

Charterparty Agreements: Issues Related to Ebola Epidemic

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Ebola Outbreak

- Highly contagious, associated with a high rate of mortality, spread through direct contact.
- 2014 Ebola outbreak is the largest in history.
- 2 reported domestic cases in Dallas.
- ExxonMobil suspended offshore drilling in West Africa.



Ebola Statistics

- Port restrictions in affected countries ranges from short term closures (Sierra Leone) to a ban on vessels from other affected countries.
- Port restrictions in South America range from 3 to 21 day quarantine.
- USCG Virginia will monitor a ship's last five calls before permitting entry.
- Flight restrictions: Certain African nations/global airlines suspended travel from affected countries.

Country	Total Case Count	Total Deaths
Liberia	4249	2458
Sierra Leone	3252	1183
Guinea	1472	843
Nigeria	20	8
Senegal	1	0

Data from CDC as of Oct. 15, 2014

What Does This Mean for Owners/ Charterers?

- Liability for delays due to Ebola not yet clear and fact dependent.
 - Is a port unsafe because of Ebola in the area or can adequate measures be taken to protect the vessel and the crew?
 - Can a vessel be placed off-hire during delay?
 - What happens to cargo if port is closed/quarantined?

Scenario I

Owner refuses to call at affected port

□ Time Charter

■ Safe Port/Berth Clause

□ NYPE 93 and BIMCO Gentime: “vessel shall be employed . . . between *safe ports* and *safe places*”

□ Time charterers are under a general duty to nominate an alternative port. (*The Kanchenjunga*, 1 Lloyds Rep, 391 HL (1990)).

□ What is safe port?

■ “A port will not be safe unless in the relevant period of time, the particular ship can reach it, use it, and return from it without, in absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.” (*The Eastern City*, 2 Lloyd's Rep. 127 (1958))

■ Off Hire Clause

□ NYPE 93: Payment of hire and overtime shall cease for deviation, default, strike or “similar cause preventing the full working of the Vessel”

Scenario I (cont.)

Owner refuses to call at affected port

□ Voyage Charter

- No general duty or right to re-nominate if port becomes unsafe between nomination and expected arrival.

- However, Exxonvoy 2000 provides option to charterer to re-nominate so long as Notice of Readiness has not been tendered.

■ Warranty Clause

- Asbatankvoy: vessel shall “proceed as ordered to Loading [Discharging] Port(s) . . . or so ^{near} thereunto as she may safely get”

Scenario II

Port is closed

□ Time Charter

- If a port is closed, does that make it unsafe?
- Does Off Hire clause apply?
 - Unlike where owner refuses to perform, vessel is in full working order.
 - BIMCO Gentime offers a broader Off Hire clause which includes the “*inability* of . . . Crew to perform services when required”
 - NYPE 93 allows for deviation to save life and property.

□ Voyage Charter

- Exxonvoy 2000 allows for charterer to re-nominate at charterer’s expense.

Scenario III

Ship quarantined at or after visiting affected port

- Time Charter
 - Fumigation Clause
 - NYPE 93 and BIMCO Gentime: charterer responsible for expenses related to fumigations “ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party”
- Voyage Charter
 - Quarantine Provision
 - Asbatankvoy: “Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable”
 - Exxonvoy: “Time lost at any port or place due to quarantine shall not count as laytime or if Vessel is on demurrage, as time on demurrage unless such quarantine was in force at the time when such port or place was nominated by Charterer.”

Scenario IV

Crew shows symptoms of Ebola

- Time Charter
 - Owner is generally responsible for crew-related costs.
 - NYPE 93: “The Owners shall provide and . . . have a full complement of officers and crew.”
 - What if charterer nominated affected port and owner agreed and accepted risks? In the other hand, what if owner protested going to port?
- Voyage Charter
 - Exxonvoy but not Asbatanvoy contains full complement of crew clause like NYPE 93.

Ebola Clause I

- Notwithstanding anything in clause 23 of the Charter to the contrary, *if the Vessel is delayed in berthing, loading and/or discharging (hereinafter called a “Ebola Delay”)* due to measures enacted by the port authority related to the Ebola virus outbreak, including vessel quarantine, at any of Charterers’ nominated ports, be the Ebola Delay prior to or after the expiration of laytime, *the laytime used or, if the Vessel is on demurrage, time on demurrage equal to the period or periods of Ebola Delay as just described shall be reduced by half.* Time shall also count as laytime or time on demurrage at the reduced rate described above where valid NOR has not been tendered due to delay in obtaining free pratique. Should *Charterers’ nominated port be closed* by the port authority due to Ebola or Ebola related causes, *all time waiting shall count as laytime and/or time on demurrage at the reduced rate described above.*

Ebola Clause II

PART 1

If the Charterers order the vessel to any port or place (“the affected area”) at which the incidence of Ebola disease (“Ebola”) has been reported and if in the reasonable opinion of Master or Owners there would be an actual risk of a crew member or other person on board contracting Ebola if the vessel were to proceed to the affected area, the Owners will be at liberty by prompt written notice to the Charterers to decline such orders and request alternative voyage orders.

Ebola Clause II (cont.)

PART 2

If in compliance with Charterers' orders the vessel is en-route to or has arrived at an affected area and since the initial voyage orders the incidence of Ebola at the affected area has materially increased and, in the reasonable opinion of the master of Owner there would be an actual risk of a crew member . . . the Owners by written notice to the Charters may decline to proceed further to the affected area, or if the vessel has arrived at the affected area, but always before tendering Notice of readiness, may direct the vessel to leave the affected area, and request alternative voyage orders. Charters shall compensate Owners for all time lost . . .

Ebola Clause II (cont.)

PART 3

Any delays and additional expense incurred at other ports or places called at under this charter by reason of the vessel having called at an affected area under his charter (including delays for quarantine and screening for Ebola) shall be compensated by Charterers, delay at the demurrage rate and expenses at cost. In the event that laytime has commenced such time shall count as laytime, and if on demurrage shall be payable at the demurrage rate.

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Additional Information available at:

<http://www.american-club.com/page/ebola>

<http://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/index.html>