



# Charterers' Liability for Damage to Hull

When entering into a charterparty agreement with the shipowner, the charterer will assume liability in respect of e.g. damage to the chartered vessel during the course of the charter. The extent of the charterer's liability for damage to hull (DTH) will depend on the terms of the charterparty and who/what has caused the damage. In this circular we will take a look at the most common grounds for the charterer's liability for hull damage, particularly under English law, which the parties often agree shall apply to the charterparty.

## 1. Unsafe ports or berths

Charterparties generally contain an express warranty that the charterer shall only order the vessel to go to safe ports or berths. In nominating a port or berth the charterer consequently warrants the safety of the port or berth. Where there is no express safety warranty the English courts may sometimes imply a warranty as to safety, but has done so only where it has considered it necessary for the sake of the business efficacy of the charter.<sup>1</sup>

Where the charterparty specifies the loading/discharging port, the courts have been hesitant to imply a safety warranty.<sup>2</sup> Then the shipowner should be able to draw his own conclusions as to the safety of the port. The legal situation seems to be the same when it comes to the charterer's nomination of a port or place out of a number of named ports or places, absent any express warranty in the charterparty.<sup>3</sup> A warranty as to safety may however be implied, at least under a time charter, where the charterparty provides that the charterer may choose between a number of unnamed ports within a geographical range.<sup>4</sup>

The charterer's primary obligation is to order the vessel to ports or berths which are prospectively safe at the time the order is given.<sup>5</sup> In case the port or berth subsequently becomes unsafe, the charterer has a secondary obligation to withdraw the original order and direct the vessel to another, prospectively safe, port or berth. The classic definition of a safe port derives from the judgment in the "Eastern City"<sup>6</sup>:

"A port will not be safe unless, in the relevant period, the particular ship can reach it, use it 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..."

Pursuant to the Nordic Maritime Codes the charterer is liable for damage resulting from his order to send the vessel to an unsafe port, unless he can prove that the damage was not caused by his fault or neglect.

## 2. Stevedore damage

Charterparties, and time charters in particular, generally provide that the charterer shall be responsible for damage to the vessel as a consequence of loading, stowage and/or discharge of the cargo. As an example, Clause 8 (a) of the New York Produce Exchange (NYPE) 1993 form provides that the charterer "shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlash, unlash, discharging, and tallying, at their risk and expense, under the supervision of the Master".

However, under the NYPE form the responsibility for stevedores' operations may easily be transferred back to the shipowner by adding "and responsibility" after the word "supervision" in Clause 8 (a). In making such an amendment, the charterer shall not bear any responsibility for damage caused by mentioned cargo operations, unless it can be proven that the charterer has in some way intervened and thereby caused the

<sup>1</sup> Coughlin, T., Baker, A.W., Kenny, J., Kimball, J.D., Time Charters, Informa, London, 6th edn., 2008, p. 217

<sup>2</sup> The Reborn [2009] 2 Lloyd's Rep. 639

<sup>3</sup> The A.P.J. Priti [1987] 2 Lloyd's Rep. 37

<sup>4</sup> The Evaggelos Th. [1971] 2 Lloyd's Rep. 200

<sup>5</sup> Coughlin et al. 2008 (as note 1 above), p. 197

<sup>6</sup> [1958] 2 Lloyd's Rep. 127

loss or damage.<sup>7</sup> The charterer may, at least under English law, also be liable in case the loss or damage results from the charterer appointing incompetent stevedores.<sup>8</sup>

The legal situation is similar in regard of voyage charterparties.

### 3. Bad bunkers

Under a time charter it is normally the charterer's obligation to provide and pay for bunkers within a certain specification, which is normally set out in the charterparty. However, under English law the obligation of the charterer goes beyond that: the stemmed bunkers also have to be reasonably fit for the particular vessel's engines. The legal situation under Nordic law is probably similar. The requirement as to fitness for purpose may also be expressly included in the bunker clause in the charterparty, which is usually the case. The shipowner however bears a heavy burden of proving that the stemmed bunkers were in fact off-spec and that there is a causal link between the poor quality of the bunkers and the machinery damage. Provided the shipowner is able to lift the burden of proof, the liability imposed on charterer may be substantial.

### 4. Damage caused by cargo carried onboard

Even where the charterer is not the owner of the cargo, he may be held liable for damage to the hull caused by cargo carried onboard. Under English law there will be an implied duty requiring the charterer not to load dangerous cargo without informing the carrier, i.e. shipowner.<sup>9</sup> This duty derives from the shipper's obligation to give notice to the carrier of the dangerous nature of the cargo. The duty is absolute and will apply irrespective of whether the charterer is aware if the dangerous nature of the cargo or not. The purpose of the notification requirement is to give the carrier an opportunity to take the appropriate precautions to carry the cargo safely, or to reject it.<sup>10</sup>

However, in case the parties have agreed on the carriage of a specific cargo and both are (or ought to be) aware of the (particular) characteristics of such cargo, the charterers will normally not be held liable for damage that the cargo causes to the ship.<sup>11</sup>

Under voyage charters the type of cargo to be carried is usually set out in the charterparty, whereas time charterers have a greater discretion in choosing from a range of cargoes. As a consequence, express dangerous goods clauses are more commonly found in time charterparties.

### Insurance cover

Alandia's Charterers' P&I Insurance will cover the charterer's liability to the shipowner for damage to the chartered ship, unless explicitly excluded in the Terms & Conditions. The cover will include e.g. the repair costs, any consequent delay and the charterer's liability for the ship's contribution to general average or salvage. As far as poor quality bunkers are concerned, the insurance will also cover extra bunker handling costs as a result of the charterer having stemmed defective, contaminated or unfit bunkers.

### Advice to Assureds

Whether covered for Owners' or Charterers' P&I risks, Alandia's Assureds are advised to consider the above aspects when concluding charterparty agreements and also during the course of the charter. Liability (and damage) could be escaped e.g. by transferring the responsibility for stevedore damage to the contracting party already at the contracting stage, properly acquainting oneself with the conditions of the port and/or berth in advance or by giving sufficient information to the shipowner on the nature of the (dangerous) cargo.

Even though several of the above liabilities may be contracted away, the charterer will still be exposed to some liability under the charterparty. As the shipping industry is struggling to cut costs, shipowners will more actively seek to pursue claims against the charterer in respect of damage to the ship's hull during the charter period. By having a Charterers' P&I insurance in place, the charterer will be protected against many of those risks. Alandia's dedicated P&I team will also be ready to assist in appointing surveyors to investigate the cause and extent of damage and negotiate claims in respect of damage to the chartered vessel.

<sup>7</sup> Coughlin et al. 2008 (as note 1 above), p. 360

<sup>8</sup> Coughlin et al. 2008 (as note 1 above), p. 361

<sup>9</sup> Cooke, J., Young, T., Taylor, A., Kimball, J.D., Martowski, D., Lambert, L., Voyage Charters, Informa, London, 2007, p. 159

<sup>10</sup> Cooke et al. 2007(as note 9 above), p. 160

<sup>11</sup> See for example Brass v. Maitland (1856) 6 E. & B. 470

