

Circular From SKULD

Date: 20 May 2020

Coronavirus (COVID-19) FAQs

The COVID-19 pandemic has generated a significant number of questions from Members in recent weeks.

We have produced CONTRACT ISSUES of FAQs to help guide our Members on the most common questions asked:

Standard Time Charterparties**Q. Are Owners entitled to refuse to follow orders for the vessel to proceed to a port where there has been a coronavirus outbreak?**

A. No, unless the port is prospectively unsafe. It is unlikely that coronavirus would make a port unsafe, unless the position is such that the crew cannot be protected against serious illness by proper precautions or the likely delay in waiting for the port to become safe or operational would be sufficient to frustrate the Charterparty. The risk of subsequent trading restrictions being imposed is unlikely to be sufficient to make a port unsafe.

Q. If Owners proceed and the vessel is delayed at a port where there is coronavirus, will the vessel remain on-hire?

A. Yes, unless the issues affect the working of the vessel (due, for example, to sick crewmembers) in which case the position would depend upon the precise wording of the off-hire (and other) provisions in the Charterparty and upon whether the vessel was ordered to the port by Charterers at a time when they should have known that she would be subject to delays (in which in which event Charterers may not be entitled to rely on the off-hire clause). However, note that delay due to quarantine can put the vessel off-hire under the Shelltime 4 Form in limited circumstances.

Q. If Owners proceed and incur expenses, costs and liabilities as a result of being traded to a port where there is coronavirus, would they be entitled to an indemnity from Charterers?

A. This would depend upon whether it can be inferred that, at the time the Charterparty was concluded, Owners accepted the risks of trading to a port affected by coronavirus (which may be the case in many recent Charterparties). The indemnity could extend to problems faced by Owners after the port call in question (for example, if the vessel is subject to quarantine at a subsequent port).

Q. Are Owners obliged to follow Charterers' orders to proceed to another port (in substitution for an affected port)?

A. Yes (within the permitted trading limits), except where a Bill of Lading has been issued for the affected port (unless the Charterparty entitles Charterers to change ports where a Bill has been issued, perhaps against an LOI). It should also be borne generally in mind that proceeding to and discharging cargo at a port, other than that named in the Bill of Lading, can give rise to serious complications and potential (uninsured) liabilities under the Bill, irrespective as to whether this is done at Charterers' request or pursuant to Owners' entitlement under the terms of the Charterparty. (An optional cover in case the cargo is discharged at a port or place other than that provided for in the contract of carriage, is available for Members and Clients with an underlying P&I entry with Skuld. Please contact your underwriter for further guidance.)

Q. Are Owners or Charterers responsible for cargo claims for delay or damage caused by delay due to unavoidable coronavirus issues?

A. If the ICA is incorporated, Owners and Charterers are each likely to be 50% responsible under the Charterparty for payments made in respect of such cargo claims. Although, in principle, there should be no liability for the original cargo claim in these circumstances, there may be jurisdictions where such claims may be difficult to defend.

Q. Can either party terminate the Charterparty on the basis of frustration?

A. No (under English Law), unless it becomes impossible to perform the Charterparty either at all or for such a long period so as to radically change the nature of the contract (which would normally require a very lengthy delay): the fact that it will be commercially difficult or unprofitable for one party to perform the contract will not be sufficient.

Standard Voyage Charterparties

Q. Are Owners entitled to refuse to follow Charterers' orders for the vessel to proceed to a port where there has been a coronavirus outbreak?

A. No, unless the port is prospectively unsafe. It is unlikely that coronavirus would make a port unsafe, unless the position is such that the crew cannot be protected against serious illness by proper precautions or the likely delay in waiting for the port to become safe or operational would be sufficient to frustrate the Charterparty. The risk of subsequent trading restrictions being imposed is unlikely to be sufficient to make a port unsafe.

Q. If Owners proceed and the vessel is delayed at the port by coronavirus issues, will time count as laytime or time on demurrage?

A. Yes, provided that a valid NOR has been tendered, unless there is fault or breach on the part of Owners or there is an applicable laytime/demurrage exclusion (in which regard general exception clauses will not usually apply to laytime or demurrage, laytime exclusion clauses will not usually apply to demurrage and laytime/demurrage exclusion clauses will not usually apply to delays in having cargo available at the port). However, if the ship is not allowed to enter the port or is unable to obtain free pratique, there may be an issue as to whether a valid NOR can be tendered: this would depend upon the charter terms and may depend upon whether obtaining free pratique is a 'mere formality'. (Note that the usual ship operating expenses will not be covered by Skuld during a period of delay, although cargo liability may be covered depending on the circumstances.)

Q. If Owners proceed and incur expenses, costs and liabilities as a result of being traded to a port where there is coronavirus, would they be entitled to an indemnity from Charterers?

A. No, unless the port was prospectively unsafe at the time it was nominated.

Q. Are Owners obliged to follow orders to proceed to another port (in substitution for a port where there has been a coronavirus outbreak)?

A. No, unless the Charterparty entitles Charterers to change their nomination.

Q. Are Owners or Charterers responsible for cargo claims relating to delay or damage caused by delay due to unavoidable coronavirus issues?

A. Neither party (as a general rule) would be responsible to each other under standard terms (in which case the loss would lie where it falls), but much may depend upon the factual circumstances.

Q. Can either party terminate the Charterparty on the basis of frustration?

A. No (under English Law), unless it becomes impossible to perform the Charterparty either at all or for such a long period as to radically change the nature of the contract (which would require a lengthy delay, unless the cargo is perishable): the fact that the cargo which Charterers intended to ship may be unavailable, would not normally be sufficient. However, there may be force majeure provisions in the Charterparty which allow a party to terminate in the event of a specified period of delay or which otherwise exclude responsibility for non-performance. The applicability of these clauses will be fact sensitive, depending on the wording and depending on the nature and extent of the delay and possibly depending on whether the event preventing performance only occurred after the Charterparty was concluded.

All FAQs should be used for general guidance only; for specific queries, please contact your regular Skuld representative for advice and assistance.

We will continue to supplement with more FAQs as we see needs develop.

Source of Information: The Skuld P&I Club