



May 2010 – Special report

soundings

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US Gulf oil pollution's impact on charterparties

Members will be aware of the recent explosion on the "Deepwater Horizon" drilling oil rig 130 miles southeast of New Orleans and the resulting oil pollution now affecting the area around the rig. Following the incident, many questions and concerns have arisen regarding the implications for owners and charterers.

At present the Managers understand that the main shipping lanes towards the Mississippi River are clear of oil, and the US Coast Guard has advised that it has no plans to restrict traffic using the Southwest Pass, the main channel for commercial shipping to the Mississippi River. The area of the oil spill has been mapped by the US authorities and is under constant review.

However the Coast Guard has organised two ship cleaning stations near to Southwest Pass with the intention that if any ships are fouled by oil stains, they should stop and be cleaned before proceeding into the river. It has also placed restrictions on three other passes to the

Mississippi and has imposed a "no wake zone" in the vicinity of the booms which have been deployed to help protect the sensitive coastal areas from the oil spill.

The situation is developing daily, however the following provides a generic summary of some of the legal issues which may arise.

Safe port issues

Although there are no court decisions on the point, a port could be considered as unsafe if the approaches to the port are covered with oil which could damage a ship or cause it to incur penalties, delays or fines. Assessing whether a port is unsafe is a question of fact on each occasion but if the danger can be avoided by an alternative safe route or the exercise of good seamanship, it is unlikely that the port will be considered unsafe.

In light of this, ports in the vicinity of the oil spill are also unlikely to be considered as unsafe such as to allow an owner to refuse an order to go to such a port under a time charter, or to refuse such a nomination under a voyage charter. Nevertheless, acceptance of an order to proceed to a port in the Mexican Gulf should not normally preclude an owner from claiming damages at a later date in the event of losses arising from the oil slick, as is discussed further below.

Time charterparties – off-hire?

Whilst the ports may currently be considered as safe, delays as a result of the oil slick are likely to occur. A master might seek to take a longer route to a Gulf of Mexico port to avoid an oil slick. Equally there may be time lost whilst



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complying with an order from the US Coast Guard to avoid further oil spreading. Moreover, a port may be temporarily closed as an oil slick develops.

In all of these situations a ship is likely to remain on-hire unless there are specific clauses to the contrary in a time charterparty.

Voyage charterparties – demurrage

Equally it is possible to envisage some restrictions being imposed on shipping which may cause delays in entering and departing from ports in the area. Each case will depend on the wording of the charter in question, but unless demurrage is already running, the risk of delay will initially fall upon the owner. However if a nominated port becomes closed prior to the ship's arrival, the ship may earn demurrage once she proceeds "so near as she may safely get."

Hull fouling

Members may have concerns about hulls being contaminated with oil as a result of trading to the Gulf of Mexico, and should be careful to ensure before entering other ports that there is no hull fouling so that the oil pollution regulations of those subsequent ports are complied with. In terms of compensation for cleaning costs

or lost time, an owner may have a claim against a time charterer under an implied indemnity for following the charterer's orders, or perhaps under the safe port warranty. Equally it has been suggested that a claim could be submitted to BP and others although bearing in mind the extent of litigation and claims that may arise as a result of this incident, even if a claim could be mounted, there might well be questions as to the likelihood of any recovery given limitations of liability currently in place in the US.

New fixtures

The Managers have encountered a number of clauses which seek to deal with the risks mentioned above and are happy to discuss the implications of these with Members as appropriate.

Further updates on the situation can be found on a separate US Coast Guard web site dedicated to the oil spill response – www.deepwaterhorizonresponse.com. In respect of P&I related matters updates can be found on www.ukpandi.com. The Managers are monitoring the situation and can be contacted for further enquiries or assistance in relation to any legal issues arising from the incident. Please feel free to speak to your usual contact.

New BIMCO "Deepwater Horizon" Oil Spill Clause for Voyage Charter Parties

In response to the Deepwater Horizon incident Bimco have issued the following clause for use in voyage charterparties. It is designed to address directly the current incident in the US Gulf and is not intended to cover oil spills in general. For further information Members should visit www.bimco.org

BIMCO Gulf of Mexico Oil Spill Clause for Voyage Charter Parties

- (a) Without prejudice to the terms of this Charter Party, if the Charterers order the Vessel to proceed to any port or place named in the Charter Party/ nominated by the Charterers that is affected by the oil spill from the "Deepwater Horizon" incident, or if the Vessel will have to pass through an area which is affected by the said oil spill in order to reach or depart from the named or nominated port or place, the following terms shall apply:
- (b) If the Vessel 's passage or operations are delayed or if the Owners incur extra costs as a result of the oil spill or passing through an area referred to in Sub-clause (a), any additional time and/or expense including, but not limited to, additional bunkers, hull cleaning and/or USCG/Port authorities mandated transit restrictions, shall be for the Charterers' account.
- (c) Any requirement of USCG/Port authorities for the Vessel's hull to be assessed for pollution contamination and, if required, for the hull to be decontaminated, shall not prejudice the Master's/Owners' right to tender Notice of Readiness on arrival at or off the named or nominated port or place. Time used complying with such operational requirements shall count as laytime or, if the Vessel is on demurrage, as demurrage.
- (d) Any additional time incurred shall be paid by the Charterers to the Owners at a rate equivalent to the Charter Party demurrage rate.
- e) The Charterers shall indemnify the Owners against any and all claims whatsoever brought by the owners of the cargo and/or the holders of bills of lading against the Owners by reason of such delay.

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