



10 REASONS FOR NOT BUYING CHARTERERS' LIABILITY INSURANCE

Often companies are reluctant to buy insurance with the assumption they are paying for something they may not actually need. Before buying any kind of insurance, it is naturally important to think about why you need it; is it a musthave or a nice-to-have for your business continuity?

At MSIG Specialty Marine we have more than 25 years of experience in writing Charterers' Liability, and during these years we have often been confronted with misapprehensions about the risks and the subsequent need for insurance associated with the chartering of a vessel. Whilst the purchase of this type of insurance is a charterer's prerogative, it is important to first analyse and assess the risks relating to chartering a vessel, both in likelihood and in magnitude, prior to taking a decision on the need for Charterers' Liability insurance.

With this circular MSIG Specialty Marine would like to create awareness and list the most commonly heard misapprehensions of the risks associated with chartering in vessels.

10 REASONS FOR NOT BUYING CHARTERERS' LIABILITY INSURANCE

1. *"I have been in this business for more than 20 years and I never had any problems."*

Regrettably results of the past are no guarantee for the future and a small mistake could easily be made. Besides, it does not have to be *your* mistake in order to become *your* problem.

2. *"I only do business with reputable owners."*

A reputable owner with a flawless reputation is a good starting point, however, it is definitely no guarantee for a claims-free adventure. Besides, a negligent action by stevedores often triggers charterer's responsibilities under the charter party and such actions mostly lie outside the influence of a shipowner or charterer.

3. *"I am on back-to-back terms."*

It is indeed recommended for charterers to charter on back-to-back terms, i.e. use *exactly the same* charterparty terms with your sub-charterers like the ones you have with your owners. Assuming this can be done, this back-to-back situation would only protect a charterer 100% if your commercial parties would always meet their contractual obligations and would not cease to exist or go bankrupt before the claim is settled. Unfortunately, there are no guarantees in that respect. Besides, in a time charter party under an Inter-Club Agreement, a recourse against sub-charterers for shortage claims is contractually limited to a maximum of 50%, whereby the remaining 50% rests with the charterers themselves (or their charterers' liability insurers).

4. *"I am neither the owner of the vessel nor the owner of the cargo, so I do not have any responsibility."*

Imagine renting a car at the airport during your holidays. Even though you are not the owner of the car, you still have responsibilities as a driver and need to make sure that the car is returned in the same state as you rented it. Same principles apply to chartering a vessel. Standard charterparties such as the Gencon, NYPE, or Baltime require charterers to send the vessel to safe ports and berths, that they (or the stevedores employed by them) diligently load, stow and discharge the cargo and that they return the vessel in the same state as they hired her. Failing to do so will expose the charterers to liability claims. The situation can be significantly aggravated if the vessel gets damaged or becomes a wreck as a result of a breach of the safe port warranties. Such types of claims can be very costly. On a separate note, please be advised that owners may also demand bank security from charterers for their claim which charterers may not always be able or willing to put up. One of the services under a Charterers' Liability policy is that charterers can ask their insurers to provide a letter as guarantee for the owners' claim.

5. *"I already have Cargo insurance."*

FOB buyers or CIF/CFR sellers wear two hats, namely on the one hand that of a shipper under the contract of sale and on the other that of a charterer under the charter party. Each contract contains risks and liabilities apportioned as between the parties to the sale of the goods and the chartering of the vessel, respectively. Cargo insurance is a property insurance purchased by the cargo interest (sellers or buyers), and its cover applies and is limited to the damage to the cargo itself. Cargo insurance neither covers third party liabilities caused by the cargo nor the liabilities for chartering a vessel as laid down in a charter party. On a separate note, please be advised that when you in your capacity as cargo interests submit a cargo claim against the carrier under the bill of lading (usually the shipowners), this claim may come back to bite you. This is because the shipowner may subsequently seek recourse for this cargo claim against their charterer under the charter party, for example, for damage to the cargo caused by the stevedores.

6. *"I am co-assured with the owners on their P&I insurance."*

Whilst it is recommended in certain businesses (such as in the off shore world) to be added to the owners' P&I insurance, please be aware that being a co-assured under the owners' P&I policy is likely to be limited to the so-called 'misdirected arrow' claims only, i.e. claims that involve owners' responsibilities but mistakenly end up on the charterers' desk. Such limited access to the owners' P&I cover is unlikely to also cover you in your capacity as *charterer*.

7. "I already have a General Liability insurance."

General Liability insurance is very useful when liabilities occur ashore. Generally, it will exclude from cover any liabilities that have to deal with 'wet' liabilities such as those of a charterer of a vessel.

8. "I always solve any potential claims/issues amicably with the parties involved (gentlemen's agreement)."

Even small mistakes or omissions can sometimes result in large claims, and in such instances we know from experience that the involvement of insurance companies would be inevitable. Although at MSIG Specialty Marine we are client-oriented, pragmatic and solution-driven, such claims can usually not be settled over a cup of coffee but would require special expertise and negotiating skills.

9. "I made sure to contract out of any liability."

Especially in today's world where there is often little balance between offer and demand, one party is unlikely to have the commercial power to successfully contract out of *all* liabilities. In the hypothetical situation where a party would be able to contract out of any liability, this would only work when every counterparty will always meet their contractual obligations without thereby ceasing to exist or going bankrupt before the claim is settled. Again, there are no guarantees in that respect.

10. "I find no value for money in a Charterers' Liability insurance."

Compared to all the available insurance products for the maritime adventure such as Hull, P&I and Cargo insurance, the premium payable for a Charterers' Liability insurance is relatively modest. Buying a Charterers' Liability insurance is not simply buying a policy, but you are also buying peace of mind. With MSIG Specialty Marine this includes 24/7 claims service for any new and urgent claims which is delivered by a team of 20 highly skilled claims handlers. These claim handlers are very experienced in handling charterers' liability claims in a pragmatic way which can save you the costs of hiring a lawyer. Equally important is that MSIG Specialty Marine can provide first class A rated security on your behalf in claims that fall within the scope of the Charterers' Liability insurance cover.

CLAIMS EXAMPLES

Please find here below two claim examples from our daily claims practice:

1. Whilst en route from the pilot station to the discharge berth, the chartered vessel suddenly touched something laying on the seabed. A subsequent underwater inspection revealed that the object was an anchor lost by another ship which pierced the chartered vessel's hull causing water to enter into the hold and damage the cargo. Considering that, under the charter party, the charterers guaranteed the safety of the berth, the owners held the charterers liable for a number of claims consisting of damage to the vessel, loss of hire during repairs, and damage to cargo. Even though this was neither the charterers', nor the owners' lost anchor, under the governing charter party the charterers were in breach of their duty towards the owners for providing a safe berth. Hence, they were liable for the costs and expenses resulting from the breach of that duty.
2. During loading a cargo of steel coils, the wire snapped from the vessel crane as a result of which the falling cargo injured a crew member and caused damage to the vessel. The owners held the charterers liable for a) the personal injury of the crew member, b) the damage to the vessel, c) the damage to the cargo, and d) the loss of time for repairing the vessel. The charterers alleged that the wire was faulty and that the owners were to blame. This case could go either way depending on the evidence available, but the owners are likely to ask for full security from the charterers for their claim pending finalisation and settlement, if any. Should the owners be able to evidence that the charterers and/or their servants were in breach of contract, these claims will rest with the charterers. Of course, it may turn feasible for the charterers to seek recourse against the stevedores in case the latter were negligent. However, you should bear in mind that stevedores often operate under very favourable terms and conditions, which allow them to exclude and limit their liability to such levels and extent that are normally not available to charterers under a charter party.

We hope that the above can offer you some guidance in deciding whether to buy Charterers' Liability insurance. Last but not least, please bear in mind that you could also be liable for somebody else's mistake or that you do not have to BE liable in order to be HELD liable.

OUR SERVICE PROPOSITION

MSIG Specialty Marine's service proposition consists of:

- ✓ Excellent A rated financial security from S&P and AM Best.
- ✓ Up to USD 1 billion limit for Charterers' Liability.
- ✓ Experienced and highly knowledgeable international claims handling teams.
- ✓ Claims offices in Rotterdam, Paris and Singapore.
- ✓ 24/7 duty system for new and urgent claims.
- ✓ Legal and technical loss prevention services available to clients and brokers.
- ✓ Vast global network of correspondents.

All these services are aimed to cause as little business interference as possible and as much 'peace of mind' for charterers.

If you have any questions on the above mentioned, our Charterers' Liability experts are there to provide you with information and answer any questions you might have. Please find here below their details.

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