

McELROYS

LITIGATION LAWYERS

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Piracy – Issues for Charterers

- Time charters
- Nature of the bargain
- All parties know the risks
- How do the contracts deal with it

- Contract for hire
- Trade limits
- Employment
- Indemnity
- Hire to be paid unless expressly agreed otherwise
- Safety

- What are the risks? See ITF
- Number of vessels
- Number of seafarers
- High Risk Area – known areas bounded by the Suez to north 10°S and 78°E / ICC
- Maritime Security Centre Horn of Africa. Best Management Practices
- Speed/Freeboard/Weather
- ie everyone accepts the risk

What is the cost?

- Extra miles
- Less trips
- More fuel
- Economic impact

'Saldanha'

- Coal Indonesia - Europe
- \$52,000 per day
- Cape of Good Hope : no
- Suez : yes
- Cost of war premium : yes
- Seized by pirates : taken to Ely
- Released : 39 days - \$3.5 m
- Who pays the time it was held?

Clause 15: NYPE 46 as modified

That in the event of the loss of time from default and/or deficiency of men including strike of officers, and/or crew or deficiency of ... stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry-docking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, then *payment of hire shall cease for the time thereby lost.*

Tribunal said charterer had to pay hire. Charterer appealed. They said the arbitrator wrong and the act of piracy did fall within clause 15, therefore off-hire. They said:

- (1) It was detention by average accident to ship
- (2) Was as a result of default and/or deficiency of men
- (3) Was within “any other cause”

High Court found:

- Was not an average accident – no damage
- Was not an accident – no accident
- Was not a default or deficiency of men
- Did not fall within “any other cause”. *Laconian Confidence*
- Agreed with Tribunal

Could clause have been amended?

- Put in “seizures or detention” clause or
- Try putting in word “whatsoever” with other cause

or

- Negotiate express terms dealing with risk or see industry standard form, like Intertanko wording
- “Vessel shall remain on hire for any ... time ... spent during or as a result of an actual or threatened attack or detention by pirates

Or

BIMCO wording:

If the vessel is attacked or seized by pirates any time lost shall be for the account of the charterer and the vessel shall remain on hire.

Summary

- Identify risk
- Agree terms
- Charterer at risk by default