclusion does not exist, apart from their rules' reference to the paperless trading, as described earlier.[1011] Therefore the assured's cover continues to respond to P&I liabilities arising out of a cyber-attack so long as the attack in question does not constitute an act of "terrorism'', as the term is defined under the Clubs' rules and depending on the motivation behind the attack.[1012]

E) Commercial losses

It has been mentioned above that under class 1 of CLI (i.e hull related liabilities), the charterer -among others- is protected against any commercial losses that arise directly as a result of such damage. The same also can be argued for the second class of charterer's insurance (i.e cargo liabilities) under which protection is offered in relation to expenses incurred as a result of delay due to a breach of his obligations for the execution of cargo operations or due to the unseaworthiness of the vessel, unless otherwise provided by his insurer.[1013] However, this is not the case when it comes to financial losses suffered by the charterer as a result of a risk falling within the charterer's purely P&I liabilities which expressly prohibit such protection.[1014] It has been supported that the rationale behind this principle is the fact that insurers do not find this risk cost-effective.[1015] This is in fact justified, if it is considered how difficult it is for the insurers to quantify the exact amount of charterer's liability exposure in respect of such risks and as a consequence, their own risk too. Accordingly, such difficulty affects the accurate evaluation of the premium imposed on the charterer and risks placing his

[1010] Clause 40 of Norwegian Hull Club Charterers' Rules 2016. Similarly also in section C, clause 14 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017 and in clause 42.2 of DUPI Charterers Liability Insurance Conditions (August 2016).
[1011] See above in 2.2.2.2 Second class: Liability in respect of the cargo carried on board – B) Discretionary covered risks, at p. 170-172.
[1012] Rupert Banks, "Cyber risks and P&I insurance implications'', (March 2017) <https://www.standard-club.com/media/2533617/cyber-risks-and-pi-insurance-implications.pdf>, accessed 12 March 2020.
[1013]As an example, see clause 33.1.21 of the Norwegian Hull Club Charterers' Rules 2016 which provides that "*the cover under Rule 12* (i.e for cargo liabilities) *excludes liabilities and costs arising from delay except insofar as liability arises because of the application of the Hague or Hague-Visby Rules''*.
[1014] See, for example, clause 13 section 2 of the Charterers P&I Club Terms and Conditions 2018, clause 24.1.4-24.1.10 of Skuld Terms and Conditions 2017 for Charterers' cover, section C clause 3 of British Marine Terms and Conditions for Charterers Marine Liability, Protection and Legal Expenses, clause 42.1.1- 42.1.8 of Norwegian Hull Club Charterers' Rules 2016.
[1015] Information provided by a professional working within the Charterers P&I Club.

insurers in face with very high claims which will not probably reflect the initial premium charged. Therefore, it is easier for insurers to completely exclude such risks from their policies, rather than encountering unpredictably onerous claims in the future which could jeopardise their business.

Such differentiation, though, plays a significant role to the charterer's overall exposure, as inevitably, there would be some events in the course of the voyage which would hinder its continuance, exposing charterers to additional expenses which they have not predicted. Nonetheless, notwithstanding these risks' exclusion from a standard liability cover, charterers can still safeguard themselves against any financial losses they suffer when the vessel is generally delayed, detained or arrested by purchasing an additional cover for loss of the vessel's use in the general commercial insurance market.[1016]

2.3 The conditions of charterer's insurance protection

Similarly to any type of insurance contract, in the CLI there are certain conditions which should be fulfilled in order for the charterer to be able to make actual use of his insurance protection and claim compensation. Notwithstanding these conditions are always subject to the demands of each insurer, so they can change from time to time with new rules being inserted into the latter's terms, the following described conditions are invariably expressly included in all CLI policies and apply irrespective of the type of charterer's insurance provider as well as the type of premium paid. In respect of the charterer's claims handling procedure, as it does not differ from the one followed in shipowner's case, it will not be part of this work. It suffices merely to mention that all the main powers in terms of decision making are vested upon the charterer's insurers which maintain an active role in dealing with any matter presented before them.

2.3.1 The capacity of assured as "charterer"

To begin with, one of the most fundamental conditions provided within charterer's cover is that protection is granted to the assured only in relation to liabilities, costs or expenses

[1016] See, for example, "Gard: Charterers' loss of use cover" (2014), available <http://www.gard.no/Content/14376622/Charterers%20loss%20of%20use%20July%202014.pdf>, accessed 12 March 2020. More details about this cover can be found in Chapter VI, in 3.4 "Charterer's loss of use cover".

incurred by him under the capacity of the "*charterer"* of vessel,[1017] or *"by reason of his interest as charterer (of hers)"*,[1018] as it is usually expressed in charterer's liability insurance policies. Since we have already discussed the status of the assured earlier in this chapter,[1019] it suffices to mention that the same definition will apply here as well, as the covers do not usually provide otherwise. Therefore, that will include any type of charterer, other than a bareboat, mostly time or voyage ones, either they are merely chartering, or sub-chartering the vessel and perhaps also the carrier of the goods acting on the former's behalf.[1020]

When it comes to the charterer's interest that could justify the provision of insurance over for certain liabilities, costs or expenses, it is founded on the basis of sections 3(2)(c) and 5(2)[1021] of MIA 1906 defining the "maritime adventure" as well as the "insurable interest" respectively. Accordingly, a person has an insurable interest to the extent that a liability arises or becomes more difficult to satisfy as the result of the operation of an insured peril, while such liability may be insured under liability policy.[1022] It is further provided that the assured's insurable interest in the form described above should exist in relation to the insured vessel. This means, therefore, that the assured should prove a financial loss if the insured ship ceases to be a revenue-producing asset, or its value is reduced as a result of an insured peril. Although such proof might seem straightforward just for the shipowner of the insured vessel, the same equally applies to her charterer. The reason for this lies in the nature of the charterparty between them. By the time the charterer signs the charter, he becomes an integral part of the maritime venture and is subject to the same marine perils as the shipowner, so he develops an insurable interest in the ship as well. Although he does not own the chartered vessel, his interest can still emanate from his intention to sub-let her and generate profits, or because he might incur relevant

[1017] See, for example, Chapter B, Rule 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 1, clause 1.2.2 of Skuld Charterers' Cover Terms & Conditions 2017, Class III, Rule 1, section 1(5)(ii) of the American P&I Club By-Laws, Rules and List of Correspondents 2016-2017, British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, p. 1 and Hydor Charterers P&I Terms and Conditions 2018, Section I,p.1, Part 1, Rule 3.2 of the Norwegian Hull Club Charterers' Rules 2016.

[1018] See, respectively, Part II, rule 19(24) of Britannia Rules of Class 3, Protection & Indemnity and List of Correspondents 2017, Class III, rule 1.5(ii) of the American P&I Club By-Laws, Rules and List of Correspondents 2016-2017, British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, p. 1, clause 29 of Carina's P&I cover for small ships (5th edn.) 2016, Part 3, clause 19(25) of North of England P&I Rules 2018/2019.

[1019] See respectively above in "2.1 The type of contract and the assured", at p. 151.

[1020] See respectively Class 2, Clause 7(A)(i)(c) of the Charterers P&I Club Terms and Conditions 2018.

[1021] "*In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof".*

[1022] *Feasey v. Sun Life Ass Corp of Canada* [2003] EWCA Civ 885; [2003] Lloyd's Rep. IR 637, esp. [89-92],[113-119].

liabilities arising directly from her, or from his duty to return the ship to the owner in good order and condition.[1023] Charterers might also have an interest in the maritime operation as carrier or handler of the cargo on board of the vessel or by paying for her fuel. Hence, to the extent that liability, costs and expenses for which he might be found liable are associated with his insurable interest in the form described above, they could be recoverable under the CLI as long as the other conditions of the policy are being fulfilled as well.

2.3.2 Link with the operation of the vessel

As the range of charterer's liabilities varies, as it was seen in part A of this work, it is usually provided in practice that the CLI is activated only in relation to risks covered under the policy and insofar as they develop a link with the operation of the insured vessel,[1024] like in every P&I insurance.[1025] This means that the liability, loss, cost or expense must be specifically related to the entered ship, since the cover follows solely the latter, rather than any other operations or activities that the assured charterer might be engaged in. In other words, as all casualties that arise on a vessel are not deemed to stem from her operation, it follows that the *"vessel must be more than the inert locale of the injury".*[1026] Consequently, coverage turns on the occurrence of an accident not only involving the vessel, but also for which the charterer is legally liable or contractually liable under the charterparty.[1027] For instance, the cover will not usually provide protection for liabilities incurred in connection with the personnel who form part of the assured's workforce, yet who are not serving on the insured ship at the time the liability arises,[1028] or when the claimant is shot by a charterer's employee on board, since such

[1023] *Linelevel Ltd v. Powszechny Ubezpieckzen SA (The Nore Challenger)* [2005] EWHC 421 (Comm); [2005] 2 Lloyd's Rep. 534, esp. [23-28].
[1024] Only in rare cases it has been noticed that there is no such condition within charterer's liability policy. See, for instance, Class A of Charterama Policy Wording 2017, at p. 4 and at DUPI Charterers Liability Insurance Conditions (August 2016), at p. 3. Sometimes also a different wording might be used, according to which indemnity is limited to claims arising *"out of or incident to the performance of the charter…"*. See, respectively Raymond P. Hayden and Sanford E. Balick, "Marine insurance: varieties, combinations and coverages'' (1991-1992) 66 Tul.L.Rev. 311, p. 331.
[1025] See, for example, Rule 2(4)(a) of Gard Rules 2017.
[1026] Norman J. Ronneberg Jr., "An introduction to the Protection & Indemnity clubs and the marine insurance they provide'' (1990-1991) 3 U.S.F.Mar.L.J.1, p. 23.
[1027] In Robert T. Lemon II, "Allocation of marine risks: an overview of the marine insurance package'' (2006-2007) 81 Tul. L. Rev. 1467, p. 1488.
[1028] Richard Williams, "Gard guidance to the Rules 2016" *(*August 2015*)* <http://www.gard.no/Content/20889036/Gard_Guidance_to_the_Rules.pdf>, accessed 12 March 2020, p.50. See also, Richard W. Palmer, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p. 483.

liability does not present any sort of link with the vessel's operation.[1029] Overall, it is the charterer's activity that becomes the focus of enquiry and so, if the activity giving rise to the claim in question is different from charterer's contracted indemnity, there will be no obligation to be covered.[1030]

It is interesting to note, though, that there is no uniformity among CLI policies when it comes to the level of proximity required, as the particular wording used each time varies. Thus, for instance, there are certain policies which adopt a broader approach by providing that the cost, expense or liability has to arise just in connection with the insured ship, without any association to the latter's operation.[1031] Whereas the majority of them seek merely a link between the risks and the operation of the vessel.[1032] On the other hand, there are some insurance providers which follow an even more rigid approach by providing that coverage is granted only when the expense, cost or liability claimed is directly connected to the ship's operation.[1033] Consequently, when for instance, the assured charterer has an interest in the operation of a terminal that is used in connection with the operation of a ship because he incurred losses or liabilities under this capacity when the terminal was used to store the cargo carried on board of the insured ship, these losses or liabilities will not be covered under his liability policy as they are not directly connected to the operation of the insured vessel.[1034]

Last but not least, it is interesting to note that the application of the cover can be extended to substitute (to the chartered) vessels, insofar as the applicable charterparty allows the shipowner in question to substitute vessels in place of the one originally mentioned in it and the insurer has given his prior consent.[1035] In that case, it follows that in relation to the covered liabilities, the same principle of proximity of risk to the vessel's operation should apply here as well.

[1029] See the similar case of *American Motorists Ins. Co. v. American Employers Inc* 447 F. Supp 1314 (W.D.La. 1978) remanded on other grounds 600 F.2d 15 (5th Cir. 1979), as found in *supra,* fn. 1026.
[1030] *Supra,* fn. 1024, in Raymond P. Hayden and Sanford E. Balick, p 332.
[1031] See, for example, Class 2, Clause 7(A)(iii) of the Charterers P&I Club Terms and Conditions 2018.
[1032] See, for example, Part 1, Rule 3(A)(3) of West of England's Rules of Classes 1&2 2017, Part 1 of RaetsMarine Liability policy for Charterers 2017, Class III, Rule 1, section 1(5)(iii) of the American P&I Club By-Laws, Rules and List of Correspondents 2016-2017, British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, p. 1, Part One, Section I, rule 1(c) of Eagle Ocean Marine P&I Insurance, General Terms and Conditions of Cover (01.07.2016), Class 5, Rule 9.1.2 and Rule 10 of the London P&I Club P&I Rules 2017-2018.
[1033] See, for example, Chapter B, Rule 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 1, clause 1.2.2 of Skuld Charterers' Cover Terms & Conditions 2017, Hydor Charterers P&I Terms and Conditions 2018, Section I,p.1, Rule 3.2 of the Norwegian Hull Club Charterers' Rules 2016. See also, *supra, fn.1024,* p. 327.
[1034] *Supra,* fn. 1028.
[1035] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 379.

2.3.3 The element of time

In addition to the above conditions, there is invariably a time restriction in respect of risks against which charterers can claim protection under their liability insurance. Thus, in every liability policy it is traditionally provided that the loss, liability, cost or expense for which the charterer is seeking coverage should have arisen out of an event that occurred during[1036] the period of his insurance.[1037] The latter commences upon the issuance of the certificate of insurance which evidences the terms and conditions of the binding contract concluded between the assured charterer and his insurer,[1038] or upon the date mentioned therein,[1039] and it is terminated when one of the cessation reasons included in this contract occurs.[1040] It is also interesting to mention that often many of such insurance policies provide expressly that they have an annual duration[1041] and so, it is a lot easier for charterers to identify their contract's policy period and ascertain every time whether they are protected or not. Either way, it should be clarified that this condition is not related to the satisfaction of the claim by the assured based on the "pay to be paid" rule that is examined below, as this can legitimately take place even after the policy period has expired.

Similarly to shipowner's P&I rules, charterers' insurers should be promptly notified about their assureds' claim. Along with this requirement, however, it has been noticed that contrary to what applies in shipowners' case, charterers' insures often impose on the assured an absolute

[1036] It is also possible to find agreements that differ from this rule; yet, this is not provided for any charterer's liability insurance policies. See respectively, Dieter Schwampe, Charterers' liability insurance, (Lloyd's of London Press Ltd 1988), p. 126.

[1037] See, respectively, Class 2, Clause 7(A)(ii) of the Charterers P&I Club Terms and Conditions 2018, Part 1, clause 1.2.1 of Skuld Charterers' Cover Terms & Conditions 2017, Part 1 of RaetsMarine Liability policy for Charterers 2017, Class III, Rule 1, section 1(5)(i) of the American P&I Club By-Laws, Rules and List of Correspondents 2016-201, British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, p. 1, Hydor Charterers P&I Terms and Conditions 2018, Section I,p.1, Part One, Section I, rule 1(a) of Eagle Ocean Marine P&I Insurance, General Terms and Conditions of Cover (01.07.2016), DUPI Charterers Liability Insurance Conditions (August 2016), p. 3, Class A of Charterama Policy Wording 2017, p. 4, Rule 3.2 of the Norwegian Hull Club Charterers' Rules 2016.

[1038] See, respectively, Part III, clause 16(A)(i) of the Charterers P&I Club Terms and Conditions 2018, Part 5, section 27.1 of RaetsMarines Liability policy for Charterers 2017, Part 1, clause 2 of Skuld Charterers' Cover Terms & Conditions 2017, Chapter F, Rule 11 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1039] See, for instance, Part 1, clause 1.3 of the Norwegian Hull Club Charterers' Rules 2016 and clause 21.1, clause 21.3 of DUPI Charterers Liability Insurance Conditions (August 2016) and clause 1.2(A) of Charterama General Terms and Conditions, Policy Wording 2017.

[1040] For example, when the assured dies or his company becomes insolvent, or otherwise when the agreed period of the enforceability of the contract expires and the latter is not renewed by the assured, or when the charterer ceases to operate as such in relation the insured under the contract vessel, or in case of the assured's fraudulent or wilful misconduct or non-payment of premium.

[1041] See, respectively, Rule 11 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 1.3 of the Norwegian Hull Club Charterers' Rules 2016, Part 1, and clause 2 of Skuld Charterers' Cover Terms & Conditions 2017, clause 1.2(B) of Charterama General Terms and Conditions, Policy Wording 2017.

time-limit for the notification of claims. Although this limit varies from policy to policy,[1042] providing either for an "immediate" [1043] or "as soon as reasonably practicable" [1044] notification, the general rule seems to be that the starting point for charterer's obligation to inform his insurer begins either way by the time he learns or ought to learn of any incident that might give rise to a claim under the policy. This means essentially that the charterer is not given the option to wait and merely report the incident within the time limit provided in order for him to be able to claim for protection by his insurer. On the contrary, he remains obliged to refer to his insurer as soon as possible by the time he finds out about the event, while not doing so after the time limit has expired merely releases his insurer from any obligations under the policy concerning this particular event, unless the insurer decides otherwise.

2.3.4 Claim for a covered risk – The omnibus clause

In compliance with section 55 (1) of MIA 1906 which provides that *"the insurer is liable for any loss proximately caused by a peril insured against",* unless otherwise agreed, CLI traditionally responds in case that the liability, cost or expense for which the charterer is seeking compensation from his insurer falls within the risks included in his liability policy in the form they have been described above. This stems from the idea that a liability policy is not a comprehensive general liability policy and so, it does not purport to cover all types of an insured's liability.[1045] Besides, it should not be forgotten that after all, the CLI itself constitutes a contract; so, the principles of "offer", "acceptance" and "consideration" will be applicable here as well, in the form that the only risks covered will be only those which have been incorporated into the parties' agreement after its final acceptance. In fact, notwithstanding the self-explanatory character of this condition, this rule is invariably expressly mentioned within

[1042] Thus, for example, that period of time can range from three or six months to one or three years. That sometimes can unfortunately lead, though, to unfair and extremely rigid treatment towards the assured. See, respectively, Part 5, section 44 of RaetsMarine Liability policy for Charterers 2017, Part III, clause 20 of the Charterers P&I Club Terms and Conditions 2018, clause 27 of Skuld Charterers' Cover Terms & Conditions 2017, Chapter F, Rule 6 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 55 of the Norwegian Hull Club Charterers' Rules 2016.

[1043] See, for instance, clause 1.18 of Charterama General Terms and Conditions, Policy Wording 2017, clause 46 of the Norwegian Hull Club Charterers' Rules 2016.

[1044] See, respectively, section B, clause 17.1.1 of British Marine Terms and Conditions, Charterers Marine Liability, Protection and Legal Expenses 2017.

[1045] Similarly was also held in *Oldham v. QBE Insurance (Europe) Ltd* [2017] EWHC 3045 (Comm), at para. 28, where the Court found that insurers will be liable for the defence costs only if there is coverage for them under the assured's policy which define the assured's coverage. But opposite in German marine insurance structure, where a general risk cover is usually preferred. See, respectively *supra*, fn. 1036, in D. Schwampe, p. 25 and *supra*, fn. 1027, p. 1480-1481.

every insurance contract,[1046] providing –at least to a certain extent- clarity to charterers as to the scope of their liability protection. Whilst the requirement of proximity safeguards the interests of insurers by hindering the application of numerous claims on behalf of the assured charterer for irrelevant or too remote risks.

However, the list of the included in the cover risks is not always exhaustive, since it is quite common practice for the insurers to insert at the end of the covered risks list a particular clause which allows charterers further flexibility when it comes to the scope of their overall protection. Such clause is generally known as "*the omnibus clause"* and is essentially a "*catch all provision"* that allows charterers to claim protection against any other liabilities, costs or expenses incurred which do not fall strictly under the head of any specific rule.[1047] But, supporting that the main idea behind these clauses was to cover anything that is not expressly covered under the CLI policy would not be accurate. Besides, if that was actually the case, there would be no reason for the policies to be so thoroughly drafted. On the contrary, the inclusion of such provision in the insurance policies is more of a historical tradition, as this clause has been introduced before the covers becomes so elaborative, purporting merely to "predict the unpredictable'' under a P&I policy. As a consequence, the clause is applicable only to risks that happen to be incidental to the chartering business of the assured that fall normally outside the scope of their traditional liability cover.[1048] But again, this conclusion does not add much to the already blur scope of the clause, while the widely drafted wording of the latter as well as the absence of any relevant cases where the use of such clause was triggered create even more difficulties, since there is no proper guidance as to the clause's interpretation and the types of claims that could potentially fall within its scope. On the top of that, the fact that the satisfaction of charterer's claim on the basis of an "omnibus clause" is always subject to the insurer's discretion and the particular terms agreed between him and the assured expands even further the uncertainty that the incorporation of such clause entails which finally works

[1046] See, for instance, Class 1 of RaetsMarine Liability policy for Charterers 2017, p. 5, Part 1, clause 1.3 of Skuld Charterers' Cover Terms & Conditions 2017, Chapter B, Rule 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 1, rule 3.1 of the Norwegian Hull Club Charterers' Rules 2016, Class 1, Part 1, Rule 3(B) of West of England Rules of Classes 1&2 2017, clause 20(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

[1047]*Supra*, fn. 1024, in Raymond P. Hayden and Sanford E. Balick,, p. 327. Also, in Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 61.

[1048] See, respectively, clause 9, section 17 of the Charterers P&I Club Terms and Conditions 2018, section 17 of RaetsMarine Liability policy terms for Charterers 2017, clause 39 of Skuld Charterers' Cover Terms & Conditions 2017, clause 21(xviii) of Steamship Charterers' Cover 2017/2018, Chapter F, rule 10 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 5, clause 54 of the Norwegian Hull Club Charterers' Rules 2016.

to the detriment of the charterers who are unable to ascertain in advance the exact framework of their protection.

Another burden that charterers might face when trying to enforce the application of this clause is the time consuming and long process that needs to be followed in order for their claim to be properly presented before their insurer for consideration. For instance, in case of IG Clubs, it is the Board of Directors which decide whether a claim falls within the omnibus clause. Before the decision is made, the assured should prepare a lengthy note explaining its case and provide all the supporting documents to the Board. Then, a discussion takes place where the assured presents his claim and a decision is made once the hearing is completed. However, when the claim of the charterer is heard before a panel that is consisted mainly of the Club's owned entries, which will also form the decision, there is no great likelihood that his request will be successful, considering the parties' conflicting interests and the shipowners' potential reluctance to create a precedent that would encourage other assureds to submit similar claims in the future. Similarly could further apply in relation to fixed premium insurers where the decision as to whether a claim could fall under this rule is mainly a commercial decision and depends to a great extent on the assured's relationship with the insurer. Therefore, even though the rule exists and is flexible enough to provide charterers with a wider protection, in fact it is rarely used in practice, except from extreme circumstances where a big claim is at stake.

2.3.5 The "pay to be paid rule"

The satisfaction of charterers' claims under their insurance policy is invariably subject to another rule known as "pay to be paid"[1049] which, as already mentioned, [1050] relates to liability indemnity policies[1051] and is firmly established as a matter of English law.[1052] The rule provides that the assured charterer will be indemnified only for what it has actually lost by the occurrence

[1049] Or, otherwise "the pay-first" rule.
[1050] See respectively in Chapter IV, at p. 95 and 101.
[1051] For the definition, see Chapter IV, at p. 93
[1052] The rule is also recognised under US law. See, for example, the cases *Psarianos v. Standard Marine Ltd* 12 F.3rd 461, 1994 AMC 2081 (5th Cir. 1994), p. 465 where the US Court following the London arbitration award confirmed the validity of the "pay-first" rule on the basis that the Texan law required a direct and close relationship between the party and the insurer which does not exist though between a third party claimant and the club, so the former has no right to sue directly the latter. See the opposite in Germany where it is possible for the assured to request and insert into the contract a clause according to which the application of the "pay to be paid" rule is rendered unenforceable. That obviously favours the assured's position over its insurer. See, *supra*, fn. 1036, in Dieter Schwampe, p. 143.

of an event from which the insurer's liability arises[1053] and only if he has already covered the damage himself. [1054] In line with this rule, the CLI policies always include a clause according to which the discharge of any loss, expense or liability by the assured pursuant to a court order or judgement, or a tribunal award, or an approved by the assured settlement is a condition precedent to his recovery right under the policy.[1055] Also, the clause goes on saying that the above loss, expense,[1056] or liability must have been *"paid from funds belonging to the assured unconditionally and not by way of loan or otherwise".*[1057] The rationale that lies behind this principle is first of all to prevent the assured from making a profit out of his insurance cover by receiving payment from the insurer, yet failing to pay the third party.[1058] It has also been supported, especially in relation to P&I Clubs, that it is important for their members to be able to assume the financial probity of other members, as the latter constitute both the insurer and assured. As a result, it is considered usual to require them to discharge their own liability first, before they can be indemnified against it by their Club.[1059] Besides, the assured is running its own business and it is upon him to ensure that a claim brought against him is well-founded. So, the best way of doing that is to require him first to pay the claim before seeking for insurance indemnity.[1060]

Despite how straightforward this rule is, its application in practice can actually be very problematic for charterers. First of all, it comes against the direct action provision that many maritime conventions provide[1061] and so, renders them inapplicable, not only by depriving the injured party from a quick, secured and full compensation, but also by imposing extra financial

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[1053] Leading case on this point is *Firma C-Trade S.A. v. Newcastle Protection and Indemnity Association (The "Fanti") Socony Mobil Oil Co. INc. And Others v. West of England Shipowners Mutual Insurance Association (London) Ltd (The "Padre Island")(No.2)* [1990] 2 Lloyd's Rep. 191 (HL), at p. 193, where it was found that "*the (assured's) rights were contingent in that it was a condition precedent to the members being indemnified by the clubs in respect of those liabilities that they should first have been discharged by the members themselves".*

[1054] Ling Zhu, "Probing compulsory insurance for maritime liability'' (2014) 45 J. Mar. L. & Com. 63, p. 72-73; *supra,* fn. 1024, in Raymond P. Hayden and Sanford E. Balick, p. 326-327.

[1055] See, respectively, Part 5, section 30.13 of RaetsMarine Liability policy terms for Charterers 2017.

[1056] See, respectively, Part 4, clause 23.5 of Skuld Charterers' Cover, Terms and Conditions 2018, Section III, clause 23 of Hydor Charterers P&I Terms and Conditions 2018, Part 6, clause 45.2 of the Norwegian Hull Club Charterers' Rules 2016.

[1057] See, for example, Part III, clause 15 of the Charterers P&I Club Terms and Conditions 2018, Section F, clause 6.10 of the Standard P&I Club Fixed Premium rules and Correspondents 2017/2018, Part 4, section (a) of Charterama Exclusions and Limitations, Policy Wording 2017, section B, clause 17.2 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, Part 6, clause 45.1 of the Norwegian Hull Club Charterers' Rules 2016, Section 4, rule 20(1) of North of England P&I Rules 2018/2019, Chapter F, rule 15 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1058] *The "Fanti" and the "Padre Island"(No.2)* [1990] 2 Lloyd's Law Rep. 191, 200 (HL).

[1059] Or at least, pay in the full the deductible applicable for the risk in question.

[1060] *Supra,* fn. 1058, p. 202, per Lord Goff.

[1061] Such as art. 7(10) of the Bunkers Convention 2001, or section 1(2) of the Third Parties (Rights against Insurers) Act 2010.

obligations on charterers, who have already paid for an insurance protection which they cannot immediately benefit from. To complicate matters more, it was also found that insurers carry no obligation under law to pay first any third parties, on the basis that this would otherwise suggest that they accept full discharge of assured's liability towards the third party.[1062] In addition, it was held that equity will not be able to override express contractual provisions so to enforce direct payment of the third party by the insurer. That is because *"when the indemnity arises ex contractu the measure of the indemnity must be determined by reference to the terms of the contract"*,[1063] whilst there is no rule suggesting that *"the equitable rule must prevail regardless of those (contractual) terms"*.[1064] Also, this rule contravenes with many jurisdictions around the world which grant victims with the right to sue the insurer directly, without having first to claim against the assured.

The risks that the application of this rule entails were also mentioned by Lord Goff in *"The Fanti"*[1065] where he noticed the likelihood of insurers trying to hide behind the "pay to be paid" rule and decline to reimburse the affected parties, especially in relation to personal injury or death claims. For that reason, he went even further, drawing the attention over the importance of insurers being monitored when avoiding covering such claims, while he suggested the promotion of appropriate remedial legislation, if necessary.[1066] Last he observed that if insurers had anyway the intention to bypass third's party right to bring claims directly against them, they would not have introduced the inclusion of such clause in their policies long before the introduction of the 1930 Act,[1067] and that the use of such clause generally by liability insurers would render their insurance policies less marketable in a competitive world.[1068]

However, the fact that these clauses are still being broadly used in practice by invariably all types of charterer's liability insurers is indicative that the risks identified by Lord Goff are still imminent and also probably more real than he thought, putting, therefore, in question once again the efficacy of the application of such principle. Moreover, the fact that the existing case law gives to the "*pay-to-be-paid"* proviso a precedence over any legislative right to direct

[1062] *Supra*, fn. 1060, per Lord Goff, at p. 201.
[1063] Ibid, at p. 206, per Lord Jauncey of Tullichettele.
[1064] *Ibid.*
[1065] *Ibid*, at p. 203 and 204. Also, initially expressed by Mr Justice Staughton in *The Fanti* [1987] 2 Lloyd's Rep. 299, 310 and Lord Justice Stuart-Smith in the Court of Appeal [1989] 1 Lloyd's Rep. 239, 258-259.
[1066] *Ibid, p.* 204.
[1067] I.e Third Parties (Rights against Insurers) Act 1930 as amended in 2010.
[1068] *Supra*, fn. 1058.

action, by treating it as a term of the contract of insurance,[1069] accelerates the enforceability of the rule every time that an arbitration clause is being inserted into the insurance contract rendering English law applicable. As a result, third parties can no longer circumvent the choice of law as well as jurisdiction within the contract of insurance, whilst contractual defences against this rule would not be able to be declared inapplicable by the local courts.

The P&I Clubs, having realised the above difficulties, decide often to adopt a more lenient approach in practice and waive the rule's application, in the light also of the enforcement of compulsory insurance obligations. The most common situation, however, where the insurers drop out such condition is when they decide to take on all relevant proceedings at an early stage and so, settle the claim directly with the claimant.[1070] Additionally, other insurers provide expressly in their clauses that departure from this rule is permitted and placed completely upon the absolute discretion of the insurer.[1071] This decision usually depends on commercial factors, such as the importance of the assured, his timely compliance with his financial obligations and the lack of any outstanding premium, as well as the claim amount at stake or the urgency of the payment. Also, it is noteworthy that when the rules' application is waived, the insurers traditionally before they proceed with any claim payment, demand from the assured to settle any outstanding premia with them and pay also the deductible related to this particular claim. Thus, they try to maintain a secure position by acquiring the funds to which they are entitled and prevent the assured from evading from his insurance obligations.

Particularly now with regards charterers, the complications that this rule manifests are primarily associated with the character of their liability insurance as non-compulsory, as established earlier.[1072] In other words, due to this characteristic, there is no regulatory urge for insurers to discontinue the application of such rule by providing a more flexible approach to charterers, similarly to shipowners. So, even though there is still no uniformity among charterers' insurers as to the application of this rule in practice, there is certainly room to argue that it applies in principle, creating to a certain extent an uncertainty to charterers who are left

[1069] *Shipowners' Mutual Protection and Indemnity Association (Luxembourg) v. Containerships Denizcilik Nakliyat Ve Ticaret AS ("The Yusuf Cepnioglu")* [2016] EWCA Civ 386; [2016] 1 Lloyd's Rep. 641; *Through Transport Mutual Insurance Association (Eurasia) Ltd v. New India Assurance Co Ltd ("The Hari Bhum")* [2005] 1 Lloyd's Rep. 67; *The London Steam Ship Owners Mutual Insurance Association Ltd v. The Kingdom of Spain ("The Prestige") (No.2)* [2015] 2 Lloyd's Rep. 33; *The Fanti and The Padre Island* [1990] 2 Lloyd's rep. 191, p. 199, per Lord Goff of Chieveley (HL).

[1070] *Supra*, fn. 1047, in Christopher Hill, Bill Robertson, Steven J. Hazelwood, p. 119.

[1071] See, for example, Part 6, clause 45.1 of the Norwegian Hull Club Charterers' Rules 2016, Section 4, rule 20(1) of North of England P&I Rules 2018/2019, section B, clause 17.2 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017.

[1072] See chapter IV in 2.3.2 "The basic characteristics of CLI'', at p. 105-106.

with no other sustainable option, save for resorting to their insurers' discretion either to settle the claim directly with claimant, or to ignore the application of the rule. Yet, it is believed that the exercise of insurers' discretion has become nowadays wider, as they are now more flexible to disregard the rule as long as the assured charterer complies also with the minimum standards imposed on him (i.e payment of premium and deductible in full). Therefore, although the complications described earlier might be justified, they represent only one side of the actual practice.

2.3.6 Proof for vessel's compliance with international regulations

Similarly to any ship operator, charterers must not only follow strictly the international rules and regulations by which the insured vessel is bound to, in order for them to be fully protected; they also need to be able to prove it whenever it is being demanded by any authorised enforcement or regulatory body, or their insurers for the purposes of the satisfaction of their claims, and inform them whenever a change occurs. For that to happen, it follows that charterers should always maintain valid and updated copies or certificates of the insured vessel's conformity with the aforementioned. Accordingly, for example, it constitutes usually an express obligation of the assured charterer to make sure that the insured vessel complies with all the statutory requirements of her flag state concerning her *"construction, adaptation, condition, fitment, equipment, manning and operation*", as well as with the ISM, ISPS and SOLAS codes. Charterers should also be able to secure that the vessel is classed with a classification society approved by the insurer throughout the policy period.[1073] On the contrary, charterers' failure to satisfy the above warranties constitutes a breach and therefore, their cover is reserved. Thus, the charterer undertakes the difficult task to comprehend and be aware not only of the regulatory regime of the vessel's flag state, but also the legal rules of the jurisdiction applying to the areas within which the vessel is trading as well as of any international conventions that have been ratified by all of them. The same also applies for the vessel's quality and her conformity with the acceptable minimum standards imposed by the ISPS Code. Yet, this is at least less difficult for the charterer to ascertain, if it is considered that experienced charterers are always competent in understanding and identifying a sub-standard vessel trading

[1073] See, respectively, Part 4, clause 23.3 and 23.6 of Skuld Charterers' Cover Terms & Conditions 2017, Part 1, clause 12(E) of Charterers P&I Club Terms and Conditions 2018, section B, clauses 2, 3 and 5 of British Marine Charterers Marine Liability, Protection and Legal Expenses, Terms and Conditions 2017, section I, clause 15.1(1) and (5) as well as 15.2 of the Standard P&I Club's Fixed Premium rules and Correspondents 2017/2018, clause 24 (i)(b)(ii) and (iii) of Steamship's Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

within the area of their expertise.[1074] Conversely, with regards the vessel's classification society, charterers' understanding might not be very easy to be achieved, as the standards of each society can widely range from one another.

But, since there are P&I Clubs as well as insurers that implement measures purporting generally to penalise ship operators for trading with sub-standard vessels, it follows that either way, it is important for the charterer to ensure that the vessel is fully compliant in all her respects and standards as much as it is for him to make sure that she is fully in class and properly insured, because otherwise the cost of shipowner's decision might easily rebound on him, negating his protection.[1075]

2.4 The limits of CLI

It has been explained in the previous chapter that the insurance limits provided to charterers for their liability cover vary significantly depending on the type of the insurance provider as well as the type of the insurance purchased (i.e on mutual or fixed premium basis). Therefore, here, only the ways that these limits appear and apply in practice will be explained.

More specifically, it was has been established that one of the substantial differences between commercial insurers generally and IG Clubs is that the latter do not traditionally provide protection against hull related liabilities, on the basis that they fall within the business ambit of hull insurers. But, since charterer's exposure to such liabilities is extensive as much as frequent, insurance protection against them is of vital importance. As a result, IG Clubs expanded their P&I cover's usual scope by introducing a special cover only for charterers which expressly included, amongst others, hull related liabilities too.[1076] Hence, when it comes to the form that such cover appears in practice, it is often provided on fixed premium basis under a combined single limit which includes both damages to hull as well as P&I liabilities arising out of the same event.[1077] Others, though, continue insuring P&I liabilities on a mutual

[1074] Supported in Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 102.
[1075] *Ibid*, p. 76, 77 and 82, 107.
[1076] See, for example, Class III, rule 2(B) of the American Club By-Laws, Rules and List of Correspondents 2016/2017, rule 19(24) of Britannia Rules of Class 3, Protection & Indemnity and List of Correspondents 2017, class 5, rule 10 of London P&I Club P&I Rules 2017/18, rule 19(25)(b) of North of England P&I Rules 2018/19, rule 4, section 2 of the Shipowners' Club Rules 2018, rule 4, section 1 of UK P&I Club Rules 2017, rule 7, section 1 of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[1077] That single limit can sometimes also include a sub limit referring to legal costs and expenses arising under Freight, Demurrage and Defence cover. See, for example, the Britannia P&I Club or North of England P&I Club. Similarly confirmed in "Steamship Mutual P&I Club: Charterers' Liability Cover", available at

basis, whereas hull liabilities are insured on fixed, as discussed earlier. In that way, they are copying in a sense the method normally followed by commercial insurers, according to which hull, cargo and P&I liabilities appear within the same single cover, yet under different classes, to all of which a common limit applies for each event that takes place.[1078] Nonetheless, there are other commercial insurers which follow a different approach with respect to the general limits applying to charterers. For instance, it is usual in practice to see different limits provided for charterer's hull liabilities and others for their P&I and cargo liabilities only, all of which being subject, though, to an overall maximum single limit applying per incident.[1079]

3. Conclusion

The main purpose of this chapter was to analyse and compare the content of multiple different CLI policies available in the market and also present the main principles applicable in charterer's insurance. From the above thorough examination, it is concluded that CLI policy as it appears in practice presents the same general scope, irrespective of the nature of charterer's insurance provider, as all of them seem to concentrate their interest on the same risks. However, some important differentiations appear in the exact wording used to describe the protection offered against the above risks. For example, it has been noticed that the covers provided by the IG Clubs are effectively identical,[1080] as they all often introduce a special clause for charterers within their Rules whereby they essentially repeat that charterers' risks will be the ones described under the owner's P&I policy. This fact, though, confirms the argument supported in the previous chapter regarding the lack of flexibility of this type of insurer which sometimes might result in charterers purchasing insurance protection against risks for which

<https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 14 and 2; Jack Marriott-Smalley and Edward Atkins, "Club cover for charterers" in "*Standard Club's charterer's bulletin"* (August 2017), available at <http://www.standard-club.com/news-and-knowledge/news/2017/08/charterers-bulletin-august-2017.aspx> , accessed 12 March 2020, p. 1 and "The London P&I Club: Cover for charterers", available <https://www.londonpandi.com/special-cover/> accessed 12 March 2020.

[1078] See, for example, Carina P&I, RaetsMarine, Eagle Ocean Marine, Hanseatic Underwriters, Charterama BV, the Charterers' P&I Club and the Norwegian Hull Club. See respectively also, Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 30,46, 52, 54 and 56; "Hanseatic Underwriters brochure", available <https://hanseatic-underwriters.com/wp-content/uploads/2016/04/Hanseatic_Underwriters_brochure_web_EN.pdf>, accessed 21 August 2017, p. 7.

[1079] See, for example, British Marine where although the maximum limit offered can reach USD 1 billion, with respect charterers liability, the limits offered for P&I cover are up to USD 100 million with charterer's damage to hull (DTH) being limited up to USD 50 million. Similarly also with Hydor AS. See respectively, *ibid*, in A.J. Gallagher, p. 28 and 36.

[1080] Same was also supported *ibid*, p. 49.

they do not even need it, as some of these rules can never apply to them. Nonetheless, an exception seems to appear in case of some IG Clubs which offer their charterer's cover on a separate, fixed premium basis.[1081] In these cases, the form their liability cover takes, resembles the one provided by the commercial, fixed premium insurers, as it introduces a broader and often less complicated, in terms of interpretation, protection which is perfectly tailored to charterer's risks.

It is clear so far that a charterer undertakes a very detailed and diverse range of matters on his daily contractual arrangements. For that reason, he needs to ensure not only that his actions comply his obligations under the contracts he has signed, but also arrange accordingly protection, so the consequences of these contractual obligations are insured in case the latter are being breached. Thanks to the existing form that CLI policy appears in practice, it could be argued that there is no substantial gap between the actual liabilities faced by the charterer and the insured risks included in the former. Thus, to that extent at least, it would seem at first glance that charterers are well protected with the insurance available to them.

[1081] Such as in the case of Skuld P&I Club.

VI. CHARTERER'S INSURANCE: THE ADDITIONAL COVERS

1. Introduction

After having examined extensively the liabilities that time and voyage charterers face usually in the course of their business in the first part of this work, they were later analysed under the spectrum of a typical CLI cover, so the limits of such insurance protection could be identified. The aim of this chapter is to provide an overall view of the insurance products available in the charterer's market that purport to cover risks beyond the limits of a traditional liability cover for charterers. Although these covers do not fall within the concept of CLI in the strict sense, they still play an important role in charterer's overall exposure, as they constitute essentially an extra layer of protection which, if combined with the charterer's standard liability cover, create a robust shield that seems currently to protect satisfactorily all types of charterers against most of the risks they are exposed to. Therefore, it is believed that they are worth mentioned, as they complete the concept of charterer's liability insurance. However, as their reference is being made only on an ancillary basis, the risks covered by them will not be presented in detail.

2. General characteristics of charterer's additional insurance covers

Before we proceed with the examination of the most common additional insurance covers that charterers usually purchase, it is considered useful to make first reference to some common characteristics that define all these covers, so to understand better their application.

As previously mentioned, it is common ground that the insurance market exists to serve the needs of its assureds, follows the trends of the latter's business and tries to offer solutions that will enable them to continue prospering, by predicting potential areas of exposure for them. It is obvious, though, that all risks that come from these various areas of exposure cannot fit in a single standard cover for the simple reason that they hinder its general applicability, by transforming it into a non-flexible, very purpose-orientated cover. Besides, there are certain risks that due to their nature are incompatible to each other; so, any effort to mix them would

be simply impossible. As a consequence, it follows that the more areas of exposure being identified, the more covers within the insurance world will emerge. The same also applies in case of charterers and the wide range of additional covers that are nowadays available to them. This flexibility of the insurance market towards the increasing number of the insured risks is further confirmed by the willingness of some insurers to negotiate optional extensions and agree on special covers tailored to meet the charterer's particular needs.[1082]

This plurality of covers is further topped with the specialist nature they have which makes them match perfectly with the peculiarities of charterers' business. As a result, their scope is concentrated on a particular theme which could not be included in the standard CLI cover. So, charterers can opt every time for the ones they actually need and readjust their protection against the risks they wish to undertake themselves. However, it should be clarified at this point that although there are additional covers whose specialist nature can apply only to charterers' risks, the majority of them have been created to apply to both charterers and shipowners, with the only difference being their exact scope. For example, there might be a variation in the provisions included in them, although the special risk against which they purport to offer protection remains the same.[1083]

In addition to the above and similarly to the CLI cover, the additional covers are not compulsory, while the amount of extra insurance protection a charterer is allowed to seek is not restricted. Thus, from charterers' perspective, there is an element of discretion that defines these further categories of insurance which may be equally important under certain trading conditions to some of them, but quite unnecessary to others. So, whether charterers do or do not avail themselves to these classes of insurance depends on the contractual arrangements in place and the prevailing circumstances.

Nonetheless, there is a significant difference that distinguishes these sort of covers from a standard CLI cover. As opposed to the latter, these covers have only an ancillary character, as their name, besides, indicates. This means that they cannot exist on their own and so, in order for them to be available to the charterer, he needs to have acquired first the traditional liability cover.[1084] In fact, there are times where the insurance providers require their additional covers

[1082] As stated for example, in *supra,* fn. 1077, in Steamship, p. 5.
[1083] For example, the additional cover against war risks or legal costs applies to both shipowners and charterers, yet under different terms; whereas, the additional cover against bunkers' liabilities can be applicable only in case of charterers. The same also happens with the cover against cargo damage when the charterer is also the owner of the cargo on board.
[1084] Same confirmed by a charterers' claims handler.

to be available to charterers only if they have purchased their standard liability cover from them as well.[1085] Although this seems to be the general rule, especially among the IG P&I Clubs, there are some insurers who are willing to offer such covers on a stand-alone basis. Yet, they are limited in numbers and offer only specialist insurance protection which focuses exclusively on certain risks.[1086]

Last, as regards the providers of such covers, they are the same with those offering CLI protection in the forms and numbers described earlier in this work.[1087] The only difference here is that the additional insurance they offer is solely on fixed premium basis, as opposed to CLI which can be found in both mutual and fixed premium form. Also, to the extent that each of these covers is freely negotiated between the insurer and the assured charterer in exchange of a standard premium, it follows that each of them will have its own limits which can further range depending once again on the insurance provider.

3. The charterer's additional insurance covers

3.1 Freight, Demurrage and Defence cover (FD&D)

The "Defence" cover constitutes one of the most usual extensions that is traditionally added to both shipowners' P&I and charterers' liability insurance.[1088] Compared to the seniority of the P&I insurance, FD&D insurance is a considerably recent development of the insurance industry, as its development commenced only at the end of the 19th century when the shipowners felt the need for a legal costs cover as well as a general advisory service for non-P&I matters.[1089] Over the years, the cover extended and referred to charterers and operators due to the frequency and severity of charterers' exposure the last two decades which necessitated the acquisition of both liability and defence insurance.[1090] Besides, legal costs until

[1085] See, for instance, in "Gard: Defence Cover Brochure 2019", available <http://www.gard.no/web/products/charterers-and-traders>, accessed 12 March 2020, p. 6.
[1086] For example, there are Defence Clubs offering only protection against legal costs and liabilities, similarly to an FD&D cover. Or, similarly, War Risks Clubs offering war risks insurance.
[1087] See in details in Chapter IV.
[1088] Confirmed also in Astrid Elvebakk, "Charterers liability insurance - to buy or not to buy - that is the question...", <https://www.linkedin.com/pulse/charterers-liability-insurance-buy-question-astrid-elvebakke/?lipi=urn%3Ali%3Apage%3Ad_flagship3_profile_view_base_post_details%3BiQtDOtm5QImjNE0u6kFVqg%3D%3D>, accessed 12 March 2020.
[1089] *Supra,* fn. 1085, p. 3.
[1090] As supported in Carlos Vasquez, "Service matters'', *The Charterers' P&I Club Newsletter* (November 2010) p. 1 and in "FD&D – The essential tool to survival in difficult markets'', *The Charterers' P&I Club Newsletter* (July 2009).

then were covered by the insurers' own funds, so a development like that could only have been seen positively on their side too.[1091] Today, it has been supported that a great number of charterers purchase both liability and FD&D insurance,[1092] especially after the significant increase in the number of disputes between charterers and shipowners following the new market reality and the financial casualties arising thought the complex charter chains.[1093] For those who seek merely legal assistance in defending their claims, some insurers have further created internally separate entities whose services focus only on such matters, replacing in a way the expensive services offered by law firms.[1094] Thus, similarly to what has been said earlier in relation to the CLI, the available market options for such cover are numerous and hence, the competition can be quite intense among the insurers.[1095] In fact, it has been argued that many insurers that offer such cover do not have the required expertise to properly underwrite and rate such complex risks, whilst charterers are unfortunately often attracted by the low prices offered to them, only to find out later at their cost that the service they get is what they actually have paid for.[1096]

The Defence cover is nowadays offered to both shipowners and charterers invariably on an ancillary basis as a separate class of insurance only, with the exception of some Defence Clubs which provide a defence cover on a stand-alone basis.[1097] That means that the charterer should request it from his insurer subject to the payment of an additional premium.[1098] Furthermore, as in the majority of additional covers, insurers agree to provide Defence Cover to charterers only if the latter are insured with them under a liability cover as well.[1099] This trend is reasonable, though, if we consider that it places insurers in a position where they can evaluate and hence, rate better the charterer's risks and exposure.

[1091] Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 145.
[1092] View expressed by a charterers' claims handler.
[1093] As supported *in supra*, fn. 1090.
[1094] See, for example, the True North part of the MECO Group (The Charterers' P&I Club) and the CTRL Group which is part of the Shipowners' Club.
[1095] Steven J. Hazelwood, David Semark, P&I Clubs law and practice, (4th edn, Lloyd's List 2010), p. 381.
[1096] Similarly expressed in *supra*, fn. 1091, p. 144 which indicates that specialist charterers' underwriters might provide better claims handling and legal advice services from a general commercial insurer or P&I Club.
[1097] See, for example, the UK Defence Club or the Hanseatic Defence whose cover is fully compatible with the P&I cover they offer, yet it can exist as an entirely independent cover. See respectively in "Hanseatic Underwriters brochure", available <https://hanseatic-underwriters.com/wp-content/uploads/2016/04/Hanseatic_Underwriters_brochure_web_EN.pdf>, accessed 21 August 2017, p. 11. On the contrary, IG P&I Clubs do not allow that, as confirmed by claims handlers working for IG Clubs.
[1098] A time or a voyage charterer is only charged pro rata for the period on charter, but that is usually subject to a minimum period of two months, similarly to the P&I premium. As found in Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 71.
[1099] Confirmed by claim handlers working for various IG P&I Clubs.

As regards this cover's nature, similarly to CLI cover, it can be purchased mostly on a fixed premium basis,[1100] except in case of Defence Clubs which seem to be open to some mutual chartered entries as well.[1101] The exact cost of such insurance, though, will vary depending on the litigations costs in UK and USA, as the cover is frequently subject to English law and jurisdiction.[1102] Also, similarly to other forms of insurance, FD&D's limits range depending on the insurance provider from up to two[1103] to ten million[1104] US dollars per event and theirs risks are subject to their own separate deductibles. However, it has been argued that lately a change has been noticed in the market with charterers increasingly seeking for higher defence protection limits, following perhaps the frequency of the disputes they are involved in. Also, it is interesting to note that contrary to other covers, along with the above maximum limits, the Defence cover is further subject to a bottom limit, often in the region of ten thousand US dollars per claim, so to prevent insurers from being bombarded by thousands of claims.[1105]

As regards the scope of this insurance, it purports generally to provide for legal advice in connection with disputes or liabilities arising primarily from charterparties, bills of lading, contracts of affreightment, or other forms of contracts of carriage, or generally in direct connection with the vessel's, its operation or disposal, either the claim is brought by the shipowner or any other third party.[1106] Also, although it is provided on an ancillary basis,

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[1100] See, for example, in "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 5.

[1101] See, for example, section 9 of the UK Defence Club's Rules 2019, according to which a "*fixed premium entry''* is "*a ship which has been entered in the Association pursuant to Rule 12 by a voyage charterer for an agreed fixed premium or in such other manned as the Directors might from time to time agree''*; whereas an "*applicant member"* in relation to a ship which is entered or desired to be entered in the Association is defined as the "*owner, owners in partnership, (...), charterer, operator, (...), provided always they are named in the Certificate of Entry by whom or on whose behalf an application has been, is being or is to be made for the Entry, whether he be or is to be a Member or not''*.

[1102] See, for example, section 8, Rule 44 of UK Defence Club's Rules 2017, section 25 in combination with section 46 of RaetsMarine Liability policy for Charterers 2017.

[1103] See for example, clause 2(A) of the Charterer's P&I Club's Rules 2018. It has been argued by a charterers' underwriter that this limit can go up to 5 million, yet only in exceptional circumstances. Also, under clause 22.4 of Skuld Charterers' Cover Terms & Conditions 2017 the limit for FD&D claims is 5 million US dollars. Same in Rule 32.1 of the Norwegian Hull Club Charterers' Rules 2016.
See also, in *supra,* fn. 1097, in Hanseatic Underwriters brochure, p. 11.

[1104] See, for example, "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020, p. 2 ; also "Gard: Comprehensive Charterers' Liability Cover" (2013) available <http://www.gard.no/Content/67630/Comprehensive%20Charterers%20Cover%20%202013.pdf>, accessed 12 March 2020, p.5 and 6. Actually some Clubs, like Gard, can upon their discretion extend their cover's limits even further on a case-by-case basis.

[1105] *Supra*, fn. 1095, p. 385.

[1106] "Norwegian Hull Club: Charterer's combined P&I/CLH and FD&D", available at <https://www.norclub.no/assets/ArticleFiles/Charterers-Combined-PICLH-and-FDD.pdf>, accessed 19 June 2017, p. 1; "Raets Marine: Charterer's liability hand-out" (2014), available

following the P&I or liability cover, they are mutually exclusive and therefore, the Defence cover protects only against disputes whose main risk does not fall within the primary P&I insurance. Nonetheless, it needs to be clarified that this would not imply at the same time that any cost not falling within a liability cover will be always covered under charterers' Defence cover.[1107] On the contrary, similarly to CLI cover, the FD&D cover is not open-ended, as it is a named risks policy. So, its scope will be limited only to those disputes enumerated and explicitly mentioned in there.[1108]

The disputes' types that are covered under the majority of FD&D covers include first of all those referring to claims for hire, such as those related to the off-hire period and withdrawal of the vessel; or for freight, deadfreight as well as for demurrage, laytime, detention or despatch money.[1109] Furthermore, they include claims related to general average contributions and loss or damages caused to the hull of the vessel.[1110] Passenger, crew and stowaway claims constitute also a usual covered risk.[1111] But, considering the limited interaction of charterers with these persons, the inclusion of such risk to their cover does not add much to their overall protection. The cover provides further protection against disputes arising as a result of a breach of any contract of carriage that the charterer is bound by, regarding for instance the speed or performance of the chartered vessel or the safety of the nominated port.[1112] Whilst, of special importance is the covered disputes related to the improper execution of cargo operations.[1113] Under the latter risk fall also the costs arising as a result of the charterer defending himself

<https://www.raetsmarine.com/sites/default/files/default/files/cl-handout_2014_0.pdf>, accessed 19 June 2017, p. 3; supra, fn. 1085, in Gard's Defence Cover Brochure, p. 3.

[1107] "Carina: Guide to P&I Insurance", available at <https://www.carinapandi.com/assets/Uploads/documents/Guide-to-PandI-v01.pdf>, accessed 9 June 2017, p. 4 and *supra,* fn. 1091, p. 138.

[1108] See, for instance, Class 1, clause 3 of the Charterers P&I Club Terms and Conditions 2018 stating that "*legal cost and expenses, including any legal cost and expenses which the assured may become liable to pay to any other party in proceedings, solely for Claims as set out in sections 1-17 of this clause''*. See also, Rule 6 of the Shipowners' Club's Rules 2018.

[1109] See, for example, Clause 3, sections 1, 3 and 4 of the Charterers' P&I Club Terms and Conditions 2018, class 2, sections 18.1.1 and 18.1.5 of RaetsMarine Liability policy for Charterers 2017, Rule 29.1.1 of the Norwegian Hull Club Charterers' Rules 2016, Rule 7, Chapter C, Rule 2(b)(i) of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1110] Clause 3, sections 2, 5 and 8 of the Charterers' P&I Club Terms and Conditions 2018, class 2, section 18.1.6 of RaetsMarine Liability policy for Charterers 2017, Part 3, clauses 22.1.7 and 22.1.6 of Skuld Charterers' Cover Terms & Conditions 2017, Rules 29.1.4 and 29.1.5 of the Norwegian Hull Club Charterers' Rules 2016, Chapter C, Rule 2(b)(ii) and (iv) of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1111] Clause 3, sections 11 and 12 of the Charterers' P&I Club Terms and Conditions 2018, class 2, sections 18.1.9 and 18.1.10 of RaetsMarine Liability policy for Charterers 2017.

[1112] Clause 3, section 6 of the Charterers' P&I Club Terms and Conditions 2018. Similar in Chapter C, Rule 2(b)(vi) of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1113] *Ibid* in Charterers' P&I Terms, section 7, class 2, section 18.1.4 of RaetsMarine Liability policy for Charterers 2017, Part 3, clause 22.1.1 of Skuld Charterers' Cover Terms & Conditions 2017, Rule 29.1.3 of the Norwegian Hull Club Charterers' Rules 2016.

after sustained economic losses due to cyber-related liabilities which are excluded under his liability policy. Salvage, towage and ship repair claims fall within this cover too.[1114] Similarly applies for criminal and administrative offence proceedings against the assured.[1115] In addition, many insurers provide coverage against disputes concerning insurance contracts (e.g H&M, P&I, Loss of Hire) or contracts agreed with port agents and stevedores,[1116] as well as claims for damage to third party property.[1117] It has been mentioned above that the FD&D cover might even include disputes related to risks that are usually banned from a traditional CLI cover. This happens, for instance, in case of delay claims which are often part of an FD&D cover,[1118] but are excluded from a CLI. However, it is important to note that not many insurers are willing to offer cover for such disputes when the risk itself does not appear in their liability cover.

Interestingly, it has been noticed that some insurers offer also protection against disputes related to the supply of inferior, unsuitable or bad quality fuel (off-spec bunkers).[1119] It is important to clarify here that legal costs arising due to the use of off-spec bunkers can be covered under the CLI as well, but only if these bunkers resulted in the hull damage, or if extra bunker handling costs constitute a covered risk under the liability policy.[1120] Therefore, this clause generally refers to any other expense that the charterers can incur by the use of wrong fuel which does not result in any way in a risk covered under their liability cover. However, it would seem that the scope of such protection is still very limited, compared perhaps to the general exposure of the charterer in relation to the bunkers supplied on board. It has been mentioned in the first part of this work that in case of a time charter, the charterer traditionally arranges for the bunkers' supplies by negotiating with his bunker suppliers, and that sometimes there are disputes arising in respect of not only the ownership of these bunkers, but their

[1114] See, for example, Rule 29.1.6 of the Norwegian Hull Club Charterers' Rules 2016, section 18.1.7 of RaetsMarine Liability policy for Charterers 2017, Chapter C, Rule 2(b)(ii) of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[1115] See, for example, *supra* fn. 1097, in Hanseatic Underwriters' brochure, p. 11. Similarly also under class 2, section 18.1.8 of RaetsMarine Liability policy for Charterers 2017, Rule 29.1.11 of the Norwegian Hull Club Charterers' Rules 2016, Chapter C, Rule 2(b)(v) of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[1116]See for example, class 2, sections 18.1.12 and 18.1.3 of RaetsMarine Liability policy for Charterers 2017, Part 3, clause 22.1.2 of Skuld Charterers' Cover Terms & Conditions 2017, Rules 29.1.7 and 29.1.8 of the Norwegian Hull Club Charterers' Rules 2016, Chapter C, Rule 2(b)(iii) of the Swedish Club Rules for Charterer's Insurance 2018/2019. See also, *supra*, fn. 1115, in Hanseatic underwriters' brochure.
[1117] See, for example, Part 3, clause 22.1.8 of Skuld Charterers' Cover Terms & Conditions 2017, Rule 29.1.10 of the Norwegian Hull Club Charterers' Rules 2016.
[1118] See, for example, Rule 29.1.4 of the Norwegian Hull Club Charterers' Rules 2016.
[1119] See, for example, rule 6, clause 3(v) of the Shipowners' Club Rules 2018, class 1, clause 3, section 8 of the Charterers' P&I Club Terms and Conditions 2018, section 3, rule 19(1)(v) of North of England FD&D Rules 2018-2019. Maybe also under the similar, yet broader section 18.1.15 of RaetsMarine Liability policy for Charterers 2017.
[1120] Such as in clause 8 of Skuld Charterers' Cover Terms and Conditions 2017.

payment as well. Consequently, any disputes resulting from the bunkers' sales or purchase contract will not be part of the charterers' FD&D cover, as the latter refers only to fuel quality related matters. In this case, especially the time charterer will need to consider purchasing a Bunkers' Cover, so to prevent himself from being exposed against the aforesaid liabilities.[1121] Alternatively, the charterers can resort to the use of the "omnibus clause''[1122] which works in a similar manner with the one described earlier under the CLI cover.[1123] Lastly, there are risks that can be part of the charterers' defence policy only subject to a special agreement with their insurer. These risks include, for example, disputes regarding the alteration or conversion of the vessel, its purchase, sale or mortgage and building of the vessel.[1124]

Regarding the type of costs covered under such insurance, they are divided into two main categories. The first is related to the costs of pursuing or defending any operating disputes arising between the charterer and a third party, such as the shipowner, ship operator or sub-charterer, stevedores, agents, a State or a public body.[1125] These will include, for instance, any expenses paid for instructing a law firm to represent the charterer before court proceedings, or for hiring experts to investigate and obtain evidence about the claim, or for appointing correspondents to assist them in any of the above and for covering court and tribunal feels.[1126] Therefore, despite the cover's misleading title, such insurance provides assistance not only in respect of defending claims against charterers, but prosecuting claims as well. The second category of costs covered has to do with costs that a charterer is ordered to pay to any other party or the opponent in case he loses a dispute or claim and so, he has to compensate the winning party for the legal expenses incurred.[1127]

[1121] For more details on Charterers' Bunkers' Cover see below.
[1122] See for example, section 3, clause 17 of the Charterers' P&I Club Terms and Conditions 2018, rule 6(4)(i) of the Shipowners' Club Rules 2018, Chapter C, Rule 2(b)(vii) of the Swedish Club Rules for Charterer's Insurance 2018/2019.
[1123] For more details, see Chapter V in 2.3.4 "Claim for a covered risk – The omnibus clause".
[1124] See, for example, Rule 29.1.12 of the Norwegian Hull Club Charterers' Rules 2016 and *supra*, fn. 1085, p. 4.
[1125] Heinz E. Gohlish, Charterers' liability insurance: Essential best practice, (Witherbys Insurance 2008), p. 69; see also *supra*, fn. 1088.
[1126] *Supra*, fn. 1085, in *Gard's Defence Cover Brochure*, p. 5 and *supra*, fn. 1095, p. 382.
[1127] These include also the expenses incurred by the other party for instructing a solicitor working for the Club. See respectively *London Arbitration 20/06 (2006)* 705 LMLN 3. Here, the charterers refused to cover costs in respect of time spent by the owner's club's in-house lawyer supporting that the owner did not have any liability for these fees under his Defence cover. However, the tribunal found that there was no breach of the indemnity principle and held that there was nothing wrong with the club's arrangement to provide legal advice to its member beyond the normal level by appointing an in-house lawyer on the basis that entitled their member to recover the costs of such services from his opponent, provided that the arrangements made have been actually achieved. As found *in* *supra*, fn. 1095, p. 390-391.

Although the cover seems to include the majority of the heavy legal fees and costs incurred usually by a charterer, it is important to be distinguished from the P&I cover as to the handling of claims arising from it. Thus, contrary to what applies to P&I insurance, here, the insurer's support for a specific incident is entirely discretionary and there is no automatic entitlement to make a claim with respect to individual cases. More specifically, the wording invariably used in such covers provides that "*the extent to which (if at all)*[1128] *an assured may be supported by the underwriters in respect of any claims shall be decided by the underwriter'*';[1129] and continues by clarifying that each claim is being judged on its own merits, while "*previous support of a particular type of claim does not guarantee, or in any way bind the underwriters from (…) covering a similar claim in the future''*.[1130] Indicatively, usual factors that affect the insurers' decision are the charterers' interests, the reasonableness of his conduct, the level of estimated costs, the likelihood of the claim succeeding or being settled, the applicable law and jurisdiction, the alternative means for resolution or prospect of enforcement.[1131]

Clearly, it is implied that the insurer's discretion should be exercised in good faith,[1132] in the sense that the insurer should consider what would be the best tactic for both him and his assured.[1133] The insurer's compliance with this duty is significantly important, as similarly to what happens in case of the CLI risks, the insurer is in entire control of the handling proceedings and therefore, no decision can be made by the assured alone without the former's prior approval. It could be further argued that the insurer is subject to the same duty even after he has agreed with the coverage of a certain risk, as the Insurance Act 2015 does not seem to delineate between the parties' duty prior and after the conclusion of their agreement.[1134] Consequently, if the assured charterer is providing his insurer with all the material information

[1128] Emphasis added by the author.
[1129] See, for example, Class 1, clause 1(A) of the Charterers' P&I Club Terms and Conditions 2018, Class C, Rule 4 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Part 3, clause 30 of the Norwegian Hull Club Charterers' Rules 2016, Part 3, clause 22.2.7.10 of Skuld Charterers' Cover Terms & Conditions 2017, class 2, section 19.2.1 of RaetsMarine Liability policy for Charterers 2017.
[1130] *Ibid*, the Charterers Club Terms.
[1131] *Supra*, fn. 1125, p. 72.
[1132] See respectively section 3 of the Insurance Act 2015.
[1133] *Groom v. Crocker* (1939) 1 KB 194, per Sir Wilfrid Greene MR, at p. 203. Similarly supported in *The Mercandian Continent* [2001] EWCA Civ 1275; [2001] 2 Lloyd's Rep. 563, at para. 22.
[1134] In line with what was previously applicable in relation to section 17 of MIA 1906. The same point is also made by "The insurer's duty of good faith: is the path now clear for the introduction of new remedies?", in Clarke M. and Soyer B. (ed.*), Insurance Act 2015: A new regime for commercial and marine insurance law*, (Informa Law from Routledge 2016) in Chapter 3.

that a prudent insurer would require in order to assess the risk efficiently, the insurer is not entitled to deny continuing offering his protection to the assured at a post-contractual stage.[1135]

The insurer's discretion is further extended to decisions related to the type of costs falling within the cover. In other words, the insurers decide whether their cover should be strictly confined to the legal costs incurred, or include the costs of other services used in order for the particular claim to succeed.[1136] Also, similarly to CLI, to the extent that the charterer has protection under another cover, the FD&D protection against the same risks cannot be enforced.[1137] It is clear therefore that the insurer has a considerable influence on the legal defence of the assured, as he maintains besides his right to recover from the assured an amount equal to any amounts paid by him under this policy for the purposes of the same claim, in case there is finally an award or judgement in charterer's favour.[1138]

Despite how frustrating these principles can be for the assured whose insurance protection is subjectively evaluated, things can get more complicated for charterers insured within an IG Club. It is supported, for example, that if the charterer is insured with the same Club as the shipowner with whom he is in dispute, the risk of him not being covered under his FD&D cover is increased, despite the Club's efforts to persuade the charterer that there is no conflict of interest for them.[1139]

The importance of such cover for a charterer is undisputed and sometimes it is argued that is even more necessary compared to a shipowner. In a business like that, where various parties are being involved in the maritime venture, it is inevitable that a dispute will arise at some point, being either simply a difference on interpretation of a particular provision, or even worse, a dispute following a casualty where causation is being questioned. Similarly applies to charterers who stand in the middle of a service supply chain due to their active trading role, and the continuous flow of disputes that is followed by costs which may constitute a considerable strain on the charterer's finances.[1140] For example, the charterer will always be subject to an operating contract and so, the potential exposure to contractual disputes is

[1135] Similarly in *ibid*, at p. 8-9.
[1136] See, *supra*, fn. 1129 and fn. 1091, p. 141.
[1137] See, for example, class 2, section 19.1.1 of RaetsMarine Liability policy for Charterers 2017, Part 3, clause 30.1.1 of the Norwegian Hull Club Charterers' Rules 2016, Class C, section 2, exclusion (i) of Charterama General Terms and Conditions, Policy Wording 2017.
[1138] See, for example, clause 5 of the Charterers' P&I Club Terms and Conditions 2018.
[1139] In Heinz E. Gohlish, Charterers' liability insurance: Essential best practice, (Witherbys Insurance 2008), p. 72.
[1140] "Gard: Defence Cover Brochure 2019", available <http://www.gard.no/web/products/charterers-and-traders>, accessed 12 March 2020, p. 4.

constant, either he is a time or a voyage charterer. Of course, the degree of his exposure will depend on the specific chartering arrangement and its nature. Thus, if a charterer prefers to do business with the same owner who is also a well-known counter-party, the FD&D cover becomes less important. The same also applies in case that the contracting parties conclude in a standard non-amended BIMCO charter form and so, it is expected that any disputes will be dealt with in-house. On the other hand, if the assured charterer is operating internationally with multiple different entities at the same time (e.g port authorities, cargo owners, stevedores, bunker suppliers, ship agents) and tends to contract out standard charterparty clauses, legal protection is vital to him, considering the number of all the potential disputes that can arise in the course of the ship's operation.

Consequently, in essence the FD&D cover constitutes a security for charterers who can continue carrying out their business knowing that in case something goes wrong, they will have a cover available to assist them in protecting their rights. In fact, it is expected that the significance of this cover will most likely increase in the future as shipping industry evolves, and new complex operating systems on board of ships will be introduced in shipping, along with the trading of specialised and expensive cargo.

3.2 The bunkers' cover

Bunkers' insurance presence in the insurance world is longstanding and is provided both by the IG Clubs as well as within the commercial insurance market, either by specialist charterers' liability insurers or by any other general shipping insurance entity. As it has been mentioned in the previous chapter, when it comes to risks related to the bunkers on board, the norm seems to be that charterers will be protected only against liabilities that arise as a result of the use of such bunkers. Therefore, the purpose of bunkers' insurance is to protect charterers against losses incurred due to the loss of or damage to bunkers or fuel on board of the insured vessel.[1141]

Clearly, the rationale behind this arrangement is triggered primarily by the proprietary interests that charterers have over the bunkers which distinguish, therefore, this additional type

[1141] See section III, clause C of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Part 2, Appendix 4 of Skuld Charterers' Cover Terms & Conditions 2017, clause 3 of Amica Conditions of Insurance 09/2009, clause 71.1 of Lodestar P&I and Legal Expenses Insurance Terms and Conditions (May 2017), Part 3, clause 28.1.2 of the Norwegian Hull Club Charterers' Rules 2016, Chapter D.2 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

of insurance from the liability one. This complies further with the general rule that applies in relation to cargo risks, as analysed earlier.[1142] Thus, similarly to the principle that the liability cover would be effective against cargo risks insofar as the cargo in question does not belong to the assured charterer, the bunkers on board, being also cargo in the term's broad sense, should not belong to the charterer either, so to be covered under his liability cover. Another reason that could justify why such risks are separately covered lies on the fact that such risks are only of importance to time charterers who undertake the provision of bunkers under the charter and so, as opposed to voyage or slot charterers, they are in need of another layer of protection which will safeguard them against further financial losses.[1143] Having said that, however, it needs to be pointed out that although the above arrangement constitutes the general rule, there are still some policies under which bunkers' risks appear merely as a separate class within the charterer's cover.[1144]

In relation to the bunkers' policy, it is commonly structured as an open cover providing bunkers cover to charterers for all of his chartered vessels where the charterer has an exposure, and appears mostly under the following two most prevailing forms. First, it can be a named risks cover based on the Institute Cargo Clauses (C)[1145] where the risk commences and terminates in accordance with the charterparty, whilst the value of the insured asset and the indemnity decline as the voyage proceeds. However, if the vessel is a total loss, the full declared value on commencement of the risk is paid out. Second, it can be purchased as a wider "all-risks'' cover based on the SP13 Bulk Oil Clauses[1146] which exclude only leakage, shortage and contamination, unless the latter is caused as a result of the vessel being stranded, lost or burned, or due to a collision or explosion. [1147]

[1142] See Chapter V, in 2.2.2.2 regarding liability in respect of the cargo carried on board.
[1143] See, for example, Gard's Additional Cover for Bunkers that is offered to time charterers. Also, clause 22 (iii) referring to Time charterers' Bunkers of Steamship's Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[1144] See, for example, rule 4, section 2(C) of the Shipowners' Club Rules 2018, rule 19(24)(C) of Britannia Rules of Class 3, Protection and Indemnity, List of Correspondents 2017, section 2 of the Charterers' liability for damage to hull clause 2017 in the Standard's Club Fixed Premium Rules and Correspondents 2017/2018, clause 29.3 of Carina Policy Terms and Conditions 2016, clause 25.a.iv of Navigators P&I Policy Wording 2017.
[1145] See, for example, clause 3 of Amica Terms of Insurance 09/2009.
[1146] Or on the Institute Bulk Oil Clauses 1.2.83, the Institute War Clauses (Cargo) and the Institute Strike Clauses (Cargo) 1.1.82. See respectively, "Gard: Comprehensive Charterers' Liability Cover" (2013) available <http://www.gard.no/Content/67630/Comprehensive%20Charterers%20Cover%20%202013.pdf>, accessed 12 March 2020, p. 3. See also similarly in section III, clause C.1.1-1.3 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), clause 3.1 of DUPI Charterers Liability Insurance Conditions (August 2016).
[1147] *Supra*, fn. 1139, p. 137.

The form of this insurance and the cost of it depend on various factors, including but not limited to the chartered vessel's trading area, the type of cargo carried on board as well as the charterer's record for bunkers insurance, the vessel's age and classification and most importantly, the declared value of the bunkers at the commencement of the voyage. Additionally, the charterer's decision on the type of the bunker policy depends often on the value of bunkers remaining aboard and on whether they are required to make a general average contribution.[1148]

Regarding the nature of this cover, similarly to the majority of charterers' additional covers, bunkers' cover is usually provided by the insurers subject to charterers being insured with them for a liability cover.[1149] Hence, this factor might impact upon the charterer's final decision as to which insurer to choose, considering the additional covers that such insurer can offer them. When it comes to the limits of such insurance, it is mentioned that they are limited for any and all claims to the lesser of the replacement value of the bunkers and to two million dollars per incident.[1150] Higher limits are also available, but similarly to other covers, they are subject to the insurer's approval and the agreement on special terms and conditions.[1151] However, such higher limits are unusual on the basis that most charterers find an indemnity between five hundred thousand and one million dollars satisfactory.[1152]

In terms of risks covered, this insurance provides protection against loss of or damage to bunkers, stores and supplies belonging to the assured charterer on board of the chartered vessel. This will usually include loss or damage due to peril of the sea, fire, explosion and theft, collision, grounding or sinking of the vessel, or accident during bunkering operations.[1153] Another very frequent risk that is also covered under such policy is loss of bunkers arising from their contamination resulted, for example, due to the crewmembers' negligence by opening the wrong valves, or due to the use of off-spec fuel.[1154] In this case, although the charterer's liability for the use of off-spec bunkers will usually fall within his traditional liability cover, along with

[1148] For example, it has been argued that newer ships will almost always have a lower premium than ships than ships that are older, especially above 15 years old. See respectively ibid, p. 137 and 138.
[1149] See, for example "Gard: Bunkers' cover brochure" (2013), available <http://www.gard.no/Content/18269571/Bunkers%20Cover%202013.pdf>, accessed 12 March 2020, p.3.
[1150] *Ibid*. But opposite under section III, clause C.1.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) where it is stated that only in case of the bunkers' total loss, "*the sum payable shall be the value of bunkers on the chartered ship when leaving the last port of call''*. Similarly also under clause 22(iii)(i) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[1151] *Supra,* fn. 1149, in Gard's Bunkers' cover brochure.
[1152] *Supra,* fn. 1139, p. 138.
[1153] E.g Due to negligence of the master, officers or crew in pumping cargo, ballast or fuel.
[1154] See, for instance, clause 26.1 of DUPI Charterers Liability Insurance Conditions (August 2016), rule 22(iii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.

any expenses incurred for removing or cleaning these bunkers (known as extra bunker handling costs clause),[1155] the value of the damaged bunkers itself will be recovered under the bunkers' insurance. Therefore, considering how frequently time charterers are involved in disputes with their bunker suppliers and the shipowners regarding the quality of the purchased bunkers, combined with the fact that bunkers' supply contracts are often supplier's friendly and the legal recovery actions against them are very complicated, the risk of charterers being found exposed to bunkers' losses is significant. That subsequently makes the purchase of bunkers' cover necessary. However, we need to bear in mind that disputes in relation to the quality or quantity of bunkers do not fall within this cover, [1156] but under the majority of the FD&D covers, in the form described above. It was further noticed that some insurers offer a quite broad bunkers' cover under which they cover the risks of charterer's contribution to general average and salvage award, although this will be most of the times covered under their traditional liability cover, as previously described.[1157] Very rarely, a wider cover will further protect charterers against the risk of war-like or strike circumstances[1158] as well as the charterer's proportional liability as it arises from the application of the "both to blame collision'' clause.[1159]

On the other hand, loss of or damage to the vessel's bunkers due to their own inherent vice or ordinary wear and tear are not typically covered, in line also with the provisions of MIA 1906.[1160] Similarly applies in case where the loss or damage is caused by the wilful misconduct of the assured and the vessel's unfitness.[1161] But most importantly, any financial loss suffered by the charterer from the loss of or damage to his bunkers that resulted in his delay remains outside the scope of a standard bunkers' cover, as it occurs in the majority of the losses arising from delay.[1162]

[1155] See, for example, clause 8 of Skuld Charterers' Cover Terms and Conditions 2017.
[1156] See, for example, clause 22(iii) of Steamship Mutual Underwriting Association Ltd Charterers' Cover 2017/2018.
[1157] See Chapter V in 2.2.2.3.i "Liability for salvage and general average contributions", at p. 193.
[1158] But these risks are normally excluded under most of the insurance policies. See respectively clauses 27.3 and 27.4 of DUPI Charterers Liability Insurance Conditions (August 2016).
[1159] See, for example supra, fn.1149, in Gard Bunkers' Cover Brochure, p.3 and clause 26.3 of DUPI Charterers Liability Insurance Conditions (August 2016).
[1160] Section 55(2)(c).
[1161] See, for example, clause 27 of DUPI Charterers Liability Insurance Conditions (August 2016).
[1162] *Supra,* fn. 1149, in, Gard Bunkers' cover brochure, p. 5.

3.3 Cargo owner's liability cover

In the previous chapter, when the charterer's protection against cargo liabilities were being discussed, it was made clear that the cover would be granted only when the cargo on board belongs to a third party, and not to the assured charterer. As a result of that distinction, the market developed a separate additional policy which provides coverage against legal liabilities, costs and expenses arising from the carried cargo and refers to those charterers who happen also to be the cargo's shippers and owners.[1163] This can occur, for example, when under the cargo's sale contract (being either a C.I.F or an F.O.B) the seller or buyer of the cargo are obliged to transfer the cargo to the destination provided by the buyer and therefore, they need to charter a vessel.[1164] Thus, contrary to the bunkers' cover, which was mostly related to time charterers' interests, it could be argued that this cover tends to draw mainly the attention of voyage and slot or trip charterers who often operate as general cargo traders too.

It is typical for cargo traders to purchase their own cargo insurance against loss of or damage to the cargo. However, in practice, this makes many of them mistakenly believe that such cover will also protect them against liabilities that arise as a result of their own cargo which is not always the case. It follows, therefore, that this additional cover is important to them, as there are many categories of traders who are significantly exposed to the same risks. A good example of such traders is the oil traders.[1165] Let's imagine, for instance, that a ship spills an oil cargo belonging to a trader, causing damage to a marina, yachts and a fish farm. As a result of this damage, the parties whose interests were affected by this incident will now be seeking compensation for the losses they suffered. There are legislations in some countries, within the EU as well as in some US coastal states that allow claims to be made directly against both the owner of oil that is spilled and the owner of the vessel that the oil is spilled from. In such a scenario, if the affected parties decide to bring their claim against the cargo owner/trader,

[1163] See, section III, clause B of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Class B of Charterama Policy Wording 2017.

[1164] See, for example, section 4 of Amica Conditions of Insurance 2009 where it is stated that such insurance is provided to the "*owners and/or consignees'*' of cargoes on board of the insured vessel. Similarly also under section III, clause B.1.2.1 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) where it is expressly mentioned that '*the owner of the cargo shall include the buyer, seller, or holder of the bill of lading'*. Similarly also under section 20 of Raetsmarine Charterers' Liability Policy 2017.

[1165] As supported also in "West of England Club: Charterers comprehensive cover", available at <https://www.westpandi.com/products/standard-covers/charterers/>, accessed 12 March 2020, p. 3.

his cargo owner's legal liability cover would insure him against these claims, while his cargo insurance would cover any loss of the cargo itself.[1166]

It should be noted that in terms of cover's scope, it extends only to those liabilities, costs and expenses that fall within the CLI, as described in the previous chapter.[1167] In addition to these, there are some insurers who offer a more extended cover so to include cargo that is being carried on ships that are not chartered by the assured trader. Hence, the trader has also protection against liabilities which may face as the owner of cargo purchased in transit.[1168] However, it is noteworthy that liability arising from lighterage and ship-to-ship transfer is usually excluded from the cargo owner's legal liability cover.[1169]

3.4 Charterers' loss of use cover

One of the most crucial omits that was identified earlier in the CLI cover as offered by the insurers' majority in practice was the lack of protection against commercial losses the charterers might suffer as a result of one of their covered risks under their liability policy. To be more accurate, it was found that although such financial losses can be covered when the CLI insurance includes also liabilities against damage to the vessel's hull, the same does not seem to apply to other two classes usually inserted into their liability cover, that is to say for cargo and P&I risks.

The alternative that the insurance market introduced to charterers, purporting to cover their exposure in respect of the above risks, is the additional cover for the loss of use[1170] they incur.

[1166] "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 12-13; "The London P&I Club: Cover for charterers", available <https://www.londonpandi.com/special-cover/> accessed 12 March 2020, p. 4.

[1167] See, clause 13(a) of DUPI Charterers Liability Insurance Conditions (August 2016), section 4 of Amica Conditions of Insurance 2009, section III, clause B.1of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018), Class B of Charterama Policy Wording 2017, section 20 of Raetsmarine Charterers' Liability Policy 2017. A more limited protection is provided under Chapter D.3 of the Swedish Club Rules for Charterers' Insurance Articles of Association 2018/2019 where the risks against cargo owner is protected are named.

[1168] *Supra,* fn. 1166, Steamship, p. 13. See respectively section III, clause B.1.2.2 of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018) where 'cargo' means "*any lawful and merchantable commodity or goods intended to be or being or having been carried* (emphasis added) *on board the Chartered Ship (...)*''. Same also under Class B of Charterama Policy Wording 2017 and section 20 of Raetsmarine Charterers' Liability Policy 2017. See further similar clause 13 of DUPI Charterers Liability Insurance Conditions (August 2016).

[1169] See, Class B of Charterama Policy Wording 2017, section 20.1 of Raetsmarine Charterers' Liability Policy 2017.

[1170] Also known as Loss of Hire cover. See as supported in Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 66. However, the use of this term is not preferable, as the

This type of cover is relatively new[1171] and responds primarily to the charterers' liability to continue paying hire to the shipowner under the terms of a charterparty over a period during which they cannot make use of the chartered ship, because it is prevented from sailing due to detention, delay or even arrest caused by any reason apart from its physical damage or of its loss.[1172] Similarly further applies in case where the vessel is sub-chartered and the charterer seeks compensation for the difference between the charter rates paid and received, where the hire is deemed due under the head-charter for reasons due to the ship sustaining a particular average covered by the relevant H&M policy.[1173] This insurance also protects the charterer in respect of his earned freight in the sense that it helps him minimise the impact that some circumstances beyond his control might have when they are preventing him from earning the revenue needed to pay for the ship's daily hire or his business running costs.[1174] That can happen for example when the chartered vessel is declared a total loss after being sunk and the charterer is seeking protection for his loss of profits and advance freight.[1175] Therefore, it could be argued that this cover not only is useful to time charterers who usually carry the financial burden of any time lost under the charter, but also improves the protection of voyage charterers who are now covered for any demurrage and detention damages paid, resulting from a reason other than the physical damage of the vessel's hull.

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same name is used also for the shipowners' additional cover for loss of hire which insures them against their loss of earnings on their chartered vessel resulting from their vessel having been damaged on account of a peril insured against in their hull policy. See respectively Robert T. Lemon II, "Liability 'as owner of the vessel named herein': coverage of liability of non-owners'' (1968-1969) 43 Tul. L. Rev. 475, p. 1477.

[1171] The equivalent cover for shipowners which is the Loss of Hire cover was emerged only in the past twenty to thirty years since the end of World War II. As supported in Mya Thida Lin, "A selective appraisal of the P&I insurance system, with special reference to claims for personal injury, illness and loss of life" (Master thesis, World Maritime University Dissertations 2009), p. 9. In fact, many charterers and operators found this new cover more advantageous compared to a standard shipowners' Loss of Hire cover, as it covers a substantial number of additional risks that the former would not normally include. See respectively in Christopher Else, "Five years of demutualisation", *Transmarine Transcript*, (April 2002).

[1172] See "Gard: Charterers' loss of use cover" (2014), available <http://www.gard.no/Content/14376622/Charterers%20loss%20of%20use%20July%202014.pdf>, accessed 12 March 2020, p.2. Similarly also in the London P&I Club Charterer's Cover for Loss of Use. See respectively "The London P&I Club: Charterers' covers for loss of hire & loss of use", available < https://www.londonpandi.com/documents/lp/>, accessed 12 March 2020. And clause 19(24)(D) of Britannia Rules of Class 3, P&I and List of Correspondents 2017.

[1173] See respectively in the Swedish Club Charterers' Brochure 2016, p. 9 and specifically in Chapter D.5 of the Swedish Club Rules for Charterers' Insurance Articles of Association 2018/2019.

[1174] *Supra*, fn. 1170, in Heinz E. Gohlish, p. 64 and 66. See also clause 19(24)(D) of Britannia Rules of Class 3, P&I and List of Correspondents 2017 and the Trade Disruption Insurance Cover for cargo vessels provided by the MecoGroup, available < https://www.themecogroup.co.uk/transmarine-trade-disruption-insurance/cover/class-ii-trade-disruption-insurance-cargo-vessels/>, accessed 12 March 2020, Appendix 4, Skuld Additional Covers in Skuld Charterers' Cover Terms & Conditions 2017.

[1175] Known as Charterers' interest insurance. See, respectively in the Swedish Club Charterers' Brochure 2016, p. 9 and specifically in Chapter D.4 of the Swedish Club Rules for Charterers' Insurance Articles of Association 2018/2019.

This cover is also known as Trade Disruption Insurance (TDI) and contrary to the standard principal insurances which emanate from shipping practices (i.e common law, contract and statute), it emanates generally from external events that prevent the ship operator or charterer from continuing his usual trade, and consequently interrupt his flow of earnings.[1176] Although this cover was initially focused on offering protection against any fortuitous peril named in the standard H&M policies that were affecting the financial obligations of the charterer, similarly to the shipowners' Loss of Use cover, it eventually developed and extended its scope so to include other related perils beyond the charterer's control, such as emergency port closures, mechanical breakdowns on land, pollution, stowaways, or abnormal obstruction of a berth.[1177]

For example, when there is an oil spill causing damage to a third party property and clean-up operations are being ordered by the local authorities which last for months or, when there is a stevedore injury caused during the cargo handling operations and the charterer is ordered in both cases to compensate the shipowner in damages for his lost hire on the basis that the incident was attributable to his orders, he will be able to recover these losses under his loss of use cover. The same will also apply even in case of events falling completely outside charterer's control which have a non-P&I nature, such as the vessel's seizure by pirates where hire continues to run under the charterparty for at least ninety days since the vessel was seized. Similar protection is further granted to the charterer in case of lost time due to delays encountered in arrival to or departure from a scheduled, now congested, port resulted from a previous incident (e.g grounding, collision) involving another vessel and the charterer cannot declare the vessel "off-hire'', as the delay is found to have been caused due to his own breach, for example, by nominating an unsafe port.[1178]

As regards the limits of such cover, once again they vary depending on the insurance provider, presenting a monetary cap of up to one million dollars per ship and up to five million dollars in the annual aggregate for the chartered fleet.[1179] It is further quite common for the insurer to offer such additional cover only to charterers that are insured with them for their general liability, as such cover is not typically offered on a stand-alone basis, as it is the case

[1176] *Supra,* fn. 1170, in Heinz E. Gohlish, p. 64.
[1177] *Supra,* fn. 1172, p. 3 and *ibid*, p. 66.
[1178] As found in *supra,* fn. 1172, p. 4. See also, the Trade Disruption Insurance Cover for cargo vessels provided by the MecoGroup, available <https://www.themecogroup.co.uk/transmarine-trade-disruption-insurance/cover/class-ii-trade-disruption-insurance-cargo-vessels/>, accessed 12 March 2020.
[1179] *Supra,* fn. 1172, p. 3 and in The London P&I Club: Charterers' Covers For Loss of Hire & Loss Of Use – Product Overview.

for all the other additional covers that were discussed so far.[1180] In terms of the cover's price, it has been argued that for a ninety days cover and with an excess of fourteen days, the premium may typically be in the region of three to four and a half days hire, although there are variations and higher limits might be applicable for some operations.[1181] Whereas, when the cover is related to perils other than those covered in a H&M policy, the premium may be subject to a considerably smaller excess and limit, mainly because these perils would usually result in the vessel's much shorter delay.[1182]

To conclude, it is clear that contrary to the CLI cover, the loss of use cover is merely a means of finance (cash flow) protection for charterers which purports to smooth out the unpredictable pitches in the financial status of their company. As a consequence, it is expected that such cover will be relevant only to such chartering businesses that involve big and high valued ships, since these tend to generate large incomes and therefore delays will have a more serious impact on their revenue flow.[1183] In fact, it has been supported that currently the Trade Disruption cover is mostly available to cruise operators and that as it is still generally under construction, it might become applicable to the majority of charterers as well.[1184] Given that, along with the significant cost of such insurance, it is not surprising that this cover is not very popular among the majority of charterers who tend to run medium to small size businesses and who prefer to undertake the risk of suffering such losses themselves. So, the main problem seems to be the charterers' struggle to absorb the cost of this cover as an operating expense within a reasonable proportion of their freight income.[1185] Besides, these commercial risks' lack of cost-effectiveness is proved by the fact that the liability out of which they arise constitutes part of the CLI cover, whereas the commercial expenses resulting from the same are not.[1186] Therefore, it could be argued that it would be more commercially sensible if these losses become finally part of the CLI, following essentially the risks out of which they originally arise. However, this suggestion is being discussed in detail in the next chapter of this work.[1187]

[1180] The same was also found in case of the charterers' bunkers cover. See *ibid.*
[1181] For instance, under the London P&I Club's Charterer's Cover for Loss of Use, the coverage will respond excess of a period of seven days and will indemnify the charterer for an agreed number of days' loss of use. See in *supra,* fn. 1179.
[1182] Heinz E. Gohlish, Charterers' liability insurance: essential best practice, (Witherbys Insurance 2008), p. 67.
[1183] *Ibid,* p. 66.
[1184] Information provided by a charterers' underwriter.
[1185] *Supra,* fn. 1182, p. 67.
[1186] The same was also argued by a charterers' underwriter.
[1187] See Chapter VII, in 3.4 "The exclusion of charterers' financial losses from the cover".

3.5 Other additional covers

It has been found that the covers presented above are usually sought by the charterers on the top of their standard CLI insurance, as in most cases they are highly related to the business they perform, irrespective of their size or type.

Nonetheless, there are numerous other covers available in the market, with an even more specialised character in terms of the insured risks that could apply not only to charterers, but also to shipowners or traders and operators. Clearly, these covers due to their nature are not being considered generally a vital part of the charterers' protection umbrella, except in certain circumstances where the likelihood of these risks occurring is significant and hence, the extra cost of acquiring this insurance does not seem to override the actual cost of the liability or the expenses emanating from the insured risks.

The first known cover that belongs to this category is the war risks cover which protects charterers and shipowners against warlike risks that are not typically considered as "perils of the sea'' in the insurance world and so, due to their high risk, they are excluded from both parties' liability cover.[1188] Rarely, though, there are some insurers who provide that there is no exclusion in respect of war and terrorist risks and so, they include them in the CLI cover without applying any further sub-limits in relation to them.[1189] However, it should be noted that the insurer might apply special conditions (i.e in the charterparty) in respect of cover for damage to hull caused by a war risk when the vessel is trading to a conditional area. Alternatively, the insurer might request an additional premium,[1190] as the insurers' majority do. It is interesting to note that in fact recently the war risks were in the centre of the insurers' and assureds' interests after the almost consecutive attacks that took place in the Persian Gulf and Gulf of Oman probably as a result of the increased tensions between Iran, Saudi Arabia and the United Arab Emirates.[1191] As a consequence, in face of the increased risk in these areas, both

[1188] See, for example, the London P&I Club's Charterers' P&I War Risks cover, as in "The London P&I Club: Cover for charterers", available <https://www.londonpandi.com/special-cover/> accessed 12 March 2020, p. 4 and in RaetsMarine War Protection & Indemnity Cover.
[1189] See, for example, clause 16 of Steamship's Charterers' Cover 2017/2018. See also "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020, p. 1. Same in the "Swedish Club: Charterers' Liability All-in-One Cover" (February 2016), available <https://www.swedishclub.com/media_upload/files/factsheets2015/TSC%20Charterer%27s%20brochure%202016-02-22%20web.pdf>, accessed 12 March 2020, p. 14.
[1190] *Ibid*, the Swedish Club's Charterers' Brochure.
[1191] Patrick Wintour, Julian Borger, "Two oil tankers attacked in Gulf of Oman", *The Guardian* (13 June 2019), <https://www.theguardian.com/world/2019/jun/13/oil-tankers-blasts-reports-gulf-of-oman-us-navy>, accessed 12 March 2020. Also, Vivian Yee, "Claim of attacks on 4 oil vessels raises tensions in Middle East'', *The New*

shipowners and charterers are now examining not only alternative trading routes, but also acquiring an adequate insurance protection that could safeguard them against similar incidents.

The second cover is the strikes cover which protects the assured against strikes risks. Here, the limit of the cover, the premium and deductible are usually expressed as a multiple of the daily income, or charter hire/running costs. These may be also expressed in terms of days equivalent. But, either way, they will always depend on the vessel's trading area, the number of vessels being insured and the period of insurance.[1192]

It is not the purpose of this work to analyse the scope of such covers, as they constitute the theme of recent case law and other books in which they are being extensively examined.[1193] But, it suffices to mention that the war risks cover is not an all-risks cover and its scope depends on the ship's service, its operational areas and the prevailing political climate in them. As regards the strikes cover, it insures against losses or damage to the vessel's hull or third party's property, as well as people's liabilities consequent to strike at ports or during the performance of a voyage. Although the cost of insuring against strikes varies depending on the circumstances, it might be proved beneficial to the charterer in the long run, if the charterer is trading in strikes "hotspots'' where port disruptions due to these incidents occur on a regular basis, such as recently in France.[1194]

Either way, war and strike insurances should not be in the first instance the responsibility of the charterer. It is the shipowner who arranges for war protection under his H&M cover, while the charterer can declare the ship off-hire in case of a strike. Nonetheless, the charterer still maintains his interest in the vessel, as he is directing where it will sail and so, he needs to be fully aware of the war risk exclusions, whilst the off-hire clause might be activated only after a long period of strike. Thus, if the charterer needs to enter in a prohibited area, he should obtain the shipowner's explicit approval to do so. In war's case, the owner might often require the charterer to pay the inevitable additional premium, but the charterer should avoid paying it

York Times (13 May 2019), <https://www.nytimes.com/2019/05/13/world/middleeast/saudi-arabia-oil-tanker-sabotage.html>, accessed 12 March 2020.

[1192] See respectively, *supra,* fn. 1182, p. 66.

[1193] See, for example, the case of *Suez Fortune Investments Ltd and Another v. Talbot Underwriting Ltd and Others (The "Brillante Virtuoso")(No 2)* [2019] EWHC 2599 (Comm); Nigel Cooper, "Of terrorists, pirates, foul weather and other perils to international trade: The commercial allocation of risk under time charters, with particular reference to issues of maritime security'' in Soyer B. and Tettenborn A., *Charterparties: law, practice and emerging legal issues*, (Informa Law from Routledge 2017), at p. 47; John Dunt, Marine cargo insurance, (2nd edn, Informa Law from Routledge 2015), at Chapter 10.

[1194] Similarly also in relation to Australia, Brazil, Canada, India, Israel, Nigeria and USA as supported in *supra,* fn. 1182, p. 65.

directly, if possible, so to avoid completely being kept in the claims loop if a war incident occurs. The latter can be agreed, for example, on the basis that the charterer will pay a slightly higher rate for his hire. If, however, parties do not reach such an agreement, the charterer should at least ensure that his interests are directly noted in the policy and that a full protection is offered in his own name as well.[1195] As regards the strike's case, it is better for the charterer to acquire a strike insurance at first place, so to avoid any adverse effects on his venture.

Another important additional cover is the one for contractual liabilities that exceed the limits defined under the CLI[1196] or in case of breach of contract on charterer's part when he is acting as a non-vessel operating common carrier.[1197] The former could be useful in cases where charterers were forced for commercial reasons to agree on contractual conditions that are more onerous than the ones their liability cover normally requires and so, the latter can be jeopardised when their liability arises as a result of these.[1198] An example of application of this cover is when the charterer agrees on a term that shifts completely the liability for damage or loss on his shoulders, although normally such risk should lie with shipowners, due to the latter's pressure. Imagine, for instance, the scenario where the charterer wishes to trade to a terminal which requires all ships to accept its conditions according to which the ship is strictly liable for any accident or injury to terminal personnel or equipment. If the owner refuses to undertake such strict liability, the charterer will be forced to accept that any risk will be transferred onto him, otherwise he will agree to compensate fully the owner in case he faces a similar liability.[1199] In relation to the second cover, that would include breaches related to the cargo's storage whilst ship is under repair or dry-docking with cargo being on board of the vessel, or cargo's damage during lightering and ship-to-ship transfer operations.[1200]

[1195] Ibid, p. 96-97 and 100.
[1196] Chapter V in 2.2.2.3.c "Liabilities arising from approved indemnities and contracts''.
[1197] Chapter D.7 of the Swedish Club Rules for Charterer's Insurance 2018/2019. Similarly in Skuld, as in "Skuld: Modern and flexible charterers' liability Cover (P&I) – Brochure", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_brochure.pdf?epslanguage=en>, accessed 18 August 2017, p.3 and clause 28.1.3 of Norwegian Hull Club Charterers' Rules 2017.
[1198] See, "Carina: Guide to P&I Insurance", available at <https://www.carinapandi.com/assets/Uploads/documents/Guide-to-PandI-v01.pdf>, accessed 9 June 2017, p. 3; "Steamship Mutual P&I: Charterers' and Traders' cover – Overview'', available < https://www.steamshipmutual.com/rules-and-covers/chartered-entry.html>, accessed 12 March 2020, p.2. Also, section III, clause E of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018).
[1199] See "Steamship Mutual P&I Club: Charterers' Liability Cover", available at <https://www.steamshipmutual.com/Downloads/Charterers/Steamship%20Mutual%20Charterers%20Liability%20Cover%20Full.pdf>, accessed 22 August 2017, p. 13.
[1200] Chapter D.7 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

Similarly, charterers can also seek refuge to an additional cover that protects them against liabilities or further costs arising from certain exclusions under their liability cover. One of these is liability or expenses resulting from the vessel's deviation which is normally excluded from the CLI cover.[1201] For example, charterers will be protected when the chartered vessel on its laden voyage follows a route outside the one agreed in the contract of carriage in order to load extra cargo from an intermediate port, and that results in cargo's damage or loss.[1202] Although this might be commercially acceptable for the parties in practice, it will be classified as breach by the insurer who did not consider this factor at the time of the risks' inception.[1203] The same also applies in relation to all cargo exclusions in the form described earlier in exchange of an additional premium.[1204] Thus, indicatively, liability arising from the on-deck carriage of cargo, or cargo damage whilst in transit,[1205] or due to the use of antedated bills, or the delivery of cargo without the production of a bill will be covered under such policy.[1206] In fact, the popularity of such extension has also been confirmed by a charterers' underwriter who argued that charterers nowadays seek more and more often the inclusion of this additional layer of protection. Additionally, insurance is available to cover any "*shortfall in freight where freight is at risk when cargo is lost during transport*" and includes freight's contributions to general average or salvage[1207] as well as for cargo liabilities arising when charterer is acting as the bailee of cargo.[1208] Extra coverage is further available against liabilities towards personnel employed by the charterer whose protection is excluded under the CLI[1209] as well as for ransom involving liabilities the shipowner faces as a result of incidents of hijacking and kidnapping (e.g for lost cargo, injured crew members, lost vessel, etc).[1210]

[1201] See Chapter 4, in cargo risks exclusions. Also see, *supra,* fn. 1198, clause 28.1.3 of Norwegian Hull Club Charterers' Rules 2017, Appendix 4 of Skuld Charterers' Cover Terms & Conditions 2017 and *supra*, fn. 1188, p. 3.

[1202] *Supra,* fn. 1199.

[1203] *Supra*, fn. 1182, p. 84.

[1204] See Chapter V in 2.2.3.c "Exclusions related to cargo liabilities". This cover is also known as shipowner's liability to cargo (SOL). See, respectively, supra, fn. 1182, p. 83.

[1205] More details on through transport insurance can be found in Christopher Hill, Bill Robertson, Steven J. Hazelwood, Introduction to P&I, (2nd edn, LLP 1996), p. 158-161.

[1206] See, *supra*, fn. 1198, in Steamship Club, p. 2, Chapter D.3 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 28.1.6 of Norwegian Hull Club Charterers' Rules 2017, Appendix 4 of Skuld Charterers' Cover Terms & Conditions 2017, section III, clause F of London P&I Club Charterers' CSL Cover Terms & Conditions Version 1.01 (February 2018).

[1207] Chapter D.6 of the Swedish Club Rules for Charterer's Insurance 2018/2019, clause 28.1.4 of Norwegian Hull Club Charterers' Rules 2017, Appendix 4 of Skuld Charterers' Cover Terms & Conditions 2017.

[1208] See "Skuld: Modern and flexible charterers' liability Cover (P&I) – Brochure", available <https://www.skuld.com/Documents/Covers/Liability/Charterers_brochure.pdf?epslanguage=en>, accessed 18 August 2017, p. 3.

[1209] Chapter D.12 of the Swedish Club Rules for Charterer's Insurance 2018/2019.

[1210] Chapter D.9 of the Swedish Club Rules for Charterer's Insurance 2018/2019, Appendix 4 of Skuld Charterers' Cover Terms & Conditions 2017.

4. Conclusion

Obviously, the above analysis of the charterers' additional covers is not exhaustive, as they are many other types of extra protection that each insurer develops depending on the demand they envisage they might have among charterers. However, irrespective of the number of the existing additional covers, there is only one underlying principle characterising all of them and this emanates from the way insurance is structured.

More specifically, insurance is built in a manner where the ultimate risks are spread across a large amount of insurers.[1211] Therefore, it will never be possible for a single cover to exist protecting against all different types of charterers' risks; and even that would exist, it would most likely be entirely dysfunctional and very expensive for an average charterer. Consequently, the existence of such additional covers is inevitable and their evolvement will continue in parallel with the development of CLI, purporting to fill any emerging gaps in it. To that end, despite them being called "additional'', it is believed that they are as important as a liability cover to the extent they complete it and the latter could not operate fully without their existence. This justifies also why they could not have been mentioned in this work, although not as thoroughly as the CLI cover.

[1211] Raymond P. Hayden and Sanford E. Balick, "Marine insurance: varieties, combinations and coverages'' (1991-1992) 66 Tul.L.Rev. 311, p.353.

PART C

VII. AN EVALUATION OF CHARTERERS' LIABILITY INSURANCE AND FINAL RECOMMENDATIONS FOR CONSIDERATION

1. Introduction

The purpose of this work was first to demonstrate the wide range of liabilities that time and voyage charterers face when performing their business, and second to present the different alternatives they have available to protect themselves against the above liabilities by way of insurance, in order finally to ascertain whether charterers are sufficiently protected within the insurance market in terms of not only insurance providers, but cover as well.

Thus, this study has established that although time charterers seem generally to be in a more vulnerable position in respect of their liability exposure when compared to voyage charterers, liability insurance is equally important to both of them for the same reasons referring to their contractual position, the regulatory regime they are subject to, their role within the supply chain and their influence by the changes taking place within the shipping and insurance world. It was further suggested that although there is no single ideal liability insurance provider for all charterers, their plurality suffices to create a secure insurance environment for every type of them, a fact which is also reflected by the decreasing number of uninsured charterers nowadays. Last, from the comparative analysis conducted on multiple liability covers offered to charterers, it was pointed out that although charterers' liability exposure seems to be overall well-controlled in terms of insurance protection, this is usually achieved in exchange of additional costs and compromises on charterers' part.

Despite the positive results that the research on charterers' liability insurance protection has revealed, it is believed that there is undoubtedly some space for further development, especially if the concept is seen in combination with the constant progress of shipping industry that introduces either new risks or new forms of already existing risks for all parties involved in it. Therefore, the aim of this final chapter is to provide an evaluation of the system of charterer's liability insurance as a whole, not only under its current form, but also in face of

the new challenges that are likely to appear within the forthcoming years in charterers' world, and to make suggestions as to how charterers' liability insurance market can respond successfully to this new reality without placing charterers' secure protection at risk.

2. The evaluation of charterers' liability insurance market

In the fourth chapter of this work, it was explained how CLI market operates and who charterers' available insurance providers are. Hence, it was recognised that charterers can purchase their liability insurance within the commercial insurance market, either on a mutual or fixed premium basis, both inside or outside the IG Clubs. Also, it was supported that notwithstanding the advantages and disadvantages of the mutual and fixed premium insurance, the majority of charterers seems to resort to the latter, particularly to the one offered by specialist charterers' insurers.

Albeit the above constitutes nowadays the prevailing view, it is considered worthy to examine whether there could be possibly space in the market for the development of a P&I Club that would operate exclusively for charterers based on the principle of mutuality, similarly to the Charterers' P&I Club, when it was first created,[1212] and the IG Clubs for shipowners. Inevitably, such discussion does not have a genuinely legal character, as it requires the consideration of various commercial factors, such as the demand in insurance market, the insurance costs, the insurer's operation and the parties' negotiating power under the charter as affected by the availability and supply of goods and respectively, their value and the freight and hire rates in the commercial trade. However, it is believed that it is part of the CLI overall evaluation and therefore, it should be still discussed on the grounds that it affects directly the way CLI options are formed.

At first glance, the existence of a mutual Club exclusive to charterers would seem completely logical, if it is taken into account that charterers are exposed to similar risks under the charter as shipowners and that their liability insurance is as important as shipowners', because of the seriousness of their liabilities, the regulatory regime applicable to them, the likelihood of disputes arising and the high cost the latter entail. Therefore, it would be anticipated that the development of a charterers' insurer, which would operate like a mutual shipowners' insurer and allow charterers to control its formulation and share the costs of their

[1212] More details about the Charterers P&I Club can be found in Chapter IV, at p. 102.

insurance, would be the natural outcome of charterers' increased liability exposure nowadays. However, as this type of insurer has been tested in the past and proved unsuccessful,[1213] it needs to be considered now whether and if so, to what extent the circumstances have changed, so to allow the development and commercial viability of such idea.

At the beginning of this research study in 2016, the shipping industry was experiencing rough times. The operating costs were decreasing for two successive years, as a result of the low freight rates and the declining vessels' value.[1214] The vessels' demand was limited due to the also limited supply of commodities which, as it was expected, affected charterers' business as well. Whilst, the numerous insurers available in the market, which have been created within the previous decade after the booming of charterer's liability exposure,[1215] were competing hard against each other in an effort to attract the charterers which managed to remain active during this period of instability, and contest part of the profit.[1216] Under these circumstances, the creation of a mutual charterers' liability insurer would add no value in the charterers' existing protection, as they were merely interested in finding insurance for the period of time they needed it and at a very low cost. Also, as the operating costs and values were low, they kept charterers' liability exposure stable without giving rise to excessive claims against them and necessitating for higher and continuous insurance protection.

Nonetheless since then, the market's condition improved, with the industry finally showing some signs of steady recovery. The increase of operating costs occurred in the previous years led to the scrapping of a high number of vessels. This respectively slowed down the fleet growth the following years and so, it reduced the existing gap between the vessels' oversupply and the limited availability of commodities whose demand began to increase again after the rise of cargo imports in Asia and other developing countries.[1217] Thus, the increasing

[1213] See the example of the Charterers' P&I Club which was initially funded as a mutual insurer for charterers and within 13 years of operation it transformed into a fixed premium entity. *Ibid.*

[1214] "Market conditions force down ship operating costs" (Drewry, December 2016) <https://www.drewry.co.uk/news/market-conditions-force-down-ship-operating-costs>, accessed 12 March 2020.

[1215] For details see Chapter IV in 3.2 "The charterer's fixed premium market", at p. 114- 115.

[1216] For a review of charterer's insurance market between the years 2008-2016 from a statistical perspective, see in details Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 67-68.

[1217] Similarly in "LPG freight rate recovery to be confined to smaller vessels" (Drewry, May 2017) <https://www.drewry.co.uk/news/lpg-freight-rate-recovery-to-be-confined-to-smaller-vessels>, accessed 12 March 2020. Also in "Improving demand to ease oversupply in dry bulk shipping" (Drewry, February 2017) <https://www.drewry.co.uk/news/improving-demand-to-ease-oversupply-in-dry-bulk-shipping>, accessed 12 March 2020 and in "Dry bulk shipping to recover on muted vessel supply" (Drewry, November 2016), available at <https://www.drewry.co.uk/news/container-shipping-rates-have-bottomed-out-and-forecast-to-rise>, accessed 12 March 2020.

trading activity and the balanced supply of vessels resulted in the steady recovery of charter and freight rates which still continue to grow until today.[1218] The previous recession that insurance market was experiencing resulted in the overall decrease of insurers' number. Whilst, many fixed premium entities were not able to withstand the intense competition, so they eventually either withdrew completely from their business, or merged with each other.[1219] Additionally, this extreme competition placed extra stress on the IG Clubs which struggled sometimes to follow strategies compatible with their mutuality in their effort to tackle financially with the new circumstances and maintain their growth. Though, this had a further impact on the IG's arrangements and its internal operation. More specifically, it has already been agreed that the competition rules of IG Agreement (IGA) will change, whilst all time charterers' liability business of the IG Clubs will be free from the IGA, even when part of a mutual entry, with effect from 2020/2021.[1220] Therefore, as opposed to previous years where chartered entries for P&I and pollution risks were pooled within the IG, now both will be reinsured outside the pool, in the commercial insurance market, similarly to charterers' hull and bunkers' liabilities.[1221]

From the above, it could be argued that albeit shipping industry has exited the dark times of its earlier austerity, its growth still remains controlled. This is also attributed to a great extent to the uncertainty that the worldwide political circumstances create which subsequently turns any potential radical change in the market into a threat for the stability achieved with a lot of effort the previous years. Domestically, the forthcoming Brexit continues to trouble not only the shipping industry, but also the insurance market which tries to protect its business' continuity by funding their own hubs across other European countries. Whereas, internationally

[1218] "Dry bulk shipping charter rates to rise on unexpected demand growth" (Drewry, August 2016) <https://www.drewry.co.uk/news/dry-bulk-shipping-charter-rates-to-rise-on-unexpected-demand-growth>, accessed 12 March 2020.

[1219] For example, in October 2018, the Standard Club announced that Lloyd's Syndicate 1884 will cease underwriting with effect from 31 December, after having sustained heavy losses. In December 2018, Michael Else & Co (MECO) Group, part of which is also the Charterers' P&I Club, took over the management of the Carina facility, formerly managed by Tindall Riley, while in February 2019, Lodestar Marine entered into an agreement with Aspen Insurance to provide P&I cover to small ships/ specialised sector. And, the North of England downsized Sunderland Marine the last few years and refocussed its underwriting business. See in Arthur J. Gallagher, "Marine P&I market overview 2019"<https://www.ajg.com/uk/news-and-insights/>, accessed 12 March 2020, p. 8 and 10.

[1220] Ibid, p. 9.

[1221] Ibid, p. 7.

the escalation of trade wars between U.S and China and the re-imposition of sanctions on Iran, Venezuela and Syria continue to hinder the full revival of shipping industry.[1222]

In light of the above developments, the creation of a mutual insurance entity for charterers sounds definitely more appealing than before, especially in face of the rising operating costs and commodity values. If this is also combined with the general increase noticed lately in the larger claims and the use of more advanced vessels in shipping in the near future, it would be reasonable to anticipate charterers seeking for a steadier and longer protection, even if this would mean higher costs for them. Besides, as the insurance costs would inevitably rise after remaining at such low levels for years, it would be preferable for charterers to spread them across a whole policy year in parallel with their protection, rather than acquiring business-based insurance on a fixed premium basis. Additionally, charterers' prospective exposure to more costly liabilities might result in the disappearance of numerous smaller or medium sized fixed premium insurers due to the lack of sufficient capital or funds that could insure adequately charterers against the above liabilities. Given these circumstances, charterers' insurers' options might become restricted and so, the creation of a mutual insurer operating exclusively for them might seem as a good solution.

The above suggestion would also coincide with the traditional view which provides that the principal source for liability insurance was since its beginning a P&I Club operating according to the principle of mutuality.[1223] Notwithstanding the accuracy of this view, it is believed that nowadays the latter has been rendered obsolete, as it could be supported by the recent developments in the insurance market which point towards the direction of fixed premium insurance.

More specifically, during the past few years, even the most financially robust IG Clubs were struggling to assemble the necessary protection for their members, whilst trying to maintain the cost of their insurance at a competitive and low level. However, as premium rates have now reached unsustainable levels, whereas the frequency and severity of large claims is constantly increasing, the need for a shift in the construction of the market and its premium prices is more evident than ever, especially when some IG Clubs seem to lose their financing

[1222] "MR tanker time charter rates under pressure" (Drewry, August 2016) <https://www.drewry.co.uk/news/mr--tanker-time-charter-rates-under-pressure>, accessed 12 March 2020. Also, ibid, p. 8.
[1223] See in Chapter IV, in 2.2 "the concept of liability insurance in maritime law", at p.97-99 for more details regarding the historical background of liability insurance in maritime law.

credibility as well.[1224] In fact, there are a few who support that the concept of mutuality is slowly vanishing, as more and more IG Clubs are generating their revenue mostly from their non-P&I business and their growing proportion of fixed premium entries.[1225] Subsequently, it is further argued that the number of IG Clubs should be reduced in order for their capital to be better used and efficiencies to be achieved through the use of homogenous products.[1226] This of course implies that IG Clubs' business will be re-orientated, so that it focuses again on shipowners in an effort to preserve mutuality. Besides, the same trend is justified by the IG Clubs' decision to move completely their chartered entries' liabilities outside the Group's pool from the beginning of the new policy year, as explained above.

Although it has been established that there are strong evidence suggesting that the concept of mutuality is slowly fading away and cannot add more to charterers' insurance protection, it is now turn to examine whether the standards of fixed premium insurance are adequate enough to secure charterers' protection in the current circumstances.

In an earlier chapter of this work, it was proved that fixed premium insurers irrespective of the exact form under which they operate,[1227] they all present their own flaws. Yet, it is apparent from the number of charterers insured with them that charterers' liability insurance belongs firmly within this market[1228] which managed not only to overcome the challenges that the turmoil of previous years has created, but also show actually some promising signs of progression. Thus, fixed premium market, despite the predictions of some arguing its short-

[1224] In 2018, the London P&I UK has been rated for second consecutive year by Standard and Poor's (S&P) as BBB with a stable outlook.

[1225] *Supra*, fn. 1219, in A.J. Gallagher. Similarly in "P&I insurance costs to remain flat in 2018 but to rise thereafter" (Drewry, April 2018) <https://www.drewry.co.uk/maritime-research-opinion-browser/maritime-research-opinions/pi-insurance-costs-to-remain-flat-in-2018-but-to-rise-thereafter>, accessed 12 March 2020; and in "OMNI P&I Report 2016", available <http://www.omniltd.com/en/publications/p-i-reports>, accessed 12 March 2020, p. 18 and 47. An example of the IG Clubs' increasing interest in the fixed premium entities constitutes also the recent acquisition of Lodestar's fixed premium business by Thomas Miller. See respectively in Adam Corbett, "Thomas Miller buys Lodestar's fixed premium business", *Trade Winds* (13 December 2019) <https://www.tradewindsnews.com/insurance/thomas-miller-buys-lodestars-fixed-premium-business/2-1-723913>, accessed 12 March 2020. Also, the London P&I Club is arranging via Lloyd's, their own version of fixed premium facility.

[1226] Mark Cracknell and John Trew, "Marine & cargo practice: P&I review 2019'', available <https://www.marsh.com/uk/insights/research/protection-and-indemnity-review-2019.html>, accessed 12 March 2020, p. 2.

[1227] I.e either as MGAs, or specialist charterers' insurers, or merely commercial fixed premium insurers.

[1228] See, comparatively the statistics provided for number of chartered entries within the IG Clubs and the specialist insurers between 2012/13 and 2019/20 in "P.L Ferrari & Co and OMNI P&I: P&I Market Review 2019/2020'', available <https://www.appleyardlondon.com/main>, accessed 12 March 2020, p. 6, 37,38, 40 and 41.

lived existence,[1229] maintained a continuing growth, having more new entrants than exits.[1230] The fixed premium insurers' growth and positive impact on the market are also evidenced by the increasing trust that even Clubs have lately showed them either in the form of reinsurance as described above or, by way of investment into their own fixed premium facilities (e.g MGAs).[1231] Considering further the positive development of fixed premium insurers, it could be argued that there will be no need for a general increase in the cost of their services, unlike the IG Clubs, while it would not be surprising if they also manage to expand their business by taking advantage of the mutual premium increases.[1232] In fact, if the number of the existing IG Clubs is eventually reduced, small or medium sized shipowners, following charterers' trend, might seek refuge to fixed premium insurers which will respectively strengthen their capital power as well as credibility in the market. Thus, the subsequent rise of fixed premium insurance will benefit charterers as well, as they will be finally offered protection under the same terms as shipowners.

Therefore, given the above circumstances, would the creation of a mutual insurer operating exclusively for charterers make any better difference to them? The answer is no, in author's opinion. Although from the very beginning of charterers' liability insurance the idea was exactly the creation of a mutual Club for charterers and the market's condition was actually strong enough to support such initiative, the realisation of this idea did not have the positive impact anticipated. Yet, it needs to be borne in mind that the failure did not occur because insurers could not support this. On the contrary, it was the charterers' reluctance to be bound by the rules of mutuality which required their exposure to additional calls throughout the policy period that alienated them from the idea of a mutual charterers' Club. As a result, it could be argued that the very nature of mutuality does not fit to the characteristics of charterers' business. Thus, as opposed to shipowners whose P&I insurance is defined based on their owned vessel, charterers do not have a stable asset according to which their insurance will be provided. Therefore, as their liability fluctuates each time depending on different variables (e.g the vessel,

[1229] Peter Crichton, "The ever-changing world of the protection and indemnity mutuals'' in Zarach S. (ed.), *BIMCO Review 2000*, (Book Production Consultants 2000), p. 164.
[1230] Frans Malmros, "Fixed premiums, mutuals and the future of P&I'', in Zarach S. (ed.), *BIMCO Review 2000* (Book Production Consultants 2000). See also the relevant tables concerning the commercial P&I market's overall development in Arthur J. Gallagher, Arthur J. Gallagher, "Commercial P&I market review 2017" <https://www.ajginternational.com/news-insights/articles/insights/2017/marine-pi-commercial-market-review-2017/>, accessed 12 March 2020, p. 22-23.
[1231] *Supra*, fn. 1219, in A.J Gallagher, Marine P&I Market Overview 2019, p. 8
[1232] Similarly in "Property, casualty & marine insurance market report – 2019 Renewals'', available <https://www.s2hgroup.com/images/doc/publications/Note-de-Conjoncture-IARDT-2019-SIACI-SAINT-HONORE-EN.pdf>, accessed 12 March 2020, p. 35.

cargo, fuel on board, type of operation), the point of risk sharing with each other cannot apply uniformly and so, a fixed protection for the time they need it would suit better to their needs and be more accurately priced as well. Also, another practical reason which explains why mutuality does not correspond to the charterers' nature emanates from the idea of pooling (sharing) of costs. It was mentioned earlier that mutual Clubs were created in order to allow shipowners to spread across their liabilities' costs and offer them at the same time high limits of insurance. However, in charterers' case, as the form they can take varies (i.e voyage, time, slot charterers etc.), there are no common standards for their liabilities nor their cost. Further, as charterers constitute mostly small or medium size entities, it does not seem very likely that they will be able to support the funding a mutual organisation which offers high insurance limits, as they will not be able to accumulate the required capital. Hence, only a minority of big charterers will have the financial power to support the funding of such an association. Even so though, it would not be fair for only a small number of charterers to undertake the financial burden of all charterers' claims and sustain their mutual Club.

To conclude, based on the above, it is believed that the concept of mutuality cannot apply in charterers' case and so, charterers have no reason to question the form of the insurance market within which they operate nowadays. The only exception, where mutuality can be actually fruitful, is in relation to time charterers of large tonnages which are indeed in need of constant protection and could afford high insurance limits, reflecting their potential high exposure to large claims as well. However, as such charterers constitute only a minority, the restructuring of their insurance industry does not seem to be worth of time and cost, especially when the insurance reality seems to point towards the opposite direction. As a consequence, it is supported that charterers are better served within the fixed premium insurance market, because it not only offers them with satisfactory protection on the spot, but also provides them with specialised, immediate and localised services, as its providers operate on multiple locations where chartering activity is flourishing. If actually a rise in the fixed premium market occurs, it would be also interesting to see the reaction of the few remaining mutual charterers' insurers and whether they will be able to maintain their business or elect to drop out, considering the small percentage of charterers they represent today. At the same time, it is predicted that as a result of the rise of fixed premium insurance and the increased importance of CLI, more specialist charterers' insurers will be created, with the remaining IG Clubs creating their own fixed premium facilities (MGAs) through which they will provide exclusively CLI services. So, although in a strict sense charterers will not have an exclusive

mutual association, they will still be able to create their own liability insurance hubs which will protect them under equal terms.

3. The evaluation of charterers' liability insurance cover

Although the discussion about the potential direction that charterer's liability insurance might take is based to some extent on commercial and political hypotheses and so, makes them seem to a great extent distant, the evaluation of charterers' liability cover, on the other hand, presents undoubtedly some legal elements which are expected to be tested in the future years due to either the introduction of new risks on charterers' part, or the transformation of their existing risks which will both probably set new standards for the limits of charterers' insurance cover. Hence, this part will focus on the discussion of certain issues that have been identified in relation to the CLI cover and the provision of some recommendations for their improvement for the benefit of charterers. In addition, it will be examined the likelihood of charterers' liability exposure being expanded in line with the new developments occurring within the shipping industry and the impact the latter might have on their liability cover and generally their insurance protection in the form it appears today.

3.1 The discretionary character of CLI

It has been previously mentioned that unlike shipowners' P&I insurance, CLI has a non-compulsory character, although its origins stem from the same concept, the concept of liability insurance, and despite the numerous reasons provided earlier highlighting the CLI's necessity.[1233] Considering, therefore, the above, it would be reasonable to wonder whether CLI should also become compulsory for charterers. However, in order to evaluate the prospects of realisation of such suggestion, it is important to understand first the rationale behind shipowners' mandatory P&I insurance.

When the latter was first introduced in the market, it did not appear with any elements of obligation on shipowners' part. Eventually, though, as shipowners' liability exposure to third parties increased and the regulatory regime governing their activity expanded on an international level, the shipowners' compulsory insurance protection became a condition of their compliance with the prevailing international rules. The shipowner was seen as the most

[1233] See in detail in Chapter IV in 2.3.3 "The factors of the CLI's importance".

powerful entity participating in the maritime adventure, as he was in the possession of the most valuable asset, the ship, which was also linked with the most liabilities arising from it. Subsequently, the international regulators developed a legal framework that required from the shipowner to acquire liability insurance and ensure that security is provided in advance, confirming that any third party affected by his activity will be adequately compensated, if harmed. In fact, nowadays, the most important international conventions state expressly this obligation,[1234] whereas shipowners are not entitled to trade before ensuring that they have complied with it; otherwise, the continuity of their business will be jeopardised.

On the contrary, the development of CLI did not follow the same trend, as it was not considered necessary by the regulators to implement similar rules in the conventions requiring charterers to obtain liability insurance. This is probably justified on the basis that under these Conventions[1235] only the registered owner of the vessel is hold responsible for liabilities arising from their breach, whereas charterers can only be found liable by way of recourse, if the owner decides later to bring a claim against them. But, as the regulator's primary concern is to protect only the third party who is affected by the vessel's activity, it suffices, hence, to ensure that the owner of the vessel has adequate liability insurance which could satisfy its claim. Whereas, it treats the shipowners' ability to claim compensation thereafter against charterers as a commercial and not regulatory matter and so, it leaves it to the parties to deal with it contractually.

The only exception, perhaps, to the above rule is the Athens Convention 1974 (as amended by the Protocol 2002) where it is provided that "*any* (emphasis added) *carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security (…)",*[1236] with the definition of the carrier performing the whole or part of the carriage including also "*the performing carrier*"[1237] being *"the owner, charterer (*emphasis added) *or operator of a ship''.*[1238] Therefore, if the charterer is proved to be the performing carrier, he is the responsible party for acquiring insurance against the risks that the Convention provides. Similarly also applies in case of motor insurance where again the regulator provides that even when hiring a car, it is unlawful for a person "*to use, or to cause, or permit any other person*

[1234] Article VII para 1 of the CLC 1992, article 7 para. 1 of the Bunkers' Convention 2001, article 4 of Athens Convention 1974 (as amended with the 2002 Protocol), article 12 para. 1 of the Nairobi International Convention on the Removal of Wrecks 2007 and standards A4.2 and 2.5.2 of the MLC 2006 (as amended in 2014).
[1235] Ibid.
[1236] Article 4bis para. 1.
[1237] Article 1 para. 1(c).
[1238] Article 1 para. 1(b).

to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance (…) in respect of third-party risks (…)". [1239]

In light of the above, it is believed that there is room to suggest that from a regulatory aspect CLI could obtain a compulsory character. This could be further justified on the grounds that there are certain occasions where charterers face an unlimited liability either under the Limitation Conventions[1240] in respect of certain risks, such as for hull damages,[1241] or because the applicable jurisdiction does not simply recognise them a liability limitation right at all, such as the Limitation of Shipowners' Liability Act in the U.S.A.[1242] In these circumstances, charterers' obligation to acquire liability insurance would secure any party affected by their unlimited liability and work as proof of charterers' ability to compensate them, if their liability finally arises. The need to transform CLI into a compulsory form of insurance might be also triggered in the future as a consequence of the regulatory changes taking place affecting directly the scope of charterer's liability exposure.[1243] Thus, for example, if due to the regulators' increased environmental concern, the parties' liability in respect of pollution is amended so to allow third parties' direct actions against charterers, CLI should also be considered mandatory for the same reasons mentioned above regarding shipowners' P&I insurance. But, even if no such obligation is recognized on a regulatory basis, it is still believed that CLI will maintain a mandatory form on a contractual, at least, level, on the basis that it seems to turn gradually into a condition of the vessel's chartering by many shipowners who increasingly request a copy of their charterers' liability insurance before they conclude on a charter.

3.2 Launch of CLI as a comprehensive insurance cover only

As it has been proved in the fourth Chapter of this work, the number of charterers seeking refuge within IG Clubs is steadily increasing since 2012.[1244] However, as the research findings have shown, although the charterers' covers provided by the IG Clubs present all some similarities with each other in terms of the risks covered, their application rules differ. For

[1239] Article 201, section 1 of the road Traffic Act 1960.
[1240] I.e LLMC 76 and LLMC 96.
[1241] *CMA CGM S.A. v. Classica Shipping Co Ltd* [2004] 1 Lloyd's Rep. 460, p. 468 (CA); *The Darfur* [2004] 2 Lloyd's Rep. 469.
[1242] Tony Nunes, "Charterer's liabilities under the ship time charter'' (2003-2004) 26 Hous.J. Int'L. 561, p. 590.
[1243] These changes are discussed in detail below.
[1244] See the table in Chapter IV, at p. 132.

example, it has been established that currently the majority of IG Clubs offers a combined single limit insurance to its chartered entries, including but not limited to hull, cargo and P&I liabilities, which is non-poolable, as it is reinsured within the commercial insurance market.[1245] On the contrary, only a minority continues to offer a semi-poolable liability cover to charterers where P&I and pollution liabilities remain pooled, whereas all other liabilities, and primarily hull and bunkers' risks, are insured within the commercial insurance market.[1246] As a result of this differentiation, it has been further noticed that the IG Club Rules for charterers vary accordingly. Hence, the Clubs that belong to the former category, offering an entirely non-poolable cover to charterers, usually create a separate set of rules that apply exclusively to their assured charterers; unlike the Clubs of the second category which tend to apply by analogy their shipowners' rules in respect of charterers' poolable risks and add merely to their existing rules a general clause that refers to the charterers' remaining non-poolable risks.

It is believed that the development of two set of rules within the IG Clubs was to a certain extent inevitable as the Clubs that are still pooling their charterers' risks had to continue to abide by the rules of Pooling Agreement. Nonetheless, this complicates the matter for charterers, as it is not clear to them how exactly their cover works in relation to their insured risks, because the applicable Club rules are orientated towards shipowners' risks which are all poolable, whereas charterers' risks could be either poolable, or non-poolable and require a bespoke solution that is not always necessarily relevant to the other parties in the venture, even if they might present some overlaps. For example, typically under the Club's Rules where charterers' risks are pooled, it is provided in respect of their hull risks that "*charterers' liability, together with the costs and expenses incidental thereto, for loss of or damage to the insured vessel''* are covered.[1247] But, under the miscellaneous exclusions clause in the Clubs' Rules, it is provided that *"loss of freight or hire or any proportion thereof''* is not covered.[1248] However, this creates an ambiguity as to whether charterer's hire payable during the period of vessel's repair will be finally covered under the specific clause referring to his hull liability, or it will be excluded subject to the general exclusions' clause.

Thus, the avoidance of such issues could be achieved through the introduction of a homogenous approach on behalf of the IG Clubs and more specifically with the creation of separate rules applicable only to their chartered entries. In fact, this action could be facilitated

[1245] Such as Gard, the Swedish Club, Skuld, Steamship and the West of England.
[1246] Such as the Shipowners' Club.
[1247] Rule 4, section 2 of the Shipowners' Club Rules 2018.
[1248] Ibid, Rule 27, section 4.

with the Clubs' general movement towards fixed premium market. Hence, when all IG Clubs transfer completely the insurance of their chartered entries within the commercial insurance market in 2020, as it has already been said at the beginning of this chapter,[1249] it is expected that they will also opt for a combined single limit cover, following the example of the other Clubs that are already providing for CLI outside the Group's pool. Therefore, it is anticipated that they will amend accordingly their Rules as well. In fact, this change seems that has already been started in respect of some Clubs, after the realisation of the issues that their previous Rules were creating in relation to their CLI cover. Of course, the Clubs' risks' movement outside the pool will release them from their obligation to provide cover only in respect of risks falling within the Pooling Agreement. So, the Clubs will be free to offer cover to charterers on whatever terms and for whatever risks they wish, competing with each other and the other fixed premium insurers. As a result, both parties will benefit from this change. The Clubs' cover will become more attractive to charterers, because it will obtain the flexibility of which it lacks nowadays, as previously mentioned;[1250] whilst charterers will be provided with clarity as to how their insurance protection applies. Last, it is should be noted that liability insurers are not unfamiliar with the concept of comprehensive insurance, as it is widely used in the general commercial insurance market because of the tailored protection which is designed to offer to small entities. Besides, its use goes back specifically to the introduction of liability insurance in the market, as one of the first forms of liability insurance was created as a comprehensive cover, following property insurance. Therefore, it could be argued that to the extent that liability insurance from its own nature appears in a comprehensive form, it would be reasonable to suggest that charterers' liability insurance is preferable to have the same form as well.

3.3 Charterers' cover subject to their risks' connection with the vessel's operation

Another issue that can be potentially problematic for charterers in respect of the limits of their cover and the extent of their covered risks is the requirement of the latter arising in relation to the operation of the chartered vessel.

At the moment, it seems that there are not many cases regarding disputes arising as a result of the application of the above condition. This is probably justified on the basis that this term is broadly interpreted by the insurers in practice, whereas any disagreement with the assured is

[1249] See above, at p. 250-252.
[1250] See Chapter IV, at p. 121.

usually solved amicably or internally, and so, it remains unreported. Nonetheless, even if we assume that this condition does not create currently any interpretation issues, it is quite unlikely that the same will happen when new types of risks will be introduced into the charterer's cover, following the broader use of advanced technology systems within the shipping industry. For instance, it is questionable how this condition will apply in relation to cyber risks affecting charterers' electronic systems. Also, where will the vessel's operation start or finish when the former is unmanned? Will the maintenance of its systems during the voyage be part of its regular operation? Although the complications of such future new risks are discussed later in this chapter, the main point to be drawn here is that the current vague definition used in order to ascertain what risks fall under CLI cover being connected with the operation of the vessel[1251] will not most likely suffice once the framework of charterer's liability exposure expands. Therefore, a more straightforward term will be required, until sufficient precedent exists so to provide a certain guidance to the charterers' insurers and charterers themselves.

Considering, however, how such issues are usually dealt with in practice, it is not anticipated that insurers will shed light on the application of such term, yet it is believed that the number of disputes between the assured charterers and their insurers will increase, as a result of the uncertainty to be created by the above changes.

3.4 The exclusion of charterers' financial losses from the cover

It has been mentioned several times in different parts of this work that any financial losses charterers might face as a result of the occurrence of an included risk do not generally fall within their liability cover, with only some exceptions being recognised by the insurers. It has been further explained that such losses can be recoverable in certain circumstances under the charterers' additional Loss of Use cover, yet even here, the cover offered is partial, as it is limited only to a certain number of days during which the loss was suffered.[1252] It was established that the main justifying reason behind this exclusion, either complete or partial, under both covers is primarily the insurers' inability to quantify the risk and so, their exposure. But most importantly, it is the nature of CLI as a third-party liability insurance that does not allow for a different approach towards such risks. Therefore, to the extent that such financial losses have been suffered directly by the charterer, they could not be part of his liability

[1251] See the details provided in Chapter V in 2.3.2 "Link with the operation of the vessel", at p. 208.
[1252] More details in Chapter VI in 3.4 "Charterer's loss of use cover", at p. 239.

insurance either. However, despite the reasonable justification lying behind the above exclusion, it is believed that it would make more sense if it was being applied with uniformity to all charterers' included risks. Otherwise, a different approach could imply that a more flexible attitude towards these risks would be acceptable by the insurers.

As previously pointed out, such losses seem exceptionally to be covered when arising in relation to a charterer's hull liability, for example, or due to a charterer's breach relating to cargo operations, but traditionally not when arising from a P&I incident. The inclusion of such losses in the aforementioned cases is probably linked to the insurers' realisation that charterer's exposure to such risks is not only significant, but also tangled with the majority of his duties under a time or voyage charter. Therefore, his efficient protection could only be achieved if such losses became part of his liability cover, even if they did not match entirely with the characteristics of CLI.

Although it is understood that the insurers' decision to provide limited protection to charterers in the above circumstances is a commercial decision, it is believed that CLI could be further improved, if its scope for financial losses is expanded slightly more, considering the frequency with which different incidents can give rise to a delay in charterer's activity during a maritime adventure and subsequently cause financial losses to him. For example, it was stated in the third chapter that under a voyage charter, charterers need some flexibility when nominating the ports and berths within which the vessel will sail, as the destination for the cargo's delivery might change multiple times during the voyage. However, it was also established that the prevailing view seems to forbid them from making a re-nomination, unless otherwise expressly agreed.[1253] In this case, though, if the charterer proceeds to a nominated port that is proved to be congested and so, delay is caused in the vessel's berthing and subsequently the commencement of cargo operations, during which the charterer will be liable for detention damages, his expenses will not be covered under his liability insurance. Similarly also applies in case of time charterers, when they are in search of bunkering ports available to supply their vessel with adequate fuel. Thus, even if charterers might not have always sufficient flexibility under their charter in respect of the way they employ the chartered vessel, their position would be better safeguarded, if they had at least some protection against any potential financial losses they might encounter which they could not have been prevented otherwise and for which no recourse right is recognised to them.

[1253] See in Chapter III, at p. 60-65.

Of course, insurers' agreement to cover such losses would imply indefinite exposure for them, whilst it might render obsolete the need for a Loss of Cover on charterers' part. Nonetheless, it is suggested that a balanced solution to the above issues could be the provision of cover against charterers' financial losses only for a certain numbers days (e.g of hire or detention damages) decided according to each insurers' commercial needs, even if it would increase slightly CLI's overall price. Thus, on one hand the charterer would be compensated for some, at least, of his overall loss, whilst on the other hand, his insurer would be exposed only up to a level where he is able to substantiate his exposure, so to price his protection accordingly. At the same time, any excess liability will remain outside the CLI scope and therefore, charterers will still need to buy for an additional insurance. Also, it should be borne in mind that as the Loss of Use cover provides a wide protection against all charterers' financial losses, it does not usually refer to average small or medium sized charterers, who are usually exposed to some of such losses only, because its price often even exceeds the value of their loss itself, if compared. Thus, it is believed that the demand for it will not most likely be affected by the transfer of some risks under the umbrella of CLI. On the contrary, this change will increase the popularity of CLI among smaller charterers, whilst it will maintain the option for bigger charterers to resort to the additional cover, if they feel that the limits of their liability insurance do not suffice. Last, it is expected that the realisation of this idea might be facilitated once (and if) all charterers' liability insurers move towards a fixed, all-inclusive cover, as they will no longer be hindered by the restrictions of mutuality and respectively the sharing of common risks.

3.5 The exclusion of cyber risks in an era of digitalisation

From the earlier analysis of CLI cover, it has been concluded that liabilities arising as a result of a cyber-attack to charterer's computer systems are usually expressly excluded from their liability cover provided by fixed premium insurers. Whereas, in case of IG Clubs, even though there is no express exclusion, cyber liabilities are covered only insofar as the attack does not constitute an act of "terrorism" and the liability could fall within the spectrum of liabilities arising from the electronic (paperless) trading which in their turn included only risks that would have been covered had a paper trading system been used.[1254] However, as shipping industry moves fast towards digitalisation, with more and more shipowners, charterers,

[1254] See in detail Chapter V, in 2.2.2.2 and 2.2.3.d, at pages 170-172 and 204-205 respectively.

operators and port terminals increasingly introducing automated systems into their businesses, it is questionable whether the above charterer's insured liability will remain the same and if so, whether it will be still sufficient to tackle his potential exposure to any new emerging liabilities.

It is indisputable that the number of shipping operations performed remotely through the use of software programmes and computers has significantly increased recently, as a result of the advanced progress that technology has made the past decades. Hence, nowadays, information technology (IT) and operational technology (OT) systems[1255] on board ships are networked together and more frequently connected to the internet.[1256] But, albeit cyber-technologies provide significant efficiency gains for maritime industry, the greater their internet dependence is, the bigger the threat they impose on the safety and security of shipping and the protection of marine environment, because of their vulnerability towards unauthorised accesses or malicious attacks. In fact, this trend is already evidenced by the increasing number of such incidents the past few years which alarmed the parties involved in shipping, as it was realised that there is no sufficient regulatory framework that deals with their liabilities and obligations in the event of such circumstances under their charterparties.

As a response, a set of guidelines was developed that refer to all parties involved in shipping operations, including charterers, which purports to raise awareness about cyber-security and provide advice as to how cyber-attacks could be prevented or at least mitigated. In 2017 specifically, the IMO confirmed that cyber-risks should be managed under the ISM Code and therefore, companies should tackle them in the same way as any other risk affecting the safe operation of the ship. So, the resolution MSC 428(98) on Maritime Cyber Risk Management in Safety Management Systems (SMS) was adopted, stating that an approved SMS should take into account cyber risk management in accordance with the objectives and functional requirements of the ISM Code and ISPS Code. This SMS should include instructions and procedures to ensure the ship's safe operation and specifically consider risks arising from the use of IT and OT on board. Also, it encourages administrations to ensure that cyber-risks are appropriately addressed in SMS no later than the first annual verification of the company's

[1255] IT systems are focusing on the use of data as information. On the other hand, OT systems are focusing on the use of data to control or monitor physical processes. The definitions were found in clause 2.1.2 of the Annex of IMO's Guidelines on Maritime Cyber Risk Management for Ships (MSC-FAL. 1/Circ.3, 5 July 2017), available <http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Documents/MSC-FAL.1-Circ.3%20-%20Guidelines%20On%20Maritime%20Cyber%20Risk%20Management%20(Secretariat).pdfm>, accessed 12 March 2020.

[1256] "The Guidelines on cyber security on board Ships", (International Chamber of Shipping), <http://www.ics-shipping.org/docs/default-source/resources/safety-security-and-operations/guidelines-on-cyber-security-onboard-ships.pdf?sfvrsn=10>, accessed 12 March 2020, p. 1.

Document of Compliance after 1 January 2021.[1257] In alignment with this resolution, the IMO later launched the Guidelines on maritime cyber-risk management, whilst BIMCO produced Guidelines on cyber-security on board ships which provide generally recommendations on shipowners and operators as to how to assess their operations and develop procedures to strengthen cyber resilience on board of their ships, covering both cyber security and safety issues. Despite these guidelines and as there is no relevant provision in any of the standard charter forms currently used in practice, BIMCO developed a Cyber Security Clause which provides for parties' responsibilities under the charter when a cyber security incident arises.[1258]

Although at this stage this Clause is very vaguely drafted, whereas its implementation into the charters depends completely on the parties' negotiations, it is believed that it is worth mentioned, as it provides an idea of the type of new obligations that will arise for both parties and which will inevitably affect charterers' liability exposure as well. Thus, in a nutshell, the Clause requires parties to ensure that appropriate cyber security systems are implemented as well as effective procedures are being followed in case of a cyber security incident, and that records of the systems' review are kept as evidence.[1259] Also, it provides that when such incidents take place, both the owner and charterer should try to mitigate the incident's effect and cooperate with each other in the form of sharing information and early notification.[1260] Whereas, breach of any of the above duties is limited to a certain amount defined in their contract, unless it is proved that the incident resulted solely due to any of the parties' gross negligence or wilful misconduct.[1261]

At first glance, from the above examination, it might seem perhaps that charterers are not directly affected by these changes, because they have little or no involvement in the IT and OT systems used in the vessel's operation and no direct obligation to comply with the ISM and ISPS Codes, whilst the SMS are developed solely by shipowners. Therefore, it could be argued that there are not much charterers could do, or risks that they are exposed to, so for them to be found liable towards shipowners, even if the Cyber Security Clause is inserted into their charterparty. Yet, just because charterers do not appear directly responsible for securing the

[1257] Ibid, p. 1 and 6.
[1258] As stated in Mads Wacher Kjaergaard, "New Cyber Security Clause from BIMCO" (22 May 2019), <https://www.bimco.org/news/priority-news/20190522-new-cyber-security-clause-from-bimco>, accessed 12 March 2020.
[1259] BIMCO Cyber Security Clause 2019, section (a).
[1260] BIMCO Cyber Security Clause 2019, section (c).
[1261] Ibid, section (d).

ship's operation systems against cyber-security incidents, this does mean that they face no additional risks or liabilities arising as a result of the latter.

First of all, regarding the use of IT and OT systems in the vessel's operation, although in their majority are indeed associated with the vessel's navigation, maintenance and performance for which the shipowner is in absolute control, there are certain digital systems related to the loading, management, control and monitoring of cargo during the voyage, and to the equipment used by the charterer when supervising these procedures. Also, these systems may interface with a variety of systems both on board of the vessel and ashore, including, for example, ports and terminals.[1262] To that end, such interfaces make charterers' management systems vulnerable to cyber-attacks, the result of which might cost the vessel's entire operation and so, impact upon the shipowner. For that reason, it is expected that charterers will now be obliged to assess the risk of their systems becoming vulnerable to cyber-attacks and take risk management measures, similarly to shipowners.[1263]

However, this duty is not as straightforward as it seems and creates various difficulties to the charterer, whilst it complicates the ascertainment of his liability. More specifically, although it is provided that charterers should implement appropriate systems and procedures and take steps to prevent the occurrence of a cyber security incident, it has not been specified yet whether this duty will be a strict one or merely one of reasonable care. Therefore, it could be argued that charterers should be strictly liable for the performance of these duties. Such an approach might be justified to the extent that only the charterer has the control of his systems before the operations commence. Therefore, on these grounds he should be also liable for his failure to ensure they are adequately secure. This idea would further facilitate any disputes' resolution and protect the claimant, as charterer's strict liability would release the affected party from the difficult task of proving charterer's negligence or inability to take reasonable steps to adopt a secure system or procedure. But even if his duty was merely one of due diligence, as it is indicated in relation to his duty to mitigate the effects of such incident or maintain his systems under BIMCO's Cyber Clause,[1264] again charterer's position under the charter would

[1262] More details regarding the cargo management systems can be found in *supra*, fn. 1256, p. 13 and 14.
[1263] This duty has been already confirmed by BIMCO's Guidelines on Cyber Security on board ships, where it is expressly mentioned that the same should equally apply to other major stakeholders in the supply chain, including charterers, who should carry out their own best practice cyber security protection and training. Similarly also applies under IMO's Guidelines on Cyber Risk Management for ships which are intended for all organisations on the shipping industry as they purported to have a widespread application. See *supra*, fn. 1256, p. 29 and *supra*, fn. 1255, in Preamble's section 2 and under section 1.2.1.
[1264] Sections (a)(i), (b) and (c).

deteriorate, as it is not clear what systems exactly are considered competent enough to prevent a cyber security incident and protect the charterer from being found in breach of his duty.

The definitions also used under BIMCO's Cyber Clause do not seem to be very helpful either, as they are quite broad.[1265] Similarly applies further with regard to the Guidelines that have been issued so far which despite their great importance to charterers when arranging their cyber risk management systems, they can be very technical and often require an advanced expertise which most charterers are not expected to have. While the absence of any definitive information and substantive evidence about cyber-attacks and their impact hinders charterers' efforts to trace the deficiencies in their existing systems, so to improve them in line with their new duties, irrespective of whether they are absolute or not.

Besides, even if only reasonable care was required for charterer's compliance, again it would be very difficult to ascertain what decision can be considered "reasonable'' in the face of a cyber-security incident. For instance, would it be enough for the purposes of this duty if the charterer shows that he followed all the steps included in these Guidelines? Or, would charterer's compliance be judged based on what an average reasonable businessman in the shipping industry would have done to prevent this incident from happening? Therefore, the main point to be drawn here is that due to the uncertainty that exists in relation to cyber risks, it will be effectively very easy for the shipowner to always argue that there were more measures that the charterer could have taken to prevent an incident and so, hold him responsible for any losses arising from his duty's breach. To that end, little difference would make the exact nature of charterer's duty, while his liability exposure would be certainly expanded.

Secondly, notwithstanding compliance with the ISM Code and ISPS Code lies primarily with shipowners, as they are related to the vessel's safe navigation for which charterer invariably has no saying, such compliance is equally crucial to charterers on the grounds that their insurance cover can be reserved in case of shipowners' non-compliance with the above, as already explained.[1266] Consequently, if IMO's Guidelines obtain a compulsory character, it

[1265] Under BIMCO's Cyber Security Clause 2019, a 'cyber security incident' is defined as '*the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a digital environment'*; also, 'cyber security' is '*technologies, processes, procedures and controls that are designed to protect digital environments from cyber security incidents'*; and 'digital environment' is '*information technology systems, networks, internet-enabled applications or devices and the data contained within such systems'*.

[1266] For example, clause 12(E) of the Charterers P&I Club Terms and Conditions 2018, clause 1.16 of Charterama General Terms and Conditions, Policy Wording 2017, section 32 of Navigators P&I, Policy Wording 2017, clause 5.2 of Amica Conditions of Insurance (09/2009), clause 34.1.4 and 34.1.10(d) of Norwegian Hull Club Charterers' Rules 2016.

follows that charterers will have to make sure that the shipowner is taking steps to adopt an SMS that takes into account cyber security incidents and provides for their elimination, according to the ISM Code and IMO's resolution.

Thirdly, the introduction of automated operation systems in shipping and their vulnerability to cyber risks disturbs the balance of other traditional obligations that a charterer would undertake under a voyage or a time charter. For instance, it was mentioned that under both charters, an aspect of the vessel's employment by the charterer is his right to nominate safe ports. However, with the rise of cyber security issues, it is expected that not only the definition of "safe" will be reconsidered, but also the scope of his right will be amended. Therefore, a port might be regarded as "unsafe", it is exposes the vessel, its crew and cargo to cyber-threats, if for example, its terminal systems have been proved inadequate to prevent a cyber-attack. Or, the charterers' right to re-nominate in case of a cyber risk might be provided expressly to both voyage and time charterers, on the basis of the seriousness of impact that such an incident might have on the continuity of the whole operation. Issues might also arise in relation to the running of the hire and whether the vessel will be off-hire if delays are caused due to a cyber-attack, as well as to the calculation of demurrage and detention damages.

Clearly all the above undoubtedly create further obligations for the charterer and complicate his position not only under the charter, but also in relation to his insurance cover, as the new risks that arise from his compliance with these new obligations might not fall in their entirety under his CLI cover in the form described in the previous chapter. For example, a cyber-attack on his systems used for the loading of cargo might result in a hull or cargo damage, delay of the progress of cargo operations and the voyage, or even to third party liabilities, such as injuries or pollution. Also, it exposes him to further expenses, such as hire, demurrage or detention damages, as it is not clear whether the vessel will be placed off-hire or the charter will be frustrated in case of such events. So, even though the former damages are normally covered under the CLI, it is uncertain whether the same principle will apply if they are triggered by a cyber-incident which according to some insurers constitutes an excluded risk. Whereas, in respect of charterers' financial losses, they will be still excluded under the CLI, similarly to the majority of his commercial losses.

Thus, one complication that arises in relation to charterer's insurance protection and his exposure to cyber risks is associated with the liabilities and costs that stem from the latter. The concept of "cyber risk" is broadly defined as "*an accident, incident, financial loss, business*

disruption or reputational damage through the failure or manipulation of an electronic system, which could be the result of a malicious attack''.[1267] As a result, any physical damage or loss caused, or any expenses incurred either by the charterer or shipowner due to an attack to the charterer's electronic systems can be considered cyber risk for which the charterer might be ultimately found liable, if he is in breach of his duties. Yet, despite that the term "cyber'' includes many different aspects, the only liabilities or costs that give rise to charterer's liability cover are those that arise in connection with the operation of the vessel when he is acting as "charterer'', as explained earlier.[1268] Although this condition can be easily defined when it is seen in combination with the usual risks that parties face during the performance of the voyage, the same is not as easy when it comes to cyber risks. An example of liability that could probably be covered under the charterer's liability policy including cyber risks, because it is related to the vessel's operation, is charterer's liability for damage caused to the hull of the vessel, when during cargo operations, the charterer's crane system is hacked and consequently the crane collapses on deck, curving its surface. On the contrary, though, it would not be very certain whether charterer remains, for instance, insured against such risks when the malicious act strikes the systems of his service provider onshore which results in damages to both charterer's and shipowner's equipment. Imagine, for instance, a scenario where the charterer loads containers on board of the chartered vessel which include inflammable cargo that ignites above a certain temperature. The charterer in order to monitor the cargo's temperature during cargo operations uses a remote provider who controls the containers' temperature. But, the provider's systems break down due to a cyber-attack resulting in a total black out during which the containers' temperature is uncontrollable so it eventually results in a fire which damages other cargo on board and the vessel itself. In this case, although the cargo procedures are related to the vessel's operation, the risk itself is not triggered by the charterer himself. Therefore, it is likely that cover will be reserved in this occasion in respect of charterer's cargo and hull liabilities, even if these risks are included in his policy. The same could also happen in case where charterers' communication systems are hacked and information is being leaked involving the parties in some smuggling activities due to which they are later fined by the authorities. Although the charterer will not be able to recover the amount fined claiming the cyber-attack, it might be covered as a fine risk.

[1267] The definition was found in James Simison, "Cybersecurity: A growing concern", (March 2019), available https://www.nepia.com/articles/cybersecurity-a-growing-concern/, accessed 12 March 2020.
[1268] For more details, see chapter V in 2.3.1 "The capacity of assured as "charterer".

If the risks are completely excluded, then there is certainly no protection for the charterer if he is found in breach of his duties. The only way through which charterers might be able to claim back some of their expenses in such circumstances is under the "sue and labour'' clause included often in their policy, if they show that these costs have been incurred in their effort to act as prudent uninsured who tried to mitigate its losses. Even so, though, charterer's exposure remains still significant, as it will be upon his insurer to decide whether his mitigation actions were sufficient so for his losses to be recovered. Yet, another issue that arises in relation to this principle and creates uncertainty in terms of charterer's protection, is how exactly the insurer's discretion will be exercised in this case. Specifically, the insurers will have to clarify whether a similar to BIMCO's Clause distinction of charterer's duties will apply here as well, or whether a due diligence duty will generally suffice. If the former, then for the same reasons described above, it will be easy for the insurer to reserve cover on the grounds that the charterer did not try hard enough to prevent such risk. The same effect could also be achieved through the "contracts and indemnities" clause usually included in the CLI, if the charterer undertakes responsibility for the above risks under his charter or any other contract with the affected party. However, as it was explained in the previous chapter, this clause has limited scope, and its application is subject to the contracts' approval by the insurer. Therefore it is believed that coverage of such risks under this clause will be unlikely, especially if it is taken into that insurers offer a cover extension for the same losses at extra cost.

Furthermore, the fact that cyber security management now constitutes part of the shipowners' duties under the ISM Code whose compliance should be confirmed by the charterer upon request of his insurer places another obstacle for charterers in securing their insurance protection in case it is needed. As previously established, the charterer most likely will be obliged to take measures and implement appropriate systems to protect himself against cyber risks. Now, in addition to that, he should ensure that the shipowner complied with the same duty as well, otherwise his liability cover might be jeopardised. However, the completion of this task is already too difficult for him, for the reasons explained above. So, the requirement to be able to know also whether the measures taken by the shipowner are efficient to prevent a cyber incident places an extra burden on the charterer which most of the times he will not even be able to control, if it is considered that he is not familiar with the IT and OT systems used by shipowners, let alone the technical expertise required for their evaluation.

Apart from the above risks that may jeopardise charterer's protection under his liability insurance cover, there are also many other types of losses that a charterer might suffer as a

result of a cyber incident which do not belong in the category of "third-party" liabilities arising from the vessel's operation, so to be recoverable under his CLI. For example, any damage caused due to a cyber risk to the charterer's property, such as data loss or equipment damage, will not be covered under his liability policy. So, if charterers want to ensure that they will remain protected, they should either acquire a non-marine insurance for cyber risks, or make sure that their property insurance includes such risks. Similarly also in cases where the charterer's reputation is harmed resulting in profit losses, or when he suffers financial losses caused by ransomware.

To conclude, although there are already some charterer's insurers who willingly provide protection against cyber risks, if the use of advanced technology infiltrates eventually shipping industry, then it would be anticipated the insurers' majority to follow a more inclusive approach towards these risks, keeping up with the market's needs. In fact, that cover change could be also facilitated by the incorporation of BIMCO's Clause in the charterparties, because it will offer the opportunity to the insurers to assess the risk with more certainty, as parties' liability is defined with a fixed amount that limits the indefinite exposure of both the insurer and assured. However, it should be remembered that charterers' own commercial losses due to a cyber incident will still not be covered, as explained earlier in this chapter, on the grounds that they do not constitute a liability for the charterer, but an operational loss. Therefore, the recommendations provided above[1269] could equally apply here as well.

3.6 The charterer's bunkers liability and the introduction of lower sulphur limits

In the first chapter of this work, the time charterers' duty to provide for a certain quality and quantity of fuel on board was discussed, along with their liability towards the shipowner, suppliers or any other party if damage is caused as a result of the use of such bunkers. Also, it was established that in terms of insurance, damages caused due to the use of defective fuel supplied by the charterer would normally fall within the CLI cover, whereas any loss or damage to the charterer's bunkers or fuel traditionally falls outside the scope of CLI, as protection for them is offered through an additional cover which has the form of a property, rather than liability, insurance.[1270] Therefore, given how wide the spectrum of bunker liabilities is for time charterers, it is considered necessary to evaluate how charterer's liability position will be

[1269] Under 3.4, at p. 259-260.
[1270] See in detail Chapter VI in 3.2 "The bunkers' cover".

formed in light of the new sulphur limits that were introduced into the market in January 2020 and what their impact would be on charterer's liability cover. But, before the charterer's liability issues that arise as a result of this change are presented, it is useful to clarify first some of the main points that define the latter and provide an overview of what it consists.

As it is widely known, from the 1st of January 2020, the amendments of IMO's International Convention for the Prevention of Pollution from Ships (MARPOL) enters into force, following the recent vessel bunker contamination cases in the US and Singapore. Thus, according to MARPOL's Annex VI, it is provided that the sulphur content of fuel oil used on board of commercial ships trading outside sulphur Emission Control Areas (ECAs) must not exceed 0.5% m/m, as opposed to the older limit of 3.5% m/m which has been in place since 2012. These areas are specifically the Baltic and North Sea, the North American area and the US Caribbean Sea.[1271] The only exception to the above standards is recognised to a relatively small number of ships which elected to use an "equivalent" compliance mechanism through the use of LNG fuel or the fitting of an exhaust gas cleaning system (EGCS), otherwise known as "scrubbers", in accordance with Regulation 4 of MARPOL Annex IV. Thus, today, any vessel depending on whether it is trading within or outside an ECA, should now be able to operate on different fuel oils and change between compliant and non-compliant fuel in accordance with the new rules. Also, it is generally expected that the market will be divided into two tiers, one for vessels that have installed scrubbers and another one for those which have not.[1272] The compliance to these amendments will be monitored globally by Port State Control (PSC) authorities whose task will be assisted by the prohibition on the carriage of non-compliant fuels, entering into force in March 2020.[1273] In line with the above amendments,

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[1271] "Environment and pollution – Sulphur emissions", (Standard Club, June 2018), <https://www.standard-club.com/media/2767705/environment-and-pollution-sulphur-emissions.pdf>, accessed 12 March 2020, p. 1.

[1272] James Bamforth, "Dealing with the technical and legal challenges of the 2020 sulphur cap'', *Maritime Risk International* (11 March 2019) <https://www.maritime-risk-intl.com/environment/dealing-with-the-technical-and-legal-challenges-of-the-2020-sulphur-cap-134068.htm>, accessed 12 March 2020, p. 1. A different view is that a multi-tiered market is possible which will be influenced by the availability of low sulphur fuels and the compliance policies of major charterers, who may opt to consider only certain types of vessels that deliver affordable and effective compliance solutions. See in "Tracking the impact of IMO's 2020 global sulphur limit regulation on risk management and counterparty risk appraisal'', (November 2018), <https://cdn2.hubspot.net/hubfs/4132533/Infospectrum_IMO%202020%20White%20paper.pdf?utm_campaign=IMO%202020%20White%20Paper&utm_source=hs_automation&utm_medium=email&utm_content=67611083&_hsenc=p2ANqtz-_c9Gtqt_3jg6bLp_4EhaBBVqBPNu7PkrX1HVSSc8yw9ZasPBkvuyjP>, accessed 12 March 2020, p. 11.

[1273] "Guidance to Shipping companies and crews on preparing for compliance with the 2020 'Global Sulphur Cap' for ships' fuel oil in accordance with MARPOL Annex VI'' , (International Chamber of Shipping, July 2019), <https://www.ics-shipping.org/docs/default-source/resources/guidance-for-compliance-with-the-2020-global-sulphur-cap-july-2019.pdf?sfvrsn=24>, accessed 12 March 2020, p. 4. See also Wole Olufunwa, "IMO 2020: Legal considerations for unprecedented changes'' (September 2018) <https://www.hfw.com/IMO-2020-Legal-Considerations-for-unprecedented-Changes>, accessed 12 March 2020, p. 1.

more localised low sulphur regimes have been developed and are currently in force in various jurisdictions.[1274] For example, the European Union has already agreed to the application of IMO's 2020 limits within 200 nautical miles of its Members' states' coasts,[1275] whilst its Members are required to implement "effective, proportionate and dissuasive'' penalties for those violating the sulphur provisions.[1276] In the light of such significant changes taking place in shipping industry, it is undisputable that many issues related to the allocation of parties' liabilities under the charterparty will arise, necessitating their review, whilst many disputes will be created between the parties in their effort to establish again certainty in their business.

First of all, it should be noted that it is the shipowners' duty to ensure that their vessels are compliant with the IMO 2020 limits. They are also entitled to choose the method they would like to adopt in order to achieve the above, by taking into account various factors, such as their vessels' type, size and age, their trading area, their remaining service life, the cost for scrubbers' installation, the bunker pricing and the fuel availability and consumption.[1277] However, this decision will also have a great impact on time charterers who are invariably responsible for providing and paying for the chartered vessel's fuel. Thus, for example, a charterer of a vessel which uses scrubbers is expected to pay less than one of a vessel whose owner preferred distillates or blended and hybrid fuels. That effectively will have an impact on the pricing of charterers' bunker insurance, as the price of their insured value will increase.[1278] But, as the cost implications of IMO 2020 on fuel prices are not known at present, it would be unreasonable to predict with confidence that the above change will actually occur.

Despite the price implications, though, there are other great issues that shipowners' choice might trigger during this period of transition affecting directly the charterer's liability exposure. Firstly, if (time) charterers prefer scrubber-fitted ships, as they are associated with lower fuel costs, and so request their installation from the owner, a question arises as to who should be responsible for such costs and for any liability related to their installation. Although the existing charters will not probably deal expressly with the above matters, the parties would probably have already reached an agreement as to which option should be adopted. So, if the owner refuses to comply, he should be responsible for paying any incurred penalties for not doing so.

[1274] For more specific information, see *supra*, fn. 1271, p. 5.
[1275] Ibid, p. 2 and 6.
[1276] See respectively in EU Sulphur Directive 2012/33/EU.
[1277] For more information regarding the different methods available to shipowners, see *supra*, fn. 1272, in "*'Tracking the impact of IMO's 2020 global sulphur limit regulation on risk management and counterparty risk appraisal''*, p. 5 and 11. Also, in *supra*, fn. 1271.
[1278] Similarly argued in *supra*, fn. 1272, p. 10.

On the other hand, if he accepts the charterer's order, but it is proved that his ship is not finally adequate for a scrubber-fitted system, the consequences of his non-compliance (e.g fine) will be most likely borne by the charterer who might be called to reimburse him by way of indemnity. Depending also on the charter terms, the charterer might be found liable for lost time and extra costs, if the vessel is detained by the PSC Authorities.

Secondly, if vessels are operating by using blended or hybrid fuels, the risk of charterers' being found responsible for hull damage is greater than when using scrubbers. This is justified on the basis that the bunker suppliers will be required to carry out more fuel blending in order to comply with the new low limits and produce sufficient quantities to satisfy the needs of the market. But, the more blending it occurs, the higher the risk of importing contaminants is.[1279] Also, a blended fuel may separate out in a ship's bunker tanks or become unstable when mixed with other fuel during subsequent bunkering operations. If so, then not only the ship might end up burning fuel that exceeds the new limits, but also result in poor ignition in the ship's fouling of cylinders, turbo chargers and exhaust systems, posing a threat to its operation and its machinery's reliability.[1280] Consequently, the chances of a breakdown or engine failure are likely to be higher and since the fuel is usually provided by the charterer, it follows that any damage caused to the vessel which is attributed to the fuel used will be at charterer's own cost. To make matters worse, the industry has not ascertained yet the impact that such new fuels might have on vessels' engines.[1281] Consequently, as the time charterer is responsible to provide the right type of fuel on board under the standard time charters, it will be difficult for him to prove his compliance with this duty when an engine damage occurs, since he will have no access to the technical expertise required to assist him in defending any similar claim made against him. In addition, the risk of charterers' being found liable for not providing "on spec'' fuel could result in disputes between them and shipowners resulting further in loss of earning time and potentially extra legal costs for charterers.

Thirdly, it is expected that the immediate effect that the IMO 2020 limits will have from January 2020 will certainly affect charterer's liability position in respect of the existing bunkers' disposal upon redelivery. As it was mentioned in an earlier chapter, it is common principle that when a vessel is redelivered by a time charterer, it should be returned with

[1279] *Supra*, fn. 1273, in Wole Olufunwa.
[1280] Ronald Clark, Ronald Clark, "The 2020 Global Sulphur Cap: an overview" (November 2018), <https://www.reedsmith.com/en/perspectives/2018/11/the-2020-global-sulphur-cap-an-overview>, accessed 20 March 2020, p. 3.
[1281] *Supra*, fn. 1272, p. 8.

approximately the same fuel quantities as the time of delivery and the owner will buy back from the charterer the remaining amount.[1282] Nonetheless, under the new circumstances, the shipowner will probably have no interest in buying fuel that does not comply with the new sulphur standards, as it will be of no use to him, unless his vessel is fitted with scrubbers. Also, under section (b)(i) of BIMCO's 2020 Fuel Transition Clause for Time Charter Parties, it is provided that charterers shall have supplied the vessel with fuel, so that on 1st January 2020 the vessel would have sufficient compliant fuel to complete its voyage until the closest bunkering port where compliant fuel will be available. This clause goes on saying that it is the charterer's duty to discharge, remove and dispose any non-compliant fuel from the bunker tanks at their own cost.[1283] Thus, the charterer is left exposed to new different risks and additional costs. Specifically, if he returns the vessel with no compliant fuel, he might be found liable for breaching the new regulation and should compensate the owner for any fines imposed on him, or for any expenses arising during the time lost due to his vessel's detention by the authorities. Conversely, if the charterer decides to dispose the remaining fuel that he owns, he will be responsible for cleaning the ships' tanks before the vessel's redelivery, based on the standard charter terms. In this case, he should also cover the expenses for removing, disposing or storing the fuel, along with any costs incurred for cleaning the tanks. It follows that if the tanks are proved not to be properly cleaned and as a result the new low sulphur fuel is contaminated, the charterer inevitably will have to compensate both the shipowner and the new charterer (if any) for any losses suffered. Otherwise, if the vessel is still chartered to him, he will suffer the cost of the new fuel's contamination himself.

Clearly, charterer's liabilities will not only be affected during the transition period, but also after the new regulations will be officially in force. As mentioned already, although the shipowner might be found initially liable for breach of these regulations, he will be entitled to a recourse action against the charterer who would be ultimately responsible for the bunkers' supply, as he was before. The same has been also confirmed by section (b) of BIMCO's 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties, according to which "*charterers shall supply fuels to permit the vessel, at all time, to comply with any applicable Sulphur Content Requirements (...)''* and shall warrant that any bunker suppliers used by them have complied with the above requirements as well. Breach of such warranty by charterers results in their wide exposure, as they will be liable for "*all losses, damages, liabilities, delays,*

[1282] See Chapter II, at p. 33.
[1283] Clauses (c)(i) and (d) of BIMCO's 2020 Fuel Transition Clause for Time Charter Parties.

deviations, claims, fines, costs, expenses, actions, proceedings, suits demands''[1284] arising from the above against the owner. Save the great liability that the breach of such duty entails, another difficulty that arises for charterer is that he has to comply with the above duty without any guidance, as there are no clear requirements so far regarding the bunker quality that should be provided, so the charterer can ensure that he fulfilled his obligation. For instance, some bunker quality clauses require specifically the charterer to provide fuel that complies with the International quality standard ISO 8217. On the contrary, section (a) of BIMCO's 2020 clause merely states that *"Sulphur Content Requirements''* means "*any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority''.* Thus, charterers in order to avoid liability, they should be aware of the particular fuel related requirements in the area their chartered vessel is trading. However, this would not be an easy task for them, considering the technical nature of these requirements, the various regulations that exist and the market's lack of expertise in respect of the new standards that have been recently implemented. So, the charterer should constantly check with his bunker suppliers that they are informed about any changes related to these requirements and that the fuel they supply him with is in fact compliant with any of these regulations.

Charterers' compliance with this duty becomes even more difficult in case where their vessel is trading within and outside ECAs, necessitating regular switching from heavy fuels to hybrid/blends/distillates. In this case, the charterer should ensure not only that appropriate fuel is supplied from time to time on board of the vessel, but also that the tanks are sufficiently cleaned for its storage without running a risk of contamination for which again he will be responsible. But, being responsible for the cleaning of the tanks and disposing of waste coming from the use of scrubbers, the charterer is exposed to even more risks, such as pollution or penalties for disposing it in confined waters and ports, in addition to the cleaning costs. In fact, IMO already requires that wash water parameters of pH are regularly monitored, while there are few ports that have prohibited the use of certain scrubbers in their waters.[1285] Therefore, it would not be surprising to see domestic laws of the flag and port states applying strict sanctions against any breach of their regulations related to the management of fuel waste, such as fines or vessels' detention. At this point, it is interesting to note that although charterer's liability to

[1284] Clause (b) of BIMCO's 2020 Fuel Transition Clause for Time Charter Parties.
[1285] Alvin Forster, "EGCS: Do they scrub up well?" in Tiejha Smyth, *"Sulphur cap 2020: Impact on charterparties – Time to act now''* (Signals, Issue 112, summer 2018), <https://www.nepia.com/search?q=signals+112> , accessed 12 March 2020, p. 14.

clean the tanks is not express, and despite the fact that the shipowner will be usually paying for the installation and maintenance of the scrubbers, it is believed that these costs could be recoverable by way of indemnity from the charterer on the grounds that the waste was created due to the owner's compliance with his orders to burn such fuel or to use scrubbers.[1286] It follows that the same would further apply in relation to the cleaning costs and the expenses or liabilities arising as a result of the cleaning process (e.g for vessel's downtime or loss of earnings).

Another difficulty that stems from charterer's compliance to this duty is related to his obligation to find compliant fuel to supply the vessel with. Yet, the problem in this case is that the vessel might trade in areas where compliant fuel cannot be supplied, or she might not even be able to trade in areas where such fuel is available. Consequently, if a vessel's trading pattern includes ECA port calls, the vessel would be required to include in her voyage regular bunkering deviations and delays, especially if there is also limited capacity for storing compliant fuel on board. In this case, it is likely that any additional expense incurred or any time lost for the purposes of finding supplies of the right fuel will be borne by the charterer. This is also confirmed by section (b) of BIMCO's 2020 clause which states expressly that the vessel shall remain on hire throughout the charterer's period of compliance with the sulphur requirements, notwithstanding any detention, deviation or general delay taking place due to the latter. Furthermore, the regular bunkering of the chartered vessel at various ports during its voyage will most probably expand charterer's exposure to liabilities arising as a result of the nomination of an unsafe berth. Therefore, the charterer once again should be very cautious when planning the vessel's voyage and take into account all the factors which might affect the vessel's route or delay it, as he will be in the end accountable for any losses or liabilities arising from such decision.

Of course, it is clear from all the above that the introduction of new obligations for the charterer following the low sulphur fuel regulatory changes will undoubtedly affect the spectrum of his liabilities under the charter, as they are known today. Although it would be time charterers who will be mostly influenced by the new regime due to their traditional obligation to supply bunkers on board of the chartered vessel, the impact of such changes on voyage charterers should not be neglected either, as they should consider the vessel's agreed

[1286] James Bamforth, "Dealing with the technical and legal challenges of the 2020 sulphur cap'', *Maritime Risk International* (11 March 2019) <https://www.maritime-risk-intl.com/environment/dealing-with-the-technical-and-legal-challenges-of-the-2020-sulphur-cap-134068.htm>, accessed 12 March 2020, p. 2.

route and the consequences of its deviation in order for the vessel to be supplied with competent fuel. Although the aforesaid suggested changes in charterers' liabilities are merely a prediction, on the basis that the allocation of parties' liabilities, especially with respect to bunker clauses, will be completely reviewed in the near future, it is safe to support that it would be impossible for the charterers' position to remain intact, let alone shrink, in any case.

Thus, considering that to a certain extent charterers' exposure will most likely expand, it is worthy to examine what its impact would be from an insurance perspective. To begin with, if the worst case scenario for charterers is taken into account, where the parties will decide to incorporate BIMCO's 2020 clauses into their charterparty or generally adopt a similar way of allocating their bunker liabilities, not only time charterer's exposure will increase dramatically, but also his liabilities will probably remain outside the scope of his liability cover.

More specifically, it was mentioned above that the charterer is the one who should provide compliant fuel on board, whilst breach of this duty can possibly result, among others, in fines against the owner which the latter could claim back from the charterer. In an earlier chapter of this work,[1287] it was explained that charterer's liability cover for fines is limited only to certain types of fines which are specifically enumerated in their policy. However, it seems that to date, there is no policy that accepts cover for fines arising in relation to bunkers' regulations, although it has been suggested by some insurers that these could be discretionary covered, if the assureds are able to demonstrate that they acted in good faith and did everything that could reasonably be expected to ensure compliance.[1288]At this stage, the exact amount of fine or penalty for such a violation cannot be known, as these will be defined by the flag and port states, so they will vary from jurisdiction to jurisdiction. Indicatively, though, it is noted that in the USA, the penalty policy for violations of MARPOL Annex IV provided for a civil penalty amounting to USD 25k for each violation.[1289] Although the sum might seem insignificant, it needs to be considered that the charterer runs the risk of being found liable for multiple fines per voyage, especially when the vessel is trading in areas where different sulphur standards apply, so his compliance is tested several times. As a result of the above risk and despite the likelihood of their discretionary cover, it is believed that it would be beneficial for charterers if their liability insurers expressly include this type of fine in the list of the covered

[1287] See chapter V in 2.2.2.3.d "Liability for fines".
[1288] View expressed by MS Amlin in Insurance Marine News, (4 December 2019). Similarly also under the Shipowners' Club Rules.
[1289] See "Environment and pollution – Sulphur emissions", (Standard Club, June 2018), <https://www.standard-club.com/media/2767705/environment-and-pollution-sulphur-emissions.pdf>, accessed 12 March 2020, p. 2.

under their policy risks. It is assumed, however, that charterers' insurers might be initially reluctant to provide coverage for such risk due to the uncertainty that exists regarding its pricing. Nonetheless, once the new regulations enter into force and a clearer picture of the amount of the risk is created, it would not be surprising to see charterers' insurers accepting the incorporation of such risk, especially when considering that some of them are already doing it, even on a discretionary basis.[1290] Besides, irrespective of the amount of the fine at stake, insurers could always accept coverage up to the amount they wish to insure the charterer against, by amending each time only this risk's deductible.

Apart from the fines for non-complying with the new regulations, it was mentioned that the flag and port authorities can also request the detention of the vessel during which the latter will most likely remain on hire. In addition, it has been suggested that the vessel remains on hire even when a deviation is required in order for compliant fuel to be supplied and when a delay is caused due to any of the above reasons, or because the tanks are not properly cleaned. So, the financial burden of any extra time required, despite the vessel being non-operational, will be placed on charterer's shoulders. Again, though, charterers' liability and expenses that arise as a result of a detention or deviation and respectively a delay are usually expressly excluded under their liability cover, as it was established earlier.[1291] The only exemption where detention and additional hire expenses would be recoverable under this cover is when they are related to a hull damage for which the assured charterer is responsible. Thus, for example, if from the use of multiple different blended fuels is not possible for the charterer to remove completely the fuel residues from the tanks and the owner needs to replace or clean them at a different berth, the expenses incurred by the owner along with the time lost would be compensated by the charterer and covered under his insurance cover. The same would also apply for the extra hire paid by the charterer during this period of time, as it would be related to the damage sustained to the vessel's stores. Therefore, if charterers wish to protect themselves against these new risks, they should make sure they acquire a loss of use cover which purports to include such commercial risks in the form described above. Taking into account the factor of unpredictability that such losses entail and the nature of these liabilities, it is believed that it would be difficult for them to become part of CLI. For that reason, it is expected that charterers might turn to a Loss of Use cover more frequently the forthcoming

[1290] In fact, there are already informal discussions within the International Group of Clubs regarding the potential amendment of the Clubs' Rules, so to include this type of fine expressly in their included risks. Information provided unofficially by a P&I Club representative.
[1291] See Chapter V, at p. 243.

years, if it is also considered the rising trend that freight rates follow, as mentioned at the beginning of this chapter.[1292]

As far as the emerging disputes concerned, either between the charterer and owner, or the former and the bunker suppliers or operators, it seems that in their majority will be covered under the charterer's legal costs cover (FD&D). The former's cover would be justified as long as the dispute is related to the charter, whereas any disputes involving the bunker suppliers would be covered insofar as they refer to the quality of the fuel supplied. On the contrary, disputes between suppliers and charterers related to the bunkers' quantity or ownership will be excluded from the charterer's Defence cover under its current form.

Also, assuming that charterers might need to discard or sell some of the remaining non-compliant fuel during the period of transition to the new regime, his losses and the expenses he incurs as a result of the above could be recovered only under his Bunkers cover, if he has any. As the same might happen in the future with charterers trading within and outside ECAs and the different types of fuels they are using in case they miscalculate the quantity required, it could be argued that charterer's exposure to such risks will increase. Therefore, the number of charterers looking for Bunkers' cover might respectively increase. The same could further occur not only due to the expected rise of bunkers' value, especially those of blended or hybrid fuels, but also due to the high risk of bunker's contamination through the use of different fuels. Thus, charterers trading with vessels using non-scrubber fitted systems would be expected to purchase Bunkers cover to avoid exposure to losses of or damage to their property.

It has been established from the above that charterer's bunker liability will be radically affected by the new regulatory changes and will inevitably result in an expansion of charterers' exposure. Although the existing insurance framework for charterers seems overall to be able to accommodate the emerging new liabilities they might encounter by expanding their liability cover in relation to fines and through the promotion of their additional covers (Defence, Bunkers, Loss of Use), it will be still complicated and certainly more costly for charterers, as they will have to acquire multiple covers in order to be fully safeguarded.

As a result, it might be just more effective if more fundamental changes take place from an insurance perspective, instead. More specifically, as the new bunker liabilities will affect primarily time charterers, it might be preferable for charterers' insurers, instead of amending

[1292] See above, at p. 248.

their liability cover, to introduce a completely new Bunkers' cover which will not be solely a property cover (as it is now), but a hybrid version that will work as an umbrella cover and include both liability and property risks related to charterer's bunkers. Thus, it will provide protection against the financial losses charterers might face if their fuel remains unsold or sold at a lower price, or when their bunkers are lost, contaminated, or damaged. In addition, it will further include cover against charterer's liability to compensate the shipowner for any fines he had to pay due to the use of non-compliant fuel as well as expenses incurred in relation to any of these covered bunkers' risks, such as costs for ascertaining whether the fuel is compliant, expert fees for ensuring that the tanks were properly cleaned, or legal costs for defending him in relation to bunker disputes arising between him and the bunker suppliers or shipowners. When it comes to the latter costs, the new covered risk will work essentially in a similar way to the "*legal costs and enquiry expenses''* risk that is often found in the CLI insurance policy.[1293] Moreover, it could protect them against any commercial losses (eg. lost profits, detention damages, hire, etc.) they might suffer, as a result of a breach of their new bunker duties. As such risks cannot be easily quantified, one suggestion that could make this idea more attractive to insurers, would be the cover to be offered only up to a maximum number of days whose cost is found acceptable by them; whereas, for any further losses suffered in excess of these days, the charterer will need a Loss of Use cover in order to be fully protected.

Such cover will be available only to time charterers and so, it is believed that it will make their standard liability cover more flexible and effectively more compatible to voyage charterers' needs as well. As the voyage charterers are not responsible for the supply of bunkers on board, the only substantial exposure they face is for financial losses arising as a result of the vessel's deviation or delay caused due to the change of route in search of compliant fuel, after it is found that the fuel used does no longer comply with the new sulphur limits. But, this risk will be covered from the Bunkers' cover only to a limited extent, as previously suggested. Therefore, with the new liability cover, voyage charterers will not be offered with protection that includes also liabilities for which they will not even encounter, while at the same time they can always resort to a Loss of Use cover and adjust it so to offer them limited protection for a certain period of time, if they feel that there is a risk of the vessel being delayed due to any of the above reasons. Of course, that change in the CLI is expected to impact upon the cover's price too; a change which will be undoubtedly welcomed by the charterers' industry, as insurance will come now at lower cost. It is also believed that contrary to what applies in

[1293] For more details, see in Chapter V in 2.2.2.3.j "Legal costs and various expenses".

shipowners' case, the combination of property, commercial and liability risks under charterer's Bunkers cover is more effective in charterer's case due to the lower amounts of liability they are exposed to. For instance, although the charterer is exposed to almost the same number of liabilities and risks as a shipowner, the cost of such liabilities and risks is relatively restricted in charterer's case. Whereas, shipowners, due to the value of their property (i.e the vessel) are exposed to significantly higher claims (e.g. hull damages, salvage and pollution). For that reason, it would be more sensible for the latter's insurance to be split into separate covers. However, charterers' property at stake (i.e bunkers) and their liabilities arising therefrom could never reach the levels of shipowners' exposure in similar circumstances. Therefore, it might be easier and more practical for their risk exposure to be brought under one hybrid cover.

On the basis that bunkers' cover will develop into an indispensable part of charterer's insurance, another suggestion could be for two different covers to be provided depending on the type of the insured charterer. Hence, the voyage charterer could be still insured with the standard liability cover in the form described above. Whereas, in case of time charterers, a combined insurance with a single limit could be created, according to which the charterer's bunker risks will be combined with the charterer's liability risk under one cover that will bring together two distinct types of insurance covers. The wider use of a comprehensive cover in relation to CLI has already been discussed earlier in this chapter and it was established in the fifth chapter that there are already some IG Clubs[1294] and specialist insurers which offer a broad charterer's cover including protection against liability/P&I risks and other risks that charterers usually face, such as hull liabilities, bunker, war or cargo owner's risks, for which normally the charterer would arrange for a separate cover.[1295] Therefore, it might more effective if such cover becomes the standard cover for time charterers, adopting an even wider scope and traditionally including from now on the updated bunkers' risks, in the form described above.[1296] Though, the downside of such cover would be its complexity, as it will be consisted of various smaller individual insurances. Also, because of the cover's all-inclusive character, it follows that its cost will be high and therefore, it might not be very attractive to the charterer's majority who constitute small or medium-size companies.

To conclude, it is believed that the application of the new sulphur limits will create new liabilities mostly for the time charterer for the majority of which he has no protection under his

[1294] Such as Gard and the Swedish Club.
[1295] Such as Charterama.
[1296] See above, in 3.2 "Launch of CLI as comprehensive insurance cover only", at. 155-157.

liability cover in its contemporary form. Thus, even though the insurance market seems so far to maintain a supportive attitude towards the affected parties and the transition to the new regime seems to run smoothly, it is clear that significant changes are anticipated within shipowners' P&I policies and CLI covers. As a consequence, it is argued that although most of the issues related to the new limits and the allocation of parties' liabilities might be resolved within a short period of time, the insurance changes, on the other hand, that will take place within CLI cover will most likely have a permanent character and are expected to create a new ambit of protection for the charterer.

3.7 The rise of unmanned vessels and the future of charterer's liabilities

When considering and evaluating the effectiveness of CLI as a whole, it is necessary also to take into account the future developments within the shipping industry that are likely to affect charterer's liability position. It was mentioned above that the rise of advanced technologies in shipping will increase charterers' exposure in respect of cyber risks. Nonetheless, the former's impact on charterers is expected to be even greater once the use of unmanned (UV) and autonomous (AUV) ocean-going vessels is introduced into practice.[1297]

Currently, for many the idea of an entirely automated shipping industry seems imaginary and for various reasons non plausible. But, there is no doubt that the reality suggests that more and more steps are being taken nowadays, preparing the industry for such change, similarly to motor industry. In some countries, small unmanned vessels are already being used in inland trade and short routes,[1298] whilst the world's first fully electric, battery powered, autonomous cargo ship, the "Yara Birkeland'', is prepared for its launch already in 2020.[1299] Also, recently the European Commission has announced the funding of a new project, called "Autoship" for

[1297] Generally, the definition of "unmanned vessels'' relates to vessels that are remote-controlled by one or more shore side controllers using electronic computer equipment. This is done by using either line-of sight communication or, global positioning systems (GPS) to control the vessel remotely. So, they are not completely "unmanned'', but the ''manning'' is done by personnel on shore. On the other hand, "autonomous unmanned vessels'' refer to vessels that are pre-programmed and use a combination of sonar radar, advanced computer software as well as very fast control algorithms to form a pre-determined route at sea without any human interaction. The above distinction and definitions were found in Sir Bernard Eder, "Unmanned vessels: challenges ahead" [2019] L.M.C.L.Q. 47, p 47.

[1298] Such as in Netherlands. Also, see, for example, the case of 'Maxlimer', the first unmanned cargo vessel that crossed the English Channel on 7 May 2019.

[1299] More details about the construction and equipment of the 'Yara Birkeland' can be found in "Yara: The first ever zero emission, autonomous ship", available at <https://www.yara.com/knowledge-grows/game-changer-for-the-environment/>, accessed 12 March 2020.

the development of two remote and autonomous vessels.[1300] Due to the apparent air of innovation that this new technology brings to shipping industry, it follows that concerns arise as to the efficiency of the existing regulatory, legal and insurance framework primarily in relation to the safe navigation at sea, environment and of course parties' contractual obligations. The role of reviewing and updating the existing international regulatory framework has been allocated to the International Working Group on Unmanned Ships ("IWG'') which was set up by the CMI and operates since 2015, while there are other organisations which have already developed safety codes and practices related to the use of autonomous vessels.[1301]

Clearly, the use of such ships will affect every single legal and insurance aspect of shipping. The parties' rights and obligations under charterparties should be amended and the contractual framework for the carriage of goods will change so to fit for the purpose of carriage in unmanned vessels. Also, relevant insurances will be developed and new risks will be introduced into the covers. In light of all the above, it is considered useful to mention some of the potential issues that could be triggered as a result of this development in relation to charterers, their liability exposure and insurance.

In order to be able to ascertain how the parties' liabilities will evolve in a contractual context, it needs to be understood first the design and operation of these ships. In a nutshell, it would seem that so far, the ultimate purpose of such vessels is to be able to sail with the least possible human intervention. So, all operations will all be automated, as the ship will be equipped with automatic mooring systems and electric cranes, while the berthing and unberthing will be monitored remotely or programmed in advance. Also, autonomous vessels are expected to sail only with the use of solar energy or electric power, so they will be more environmentally friendly.[1302]

As a consequence of the operations' automation, including the cargo operations, the charterer's duty, first of all, to take care of the cargo during its handling operations will be transferred to the shipowner, assuming that cargo operations will be executed completely through the use of the vessel's own systems. Thus, charterers will no longer be exposed to liabilities for cargo damage, loss or shortage and accordingly, their insurance against such risks

[1300] More details about the project "Autoship" can be found in "AUTOSHIP: Autonomous shipping initiative for European waters", available <https://trimis.ec.europa.eu/project/autonomous-shipping-initiative-european-waters>, accessed 12 March 2020.
[1301] For example, Maritime UK has already published an industry Code of Practice for Maritime Autonomous Systems Ships (MASS), Lloyd's Register has produced its own LR Code for Unmanned Marine Systems, and DNV-GL produced its own Class Guideline for "Autonomous and Remotely Operated Ships''.
[1302] Assuming that the vessels will be constructed based on the "Yara's Birkeland's'' standards.

might become redundant. Also, considering the limited, if non-existent, involvement of human intervention during the cargo operations, charterer's exposure to third party injury liabilities will be limited, as he will not need to appoint any stevedores to perform them. Nonetheless, there is still likelihood that charterers will have some involvement in cargo operations if the equipment used for cargo's loading, stowing and discharging is rented or owned by them. In this case, the use of electric cranes on charterer's behalf can expose him to the traditional cargo liabilities as well as to new risks that come along with the introduction of electronic and autonomous systems. For example, as it has been previously mentioned, there is the risk of a cyber security incident which could result in the charterer's equipment's malfunction, causing damage to the hull or cargo carried on board. If the malfunction, though, is not the result of a cyber-attack, but it is due to a software flaw, another issue arises concerning the potential liability of the manufacturer and whether he should be solely responsible for such damage, or jointly with the charterer. In the similar situation of a driverless car, the new Transport Bill currently under consideration seems to imply that liability could lie with the manufacturer, if the accident was caused due to a defect with the product's design, but with the driver, if it was being operated autonomously at the time of the accident.[1303] Although it remains to be seen what sort of allocation of liabilities will be decided, it is certain that the CLI cover will be affected accordingly. Therefore, apart from the changes in relation cyber risks mentioned above, an additional cover might be created, so to protect charterers against any liability related to the manufacturer's work, if a strict liability is imposed on him.[1304] Also, it will be perhaps needed to be clarified whether under CLI, the cover will be reserved if the included risk (e.g hull/cargo damage) is caused due to the manufacturer's work as being an inherent vice.[1305]

The development and promotion of unmanned and autonomous vessels purports to create safer conditions for the vessels' navigation by eliminating completely the chances of human errors which appears to be currently the predominant cause of the majority of incidents at sea. Albeit charterer is not involved in the vessel's navigation, there is still an extreme possibility that he would interfere and that could make him liable for any liability arising therefrom. Yet,

[1303] As supported in "Unmanned and autonomous vessels – the legal implications from a P&I perspective" (The Shipowners Club, December 2017), available <https://www.shipownersclub.com/unmanned-autonomous-vessels-legal-implications-pi-perspective/ >, accessed 12 March 2020, p 2.

[1304] An interesting discussion about the channelling of liability in case of autonomous vessels can be found in Baris Soyer, "Autonomous vessels and third-party liabilities: The elephant in the room'' in Soyer B. and Tettenborn A. (ed.), *New technologies, Artificial intelligence and shipping law in the 21st century,* (Informa Law from Routledge 2019), p.112.

[1305] Under section 55(2)(c) of the Marine Insurance Act 1906, it is provided that the insurer will not be liable for inherent vice, unless the policy provides to the contrary.

this tiny possibility will be completely vanished with the development of unmanned vessels. With every navigational move being either predetermined, or arranged remotely through the shipowners' electronic systems, the charterer will have no margin or means to interfere or affect the shipowner's decision. Therefore, charterer might no longer require protection against collision liability, which constitutes a covered risk under his liability cover.

Apart from the navigational safety, unmanned vessels will further protect the environment with emitting zero emissions in the air. Therefore, in an ideal world where all vessels will cease to operate with the combustion of fuel, time charterers will no longer be responsible for providing and paying for bunkers, but most importantly they will not be exposed to any of the liabilities described above related to the use of unsuitable or non-competent fuel. Consequently, insurance against charterers' risks related to pollution, removal, disposing and storing of bunkers, their loss or damage, delays, the vessel's detention, or any fines imposed due to the use of non-competent fuel will not be necessary. Therefore, bunkers' liability as well as bunkers' insurance cover might become obsolete. However, such suggestion might be overly optimistic, if the real difficulties of implementing these alternative sources of power into oceangoing shipping are considered. So, although the above might actually affect charterer's bunker liabilities in case of inland vessels or vessels covering short routes, it is questionable whether they will ever be able to replace traditional fuel used by vessels of big tonnage covering international trade routes. Also, even in the former case, it is expected that a new form of liability might emerge for charterers, requiring for example, that they ensure that sufficient power will be provided to the vessel during the voyage through the nomination of certain ports.

It has been suggested that because of the removal of human error as cause of accidents thanks to the use of unmanned vessels, the number of claims that are likely to arise will decrease and so will the legal costs involved; yet the value of claims is expected to arise.[1306] Although it cannot be disputed that claims will certainly become more expensive, considering the complexity of the equipment adapted on board of the vessel and the potential cost and time of its repair, it is also believed that the claims' number will not be necessarily limited. The reason for this is parties' exposure to new risks, such as cyber-attacks, or damage, losses and costs due to malfunction of a faulty software or equipment which introduces new types of disputes in which a charterer might be involved. The same also applies in respect of interpretation matters

[1306] As found in Jessica Maitra, "Unmanned vessels and the carriage of goods – contractual and insurance considerations" (18 January 2018), <https://www.clydeco.com/insight/article/unmanned-vessels-and-the-carriage-of-goods-contractual-and-insurance-consid>, accessed 12 March 2020, p. 3.

that will emerge, after the development of a new regulatory and legal framework referring to unmanned vessels and parties' new liabilities under the charter. Therefore, it is argued in response to the above, that the scope of the FD&D cover offered to charterers will expand, including disputes between them and their product producer, or any third party service provider contributed in the development of electronics systems used by the charterer.

Another significant change that affects charterer's liability exposure under the charterparty is the potential introduction of new terms of "safety'' applying to unmanned vessels. Subsequently, this might alter the standards which charterers should fulfil in order to comply fully with their charters' safe port warranty, as mentioned in the earlier chapters of this work.[1307] But, the more technologically advanced the vessel's construction and operation becomes, the more complicated the requirements of a "safe'' port will be and so, more difficult for charterers to comply with their duty.

The level of automation that will be introduced with the use of these vessels will expose all involved parties to various cyber risks as the systems could be susceptible to malfunctions and attacks due to the great number of data they will be collecting and storing. However, it is questionable whether the losses suffered or liability incurred by charterers in the above circumstances will be recoverable under his CLI. So, it could be argued that even if charterers' insurance market does not decide to follow an inclusive approach towards cyber-risks, as suggested earlier,[1308] the extension of a cyber-risk cover will certainly become a necessity for charterers.

In light of the above changes, it would be unreasonable to support that charterers' liability cover will remain intact. On the contrary, it is possible that new liabilities (e.g cyber) will be incorporated into the standard CLI cover, whereas others might completely vanish, such as for bunkers or cargo, if charterers are no longer responsible for these operations. Furthermore, the high values of the assets involved in ships' operation after its "transformation'' will impact on insurance costs which are expected to rise.[1309] Therefore, as a result of these big changes, CLI cover might take a completely different form with its included risks being entirely re-evaluated by the insurance market.

[1307] See Chapters II and III, in 2.1.c and 2.1.b respectively, regarding liabilities arising from orders related to the port nomination.
[1308] For more details see above, in 3.2.
[1309] Opposite view expressed in *supra,* fn. 1304, p.110.

3.8 The CLI limits and the issue of charterer's unlimited exposure to certain risks

In the second and third chapters of this work, it was established that charterer's liabilities under a time or a voyage charter are numerous, while in the fourth and fifth chapters, it was explained that charterer's insurance protection against the above liabilities can be broad enough so to cover the majority of risks that charterers are exposed to either in the form of a standard liability cover, or of an additional cover specialised in a particular type of risks only. It was also mentioned that CLI is not unlimited, but subject to the limits imposed by each insurer, and that they sometimes vary, depending on whether they refer to charterer's hull, cargo or third party liabilities with the average level of protection offered to them reaching usually the amount of five hundred million dollars.[1310] Although it was suggested generally that charterers seem well-protected under the above limits, an issue arises as to whether this view applies to all their liabilities and also whether such limits are in line with the emergence of new risks affecting charterer's liability position, as they have been described earlier.

With regards the first issue, the answer lies to the charterer's right to limit his liability either under the contract or statute. Thus, if the charterer agrees on a limited liability in certain circumstances and for certain risks under his charter with the shipowner or his contracts with any other entity involved in his trade, such as cargo interests, stevedores or bunker suppliers, it is expected that his liability insurance will take into account his contractual liability exposure. Subsequently, it is argued that his insurance limits will be compatible with his exposure and therefore, sufficient to protect him against the contractual risks he undertook. This argument is justified on the grounds of charterer's duty to make a fair presentation of the risk, by disclosing to his insurer sufficient information that he knows or ought to know which could affect his insurer's decision when fixing the premium or determining whether he will take the risk.[1311] Therefore, as the charterer is obliged to notify his insurer about the contractual limits of his liability before the terms of his insurance are concluded, it follows that his insurer will most likely offer him a cover whose limits will exceed or at least, comply with the above liability limits, unless he decides not to cover the risk at all. So, the charterer will be sufficiently protected.

[1310] See generally in Chapter IV in relation to the various insurance providers.
[1311] Section 18 of Marine Insurance Act 1906 and currently section 3 of the Insurance Act 2015.

On the other hand, when there is no contractual limit for charterer's liability, the adequacy of his insurance limits will be judged based on his right to limit his liability on a statutory basis. It was said earlier in this study that both time and voyage charterers can limit their liability for certain risks according to the provisions of certain international Conventions, such as the CLC or Bunkers' Convention regarding their pollution liability and Athens Convection regarding their liability to passengers and their property on board of the vessel. In addition, under English law, charterers are given the right to limit their liability for certain risks under the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), as amended with the Protocol 1996, which expressly recognises them as entities entitled to such right,[1312] irrespective of the basis of their liability and whether the claim is brought against them by way of recourse or for indemnity under a contract.[1313] The claims for which charterer's liability can be limitable are described in article 2 of the Convention and include, but they are not limited to, personal injury, damage to property, cargo and wreck claims, whereas salvage and general average claims are excluded.[1314] Of course, the latter exclusion is related to the charterer's overall insurance protection, as it implies that his liability can be unlimited, if it arises, as opposed to his insurance protection which is subject to a definite limit. However, considering charterers' rare exposure to salvage and general average liabilities, as they were described in part A, it is argued that their exclusion from the scope of LLMC does not jeopardise charterer's position, as his unlimited liability for them is very unlikely to exceed his CLI limits.

On the contrary, an issue arises in relation to his pollution claims to which there is no reference in the LLMC, except from article 3(b) which provides that oil pollution claims falling within the meaning of CLC are excluded from its scope. Thus, it is not clear whether charterer's liability for pollution caused, for example, by his waste under the EU Directive 75/442/EEC, which was described in the second chapter,[1315] could be subject to the limitation provided under the LLMC. Even though it has been supported that under English law there is still scope for most typical kinds of pollution claims to fall under the limits of the LLMC Convention,[1316]

[1312] Article 1(1) and 1(2) of the LLMC 1996. Slot charterers are also fall under this term according to *The MSC Napoli* [2009] 1 Lloyd's Rep. 246 (QB).
[1313] Article 2(2) of the LLMC 1996. Also, *CMA CGM S.A. v. Classica Shipping Co Ltd* [2004] 1 Lloyd's Rep. 460 (CA).
[1314] Article 3(a) of the LLMC 1996.
[1315] See in detail Chapter II in 2.2.2 "Liability arising from pollution".
[1316]Colin De la Rue, "Charterers and Traders – Implications of the Erika and Ocean Victory incidents'' (June 2014) < http://www.colindelarue.com/wp-content/uploads/2015/04/Charterers-and-Traders-Erika-and-Ocean-Victory-cases-Marine-Pollution-2014.pdf>, accessed 12 March 2020, p. 9; Richard Williams, "The liability of charterers for marine pollution'' in Soyer B. and Tettenborn A (ed.), *Pollution at sea: law and liability*, (Informa Law from Routledge 2012), p. 6.

probably on the basis that there is no explicit exclusion for them, the fact that there is still no clear case law dealing with the above matter creates an uncertainty as to the charterer's exact exposure. Consequently, if the charterer's liability is unlimited, it is questionable whether the average insurance limits provided to him would suffice to protect him against pollution claims which traditionally are burdensome. Whereas, in respect of the pollution claims' limits offered under the other International Conventions, it is argued that charterer's insurance protection is often effective, as he cannot be usually found directly liable for such damage, whilst owner's recourse right against him allows charterer to benefit from his subrogation right and limit his liability to the limited amount paid by the shipowner.[1317] However, if it is taken into account that currently under English law, a charterer runs the risk of being found unlimitedly liable for a pollution damage only under the EU Waste Directive, it is believed that higher insurance limits for charterers are not required. This will also be the case even after the United Kingdom exits from the European Union on the 1st of January 2021, as the Directive will remain in force as part of the English domestic law, in line with the provisions of the European Union (Withdrawal) Act 2018 (as amended in 2020) referring to the retention of the existing EU law. Of course, the United Kingdom will have the right to repeal or amend their law applying the above Directive in the future and hence, there is a likelihood that charterer's exposure to pollution liability will be diminished. However, it should be clarified that at this stage there are no indications that any such action will take place immediately after the implementation period expires.

The greatest issue that arises in relation to CLI limits and charterer's right to limit his liability under the LLMC Convention concerns his liability for hull damages. More specifically, under article 2(1)(a) of the LLMC, claims in respect to damage to property are limitable only if they occur on board or in direct connection with the operation of the ship. Therefore, to the extent that the Convention does not refer explicitly to the damage of the vessel itself, liability for such claims cannot be limited. The same view has been also recently confirmed by the Supreme Court in the "*Ocean Victory*" case.[1318] This exemption, though, is of great importance to the charterer whose actions can easily result in such damage under both time and voyage charters, as it was already established earlier. So far, despite charterer's claim

[1317] See, for example, article V.5 and V.6 of the CLC 92.

[1318] *Gard Marine & Energy Ltd v. China National Chartering Co. Ltd. v. Daiichi Chuo Kisen Kaisha (''The Ocean Victory'')* [2017] UKSC 35 at paras. 87 and 90 which confirmed the ruling in the *CMA CGM S.A. v. Classica Shipping Co Ltd* [2004] 1 Lloyd's Rep. 460 (CA) which in its turn agreed with the Court's decision in *Blue Nile Shipping Company Ltd and Another v. Iguana Shipping and Finance Inc. and Others* (*The "Darfur")* [2004] EWHC 1506 (Admlty).

for hull damages constitute nowadays the prevailing type of claim for which they seek protection from their insurers,[1319] it seems that the limits offered to them do not leave them exposed to hull liabilities or expenses and so, they are considered reasonable compared to their unlimited liability exposure. This can also be easily justified on the basis of the low ship values the past few years and charterer's more controlled exposure to similar risks.

Based on the above, it is believed that currently the CLI limits seem to be enough to respond to charterer's liability exposure, even in case where his liability is illimitable. But, it is doubtful whether the situation will remain the same in the future when new liabilities and risks will be introduced into shipping industry and more modern and expensive ships will be used in trade. For example, it has been mentioned earlier that the introduction of lower sulphur limits will increase the risk of engine damages, whilst the use of advanced technology will make parties susceptible to cyber risks and change the balance between parties' allocation of liabilities. At present, it is not clear whether the LLMC could include in its scope also claims arising due to a cyber risk. Therefore, in addition to charterer's unlimited exposure to hull risks, if they are also found ultimately liable for the expenses, delay or damages caused by a cyber security incident, their liability might again be unlimited. Of course, that would leave them exposed to a significant risk, because their liability will be not only illimitable, but also unrecoverable under the current form of their CLI. Similarly, liabilities that might arise from the use of unmanned vessels might not fall under the LLMC, if it is concluded by the regulators that such vessels cannot be regarded as "ships" in the form the term is perceived today.[1320] Yet this view is quite unlikely, if it is taken into account that there is already a general consensus that they should be treated as regular vessels.[1321] Consequently, although charterers' right to limit their liability might be maintained, it would not be surprising if the applicable limits as well as the types of limitable claims will be expanded, considering that the current limits might no longer suffice in face of the new reality. One needs to bear in mind, though, that the above is merely a speculation, as there is equally a great likelihood that such limits will shrink as well, if finally charterers are released from the majority of their traditional liabilities under the

[1319] As it has been supported by a specialist charterers' underwriter.
[1320] Under section 313 of Merchant Shipping Act 1995 and rule 3(a) of the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) 1972.
[1321] As suggested in Robert Veal and Michael Tsimplis, "The integration of unmanned ships into the lex maritima'' [2017] L.M.C.L.Q 304, at p. 308 and 314. Similarly in "Unmanned and autonomous vessels – the legal implications from a P&I perspective" (The Shipowners Club, December 2017), available <https://www.shipownersclub.com/unmanned-autonomous-vessels-legal-implications-pi-perspective/>, accessed 12 March 2020.

charter as a result of the introduction of automation into shipping with the shipowner holding the control of all systems.

3.9 Final remarks

It is noteworthy that the CLI cover, similarly to shipowners' P&I insurance, presents a plurality in respect of its scope and its covered risks. It has certainly evolved significantly since its introduction into the market and responded adequately to the charterers' needs by being developed throughout time in line with the expansion of charterers' liabilities. As a result, today, charterers have protection against the three main areas of liabilities associated usually with their operation (i.e for hull, cargo and third-party liabilities). In addition, the creation of additional covers applying specifically to certain categories of charterers supplements in a balanced way their additional exposure to less usual –for the charterers' majority- risks, whilst the discretionary character of CLI cover gives charterers the freedom to cherry-pick the insurance protection they wish.

Albeit the concept of CLI seems to operate quite efficiently nowadays, it is believed that this is achieved mostly because charterers acquire different types of insurance covers on the top of their standard liability cover, as in many circumstances, especially for time charterers, the CLI might not be sufficient when compared to the liability exposure they face. For instance, time charterers will most likely need not only a bunkers' cover to protect themselves in relation to any losses or expenses arising from their bunkers, but also a loss of use cover, considering that any delay suffered under a time charter is normally borne by them, as the above risks are excluded from their standard CLI. At the same time, though, their standard cover might offer them protection for risks they might not even encounter under their charter, such as in case of collision liabilities in a voyage charterers' liability cover. Of course, all the above impact further on charterers' insurance costs as well. Moreover, the same plurality in the market which offers charterers a variety of insurance providers for them to choose, creates an uncertainty with regards the interpretation of the terms applying to charterers with regards the risks included in their liability cover, as every insurer can evaluate the risk differently and offer protection at different limits. Nonetheless, this in its turn affects also the limits of the security that the insurer can offer to a charterer which ultimately might have a consequence on charterer's creditworthiness and the smooth continuation of his business.

However, it is believed that the essence of the CLI cover is found in its ability to adapt to the changing needs of the charterer and follow up with the pace of its business and the risks the latter entails. Therefore, it is expected that the CLI cover in the standard form that was described in the relevant chapter of this work will not last long. The new developments that have arisen within the shipping industry with the introduction of new lower sulphur limits has started creating a turmoil in the market, with the first claims making already their own appearance.[1322] Also, the fact that technology progresses faster than shipping and insurance industries develop together, necessitates immediate responses from the latter which for the first time have to deal with new, challenging and very technical concepts as well as risks. This transformation requires subsequently fundamental changes within the charterers' insurance market as well, so to reflect appropriately the new legal and regulatory framework that will define their liabilities and so, their exposure. As a result of that, new and more elaborative risks are expected to be introduced within CLI cover, whereas other additional covers previously used by charterers might simply disappear. Last, to the extent that these new liabilities might affect primarily time charterer's position under the charter, it would not be extreme to suggest that they might potentially result in the creation of separate liability covers, distinguishing between time and voyage charterers with the latter's cover being narrower on the grounds of their more limited liability exposure.

4. Conclusion

Reaching the end of this work, it is established that although CLI was created at the beginning as an imitation of shipowners' P&I insurance, it managed finally to develop into a complex and independent concept which is equally important to P&I insurance. Thus, nowadays the scope of the standard liability cover offered to charterers follows similar patterns with the shipowners' P&I cover and includes all the main risks to which they are normally exposed to. Similarly also applies with charterers' representation in the insurance market which, contrary to the past, is now booming, showing prospects of change with fixed premium insurance gaining steadily leverage over mutuality. In light also of the developments described earlier, it is expected that within the following years another rise in charterers' presence within insurance market will occur, as their liability exposure will be reformed once their new

[1322] In fact, Standard Club says it has already begun to see sulphur cap disputes, as supported in Insurance Marine News (4th December 2019).

liabilities will be finally crystallised, requiring for a complete reconsideration of the scope of their liability cover.

VIII. CONCLUSION

It has been explained at the beginning of this work that the main aim of this research was to ascertain whether charterers are sufficiently represented in the market not only in terms of insurance providers, but in terms of cover as well. Thus, in order for a general conclusion to be drawn, the liabilities of the voyage and time charterer had to be examined and the concept of their liability insurance and its operation in practice to be understood. It was further necessary to analyse the scope of charterer's liability insurance cover and its exclusions, in combination with the additional covers available to him. Last, the challenges that the introduction of new risks would place on charterers' shoulders in near future and their impact on charterers' insurance protection could not have been overlooked.

The main conclusion that can be drawn from this study is that the evaluation of the overall concept of charterer's liability insurance is subject to both commercial and regulatory factors which fluctuate charterer's role and involvement in the transport chain. Therefore, reaching a strict and straightforward conclusion regarding charterer's position insurance-wise becomes rather difficult. In other words, if the main question is whether finally the charterer is sufficiently represented in the insurance market, then the honest answer would be "it depends''. It depends, for instance, on the type of the charterer, the type of the insurer and the covers offered and the negotiation power that the parties develop when concluding a charterparty or an insurance contract. Additionally, the same effect could have the market's appetite for undertaking extra risks, the availability of the cargo for trade, the freight and hire rates, the complexity of the activity performed by the charterer and the international regulatory framework within which he operates.

Of course, it should be pointed out that this general conclusion does not deter us in reaching more specific and conclusive findings. On the contrary, the realisation first of all that the concept of charterer's liability insurance is a "vivid organism" that constantly develops and transforms by being subject to a variety of factors which all affect to a different extent

charterer's representation in the insurance world constitutes itself a conclusion that was proved through this research. In addition to this generic note, the analysis of individual themes through this research has led to the establishment of separate and clear findings regarding the matter under discussion.

Thus, it is established that the charterer constitutes an integral part of the transport chain whose obligations are intertwined with the number of the relations he develops with third parties, including both the shipowner and his insurer. As a result, it has been shown that although charterers seem to undertake a different role in the carriage of goods, their exposure to numerous liabilities is similar to the shipowner; whilst their liability can appear on the same legal basis as the latter, that is to say in contract, tort, or statute. The only distinction that can be drawn at this point, though, is that as opposed to voyage charterers, time charterers are more vulnerable to liability exposure. It has been further suggested that this is justified not necessarily because a time charterer has more responsibilities than a voyage charterer under the charter. But, on the contrary, this happens mostly due to the nature of the charterparty which allows greater freedom to be vested on the former when it comes to the vessel's employment. As a result, it can be safely suggested that insurance protection in the form of liability insurance is vital to both of them in the same way P&I insurance is for the shipowner.

Based on the above finding, it has been later examined what insurance options a charterer has in order to safeguard himself against the aforesaid liability exposure. Also, as part of this exercise it was vital to ascertain whether his liability insurance differs from the shipowner's and if so, in what sense. This study has revealed that the concept of charterer's liability insurance follows closely the principles of the general third party liability insurance. Therefore, it is natural that it will take some of the characteristics of the shipowner's P&I insurance which pre-existed and constituted the first form of marine liability insurance. To that end, it has been further discovered that the patterns applicable to CLI are indeed similar to the P&I insurance provided to shipowners. A focal and proven example of the similarity that these insurances represent is that they are both provided on mutual as well as on fixed premium basis. Interestingly, despite the above, it has been confirmed that albeit charterer's liability insurance constitutes a continuation of shipowner's P&I insurance, its development has ultimately followed an opposite route with the primary focus being given on the fixed premium insurance. It is also noteworthy the conclusion that the fixed premium insurance market for the charterer presented a considerably greater plurality when compared to the charterer's mutual insurance options. In fact, it has been shown that contrary to shipowners, whose liability insurance is

invariably offered by the thirteen IG Clubs on the basis of mutuality, charterers invariably seem to have a clear preference over fixed premium insurers which operate outside the International Group and are distinguished among general commercial insurers, managing general agents (MGAs) and specialist charterer's insurers.

Although at first glance the above preference over mutuality might seem peculiar, it has been submitted that this differentiation is absolutely justified, as it stems from the charterer's role under the charter and his interests in the maritime adventure. Specifically, it has been explained that the shipowner has a stable asset (i.e the ship) that directs continuously his liability insurance. Therefore, the provision of long term insurance with high limits on mutual basis is vital to him, considering the risks at stake and the impact they could have on his asset. On the other hand, charterers are more flexible, as their liability is not connected to an asset. Also, their trade and needs might constantly change and so, they require for different standards of insurance protection each time. As a consequence of this conclusion, it has been established that the concept of mutuality does not seem to fit adequately to the charterers' needs and therefore, the non-existence of a mutual solely charterers' insurer should not be regarded as a gap in the charterer's insurance market. The validity of this point is justified on the new reality grounds, according to which fixed premium market seems to precede mutual insurers. This has been further supported by the proven downward trend that the concept of mutuality follows lately, even in the eyes of its longstanding believers, the shipowners. Whereas, at the same time, it has been shown that the fixed premium market is competent to compete the former aggressively and finally establish its firm position in the insurance market on similar terms. So, it has been suggested that instead of charterers imitating the insurance system created for shipowners, the more likely scenario in the future would be for the latter to follow charterers' steps. Consequently, the fixed premium market will take a dominant role in the representation of both charterers and shipowners.

Having already established that charterers are sufficiently represented by the current forms of insurance providers that exist in practice, the focus of the research has then shifted to analysing the exact scope of protection that these insurers offer to charterers and whether it is satisfactory compared to the liabilities they face. Again, here, a straightforward conclusion might be not accurate, as it depends on different variables (e.g the size of the charterer, the contractual terms agreed, and the type of trade performed). Nonetheless, the general impression that I had after the examination and comparison of twenty three different charterer's liability

insurance covers is that the standard scope of the liability cover provided to charterers is basic and extends to the majority of the risks that a time or voyage charterer would face.

A problem that arises, however, with this basic cover is that it does not seem to be always compatible with the charterers' needs. To illustrate this problem, it has been pointed out that a voyage charterer, notwithstanding his more limited liability exposure compared to a time charterer, is offered exactly the same liability cover as the latter. This is because the insurers do not distinguish their liability covers depending on the type of the assured charterer. But, that creates a gap in charterers' protection, as they buy ultimately insurance against risks that they do not need. Whereas, the only small variations that are identified in certain covers that made them in a sense better than the other, are the inclusion of risks (even if it is subject to the insurer's discretion) which in the covers' majority are excluded or not mentioned at all.

Another issue that has further been clarified is that charterers' insurers invariably follow the same patterns when it comes to the insured risks. For instance, it has been noticed that not only they insure against the same risks, but they also use (especially in case of the IG Clubs) the same wording found in the shipowners' P&I insurance to describe them. As a result, it has been concluded that the interpretation of the covered risks becomes obscure, because the charterer is not finally aware of the exact scope of his protection, whilst his cover might refer to risks that have only a limited applicability in his case. For that reason, it has been suggested that the creation of rules exclusively applicable to charterers should be preferred, so to leave less room for any ambiguity to arise and make finally the cover more effective.

But the most important point that has emerged from his research is that charterer's liability cover in its basic form could only protect satisfactorily the majority of charterers (especially time charterers) when it is combined with additional layers of protection. The latter protect the charterer against risks that remain outside his liability cover, yet are substantial for him in terms of cost and exposure. For example, it is stated that the time charterer undertakes the burden of any delay under the charter. As a consequence, it follows that his exposure to economic losses and liabilities will be significant. Nonetheless, it has been illustrated that these risks remain typically outside his basic liability cover and as a result, render the purchase of an additional cover necessary. The inability of the standard liability cover to respond adequately to the charterers' needs has further been illustrated in relation to charterers' bunker risks which are similarly excluded from his traditional cover. It was also highlighted that the above deficiency is expected to become more apparent once the new low sulphur limits will be officially

applicable and start creating disputes between the parties involved in a charter regarding the allocation of their liabilities under the same.

The research also concludes that albeit this form of cover might have been proved sufficient for charterers so far, it is quite unlikely that it will stand through the technological challenges that the future might bring into the shipping industry. Thus, the fast pace of progress that technology is showing will inevitably impact upon charterer's liability position. This problem is already evident, for example, with the number of the cyber threats that charterers face nowadays whose risks, though, usually fall outside their liability cover. The same point can be made with regards the development of "smart" ships and the increased costs that will follow along them, expanding charterer's liability exposure even further. As a result of all the above, it is my conclusion that a reconsideration might be required not only of the covered risks that are included in the charterer's liability cover, but of the general provisional standards and fixed limits under which such protection is offered as well.

As a final remark, this research study has attempted to highlight the importance of charterer's liability insurance and raise some concerns regarding the way this concept operates in practice by evaluating it on legal as much as on commercial terms. It has been reassuring to finally confirm that charterers are in fact sufficiently represented in the insurance world with the multiple insurance providers being available and competent to support their needs. But most importantly, the research has been a great success in establishing that despite the adequacy of the insurance providers, the ultimate representation of charterers in the sense of insurance cover is not itself sufficient. That is because it can be satisfactory only if it is accompanied by additional protection for important risks that the former cover does not include. But, overall, it should be remembered that the above conclusion is merely relative and its patterns are expected to be challenged soon in the future when the newly introduced risks will come along with additional liabilities for charterers which will become eventually a regular part of their general exposure. Therefore, it is my belief that the restructuring of the whole concept should not be regarded as a surprising turn of events.

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