

KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-48-2012 **(Charterers & Liabilities)**

► Various Liabilities:

Although a ship-owner has its own P&I cover, the charterers can face huge liabilities themselves. There can be some products that provide high levels of cover to react to both operational and catastrophe liabilities.

These may include the risks which are covered by conventional P&I insurance, and additional risks which are specific to charterers. An understanding of the issues will be helpful in deciding for various existing covers, chartering & possible defence matters.

P&I covered risks include:

- 1-Pollution
- 2-Cargo
- 3-Personal injury
- 4-Fines
- 5-Wreck removal

Additional risks include:

- 1-Damage to hull
- 2-Detention
- 3-Contributions to General Average & Salvage
- 4-War & Terrorism

Liabilities can be to cargo interests, other third-parties and the ship-owner. They can be either contractual (e.g. breach of the charter-party) or non-contractual (e.g. pollution).

► Charterer's Pollution Liability:

Charterers are exposed to pollution liabilities in a variety of ways.

Under the Civil Liability Convention (CLC), tanker pollution claims are channelled solely to the registered ship-owner whose P&I cover responds.

However, not all jurisdictions recognise the CLC. An owner may have recourse rights against the charterer.

In some places, e.g. the USA and Japan, the charterers can incur direct and even strict liability for pollution caused by a ship.

The US Oil Pollution Act 1990 (OPA) provides that "any person owning, operating or demise chartering the vessel" may be liable. Individual states in the US (e.g. Alaska, California, Washington) have enacted their own legislation and most states target the "transporter of oil", "person having control over oil", and "person taking responsibility", so a time charterer can potentially be at risk.

► Charterer's Liabilities to Ship-Owner for Damage to Hull or Machinery:

1-Safe Port or Berth:

Time charter-parties generally include a warranty that the charterers will only order the ship to call at safe ports or berths.

Failing to provide a safe port or berth would be in breach of this warranty.

2-Damage by Cargo:

Charterers frequently assume cargo responsibility. Claims can be made against charterers for ship damage caused by cargo. For example many of the Solid Bulk & other cargoes such as calcium hypochlorite or direct reduced iron (DRI) may be corrosive or inflammable.

3-Charterer's Servants:

The charterer may be responsible for the actions of these contractors. Time charter-parties generally require that the charterer provide stevedores and other parties for operational services.

4-Bunkers:

Most time charters require charterers to supply bunkers to agreed specifications. Charterers can be liable for off-spec bunkers even if the ship's machinery is not damaged. The costs of removing, replacing, and disposing of the bunkers, cleaning the ship's tanks and engines, and off-hire can be very large or involve complicated legal recovery actions against the bunker supplier.

5-Operations:

Ship-to-ship transfer and lighterage can cause damage to the vessel and its equipment. If this is due to the actions of a servant of the charterer, for example a mooring master, the claims could be presented to the charterer.

6-Salvage Costs and General Average Contributions:

Charterers are exposed in proportion to the amount of freight at risk if it is a voyage charter, and value of the bunkers on board if a time-charter.

► Charterers Liability to Cargo Interests:

This is the most common basis for claims against charterers who are not transporting their own cargo. Claims can be made against the charterers in a variety of ways:

- ✓ Under Bills of Lading
- ✓ In Tort
- ✓ Under the Inter-Club Agreement

The Inter-Club Agreement has the effect of passing or apportioning certain cargo liabilities between the ship-owner and the charterer.

If charterers are carrying their own cargo, they are entitled to recover from the Club the same amount as would have been recoverable if the cargo had belonged to a third party and that third party had concluded a contract of carriage of the cargo on terms of the specific Club's recommended standard terms of carriage.