



**EBOLA VIRUS DISEASE: SHIPPING CONTRACTUAL
GUIDANCE FROM THE BALTIC AND INTERNATIONAL
MARINE COUNCIL (BIMCO)**

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Introduction

It has been brought to your Managers attention that BIMCO has been receiving enquiries from their members concerned with the current spread of the Ebola Virus Disease in West Africa, in the light of the statement by World Health Organization (WHO) that the situation is currently deemed as an “international emergency”.

In the past, it was not unusual that charter parties would contain reference to “fever and epidemics” as being a cause or causes which would entitle a ship owner to refuse to comply with voyage instructions to proceed to the place where such fever and/or epidemic was rampant. However, as medical science has progressed, contagious diseases have been, if not eradicated, reduced to a controllable level, basically making the fever and epidemic exception redundant.

The outbreak of the Ebola Virus Disease in a number of West African countries may, have made such fever and epidemics provisions relevant again. Despite the WHO having declared the situation an international emergency, the organization does not appear to recommend staying away from West African countries afflicted by the Ebola Virus Disease, but owners are naturally concerned and querying whether they should comply with orders for their vessel to proceed or whether they are currently not in a position to do so.

The general position in time charter is that the time charterers warrant that the vessel will trade only between good and safe ports, i.e. even if there is no clause in the contract specifically dealing with epidemics etc. the owners may nevertheless have a

“fall back” position, claiming that the particular port is not safe if a potentially lethal disease is harrying the place.

The following is a summary of various BIMCO charter parties and relevant clauses that may pertain to the Ebola Virus Disease outbreak.

SHELLTIME 4

The “Shelltime 4” differs from this general position in that according to clause 4, the charterers do not warrant the safety of the ports to which they order the vessel, they only have to exercise due diligence in this context. According to clause 21(a)(iii) obtaining medical treatment etc. or landing a sick individual (read: crew), will constitute an off-hire event. Hence, in a situation in which a member of the crew becomes infected with Ebola virus (or any other disease for that matter) because of calling the port as ordered by the charterers, and this requires treatment (which it usually does) or even that the vessel deviates, this will be an off-hire event.

BIMCO has, however, maintained fever and epidemics provisions in some of our recommended forms.

BALTIME 1939

In the BALTIME 1939 (as revised 2001), this issue has been dealt with in clause 14(A) According to which: “The vessel shall not be ordered to nor bound to enter: (A) any place where fever or epidemics are prevalent or to which the Master, officers and crew by law are not bound to follow the Vessel;....” which may be termed as a “short and sweet” version.

SUPPLYTIME 2005

A different approach has been taken in the SUPPLYTIME 2005 in which clause 25 regulates the salient problem as follows:

“5. Epidemics/Fever

The vessel shall not be ordered to nor bound to enter without the Owners’ written permission any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel. Notwithstanding the terms of Clause 13 [the off-hire clause], Hire shall be paid for all time lost including any lost owing to loss of or sickness to the Master, Officers, crew or passengers or to the action of the Crew in refusing to proceed to such place or to be exposed to such risks.”

BIMCHEMVOY 2008

The rather longer version of a relevant clause can be found in the BIMCHEMVOY 2008, in which clause 46 reads as follows:

“In the event of severe epidemic, plague or infectious diseases, or outbreaks of a similar nature as a consequence of which quarantine is imposed the following terms apply:

- (a) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Charter Party, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons onboard the Vessel to such outbreaks, the Owners may give notice to the Charterers cancelling this Charter Party, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to such outbreaks; provided always that if this Charter Party provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons on board the Vessel may be exposed, or may be likely to be exposed, to such outbreaks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Charter Party if the Charterers shall not have nominated such safe port or ports within forty-eight(48) hours of receipt of notice of such requirement.
- (b) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the Cargo is completed, that, in the reasonable judgment of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be, or are likely to be, exposed to such outbreaks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the Cargo or any part thereof, and if within forty-eight (48) hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the Cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Charter Party. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the Cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same

- percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the Cargo for such expenses and freight.
- (c) If at any stage of the voyage after the loading of the Cargo commences, it appears that, in the reasonable judgment of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to such outbreaks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.
- (d) If the Authorities at any time during the currency of this Charter party impose quarantine on the vessel or the crew, any time thereby lost shall be paid for by the Charterers at half the demurrage rate specified in Box 22.

Summary

It is, however, important to keep in mind that it may be difficult to assess – apart from in completely obvious situations – whether a given situation amounts to an “epidemic” in that this may to some extent be “in the eye of the beholder”. It is, therefore, necessary to apply such clauses with caution, particularly as long as international organizations such as the WHO does not categorize a particular situation as an epidemic. Members are advised to consult with their P&I club before deciding to refuse to call at a given port or area so as to prevent them from being exposed to claims subsequent to such a refusal.



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