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NYPE 2015 - Charterers' interests

On 15 October 2015, the "NYPE 2015" time charterparty form was issued jointly by BIMCO, the Association of Ship Brokers and Agents (ASBA) and the Singapore Maritime Foundation (SMF). The new form, which incorporates many BIMCO standard clauses or clauses that are based on them, attempted to create a more balance agreement between Owners and Charterers than in previous versions of the charter. The new form also takes into account a number of legal and commercial changes that have taken place since NYPE 1993 was produced. The Charterers' P&I Club has recently issued a circular discussing the new NYPE 2015 form, attempting to advise whether the new form is more of Owners' or Charterers' favour in general.

The Club's circular discusses some key features of the new form, all are equally important. We are going to highlight two examples here for your reference.

1. Clause 11 - Hire Payment (including Withdrawal and Damages)

In the event that charterers fail to pay hire within the "grace period" of three banking days, NYPE 2015 entitles owners to withdraw the vessel and terminate the charter. In addition, if owners suffer a loss as a result of the early termination of the charterparty (such as future lost earnings due to falling market rates), they can claim damages from charterers to cover the remaining period of the charter. Alternatively, Owners may suspend the services at any time when hire is outstanding (they do not need to wait for expiry of the grace period), without liability for the consequences and without prejudice to their liberty to withdraw the vessel upon expiry of the grace period.

The intention was that the new wording would reflect the position at law, following the decision in *The Astra* [2013] EWHC 865 (Comm), in which clause 5 of NYPE 1946 (charterers' obligation to make punctual hire payments) was found to be a condition of the contract, any breach of which would entitle owners to terminate and claim damages for their resulting loss. However, this aspect of the *Astra* decision (which was obiter and therefore not binding on other judges) no longer represents the current state of the law, after the judge in *Spar Shipping AS v Grand China Logistics Holding (Group) Co., Ltd* [2015] EWHC 718 (Comm) declined to follow *The Astra* in this respect and found that the obligation in the NYPE form to pay punctual hire was not a condition. Accordingly, whilst the new provision provides certainty on the parties' respective obligations, it erodes charterers' positions as compared to the current common law, and charterers would be advised to reject or amend this wording where commercially possible.

2. Clause 54 – Law and Arbitration

It is important to note that if no alternative is indicated, US law and New York arbitration will apply by

default, so parties should consider what law and forum best suits their purposes. The default position is both surprising and unhelpful as US law/arbitration is not as commonly used as English law with London arbitration or Court.

Although the Hire Payment Clause is more of Owners' benefit, the above discussed two clauses do not reflect the whole position of the new contract. Detailed discussion of all other key features can find in the Charterers' Club circular attached to this circular. Despite the new contract is in some ways more balanced than the NYPE 1993 Form, but in general, the Club are of the view that, the new Form does not really offer a better option for Charterers because as mentioned above, it incorporates many BIMCO terms and BIMCO terms are relatively Owners-friendly. Overall, it is recommended that, caution is exercised before the NYPE 2015 Form is used, and Charterers should consider the specifics of each potential charter when deciding on which wording to use to avoid confusion.

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