Liability for stevedore damage claims

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The major part of world trade is carried by sea. With this enormous amount of cargo being moved around the globe it is not surprising that accidents happen but, even so, when we talk of stevedore damage, some cargoes are perhaps more susceptible to stevedore damage than others.

Cargoes most susceptible to stevedore damage are, effectively, all cargoes carried in bags and include rice (or for that matter all kinds of grain) ,bagged cargo, steel coils and paper rolls/wood pulp.

Other than cargo, stevedores may of course also cause damage to the vessel.

For both types of damage (cargo and vessel) the liability allocation in the C/P will have to be checked together with any stevedore damage clause. An outline of how standard pre-printed clauses and rider clauses work together can be found here.

1.1 The allocation of responsibility in C/P:

It is the vessel owners who, under common law, are obliged to load, stow, trim and discharge the cargo. That means that responsibility for losses caused by the negligence of stevedores remains with the owners. The owners can escape this liability only by proving that the charterers, on their part, acted in such a way as to break the chain of causation (i.e. interfering actively with the stevedoring operations) and with this intervention from charterers being the immediate and proximate cause of the loss.

Consequently, owners will endeavour to include a clause in the C/P where these obligations are transferred to the charterers. On their side, the charterers will of course endeavour to have the responsibility for stevedore operations remain with the owners – even if charterers do accept responsibility for arranging and paying the stevedores. Arranging and paying for stevedores will usually not mean that responsibility for the operations as such are transferred to charterers.

The **NYPE 46** form includes clause 8 which provides that

> "Charterers are to load, stow and trim the cargo at their expense under the supervision of the captain."

This clause therefore shifts the (primary) responsibility for cargo operations to charterers.

The same clause in the newer NYPE93 form (although slightly differently worded) allocate liability in the same way.

Despite the wording of clause 8 of the NYPE 46 form, the vessel's master owes no positive duty to the charterers to supervise these operations. The responsibility for any stevedore damage will only be transferred back from the charterers to the owners if the master either actively interferes in the stevedoring operations or shows negligence by failing to intervene in the stevedoring operations where this would have been necessary to ensure the safety of the vessel, its crew or cargo.

Much will therefore depend on what evidence is available concerning the sequence of events, who did what and when, and what would (in some cases) be necessary to ensure the vessel's safety etc.

Clause 8 is quite often itself amended in another way: the words "and responsibility" are added after the "supervision" in clause 8. In English law at least, this change results in the responsibility for stevedoring operations being transferred back to the owners.

Where clause 8 is changed so that cargo operations are conducted not only under the supervision but also under the "responsibility" of the master, it is the owners who will remain responsible unless the owners can show that the charterers actively interfered in the cargo operations/stevedoring operations (and this was the immediate and proximate cause of the loss or damage).

1.2. Stevedore damage clauses

As a starting point, the allocation of responsibility between owners and charterers for cargo (stevedoring) operations is therefore usually fairly clear, but the introduction of stevedore damage clauses can sometimes make the picture less clear.

Stevedore damage clauses come in all shapes and sizes ranging from stevedore damage clauses which are incorporated in pre-printed standard forms to specifically drafted rider clauses. Especially rider clauses can exhibit a great variety of how stevedore damage is to be dealt with (they often require owners to make specific notifications within a certain time etc.) and may not always fit comfortably with how the allocation of responsibility is otherwise resolved in the C/P in the pre-printed standard part of the C/P form.

It may therefore be that there is no clear consistency between the more or less standard clause 8 and the rider clause. Clause 8 in the NYPE 46 form may e.g. include the words "and responsibility" leaving responsibility for cargo operations with the owners, but a rider clause may regardless seem to make charterers liable for stevedore damage (e.g.that stevedore damage caused to the vessel by the charterers could be required to be repaired at charterers' time and cost). It seems that London arbitrators have tried to make sense of this by attempting to at least give some meaning to both of

these within the scope of the C/P and the way this is done is that responsibility, as a starting point, for stevedore damage remains with owners under the (amended) clause 8 whereas the rider clause transfers liability to the charterers where the charterers have intervened actively and therefore have been the direct cause of the damage. (London Arbitration 2/89 LMLN 242)

The situation can be different: clause 8 can be left unamended (leaving responsibility for cargo operations with charterers) but a rider clause, on the other hand, seeks to allocate with owners the liability for stevedoring operations. In one particular case (London Arbitration 1/92 LMLN 318), the arbitration tribunal had to consider a combination of clauses including: (1) a clause 8 which was unamended (leaving cargo operations to be the responsibility of charterers), (2) a clause 35 providing that in the event of a breakdown of… cranes for any period by reason of disablement or insufficient power…. time lost by stevedores as a result of such breakdown… and all other expenses thereby incurred, to be for owners' account…, (3) a clause 47 which stipulated that the stevedores although appointed by charterers were to be considered as the owners' servants and should load, stow, trim and discharge the vessel under the control of the master and the master was to direct and control the loading or stowage and discharging of cargoes in cooperation with the local authorities, and (4) a clause 48 concerning stevedore damage stipulating that damage to the vessel caused by stevedores was to be repaired at charterers' expense before redelivery to owners (if it affected vessel's seaworthiness) but charterers were not to be responsible if master fails to notify… except hidden damage which was to be notified as soon as discovered, in which case a joint survey to be held. Otherwise, charterers were not to be liable.

It so happened that stevedores caused damage to one of the vessel's cranes and owners demanded that charterers should indemnify them for the cost of the repairs. The charterers, unsurprisingly, denied liability for this and instead raised a counterclaim for the cost of hiring shore cranes.

The tribunal held that under clause 47 the charterers were to appoint stevedores and it also meant that the stevedores were deemed to be the owners' servants and obliged the master to direct the operations. At this stage, the tribunal added that since clause 47 was a typewritten rider clause, it took precedence over any conflicting provision contained in clause 8 of the printed NYPE form. The "net" effect therefore was exactly the same as if clause 8 had been amended to include the words "and responsibility". At this stage of the analysis, the responsibility for stevedore damage therefore remained with owners.

The arbitrators then moved on to consider the effect of clause 48 which certainly seemed to contradict clause 47. Clause 48 set out on its own a specific procedure to be followed in respect of stevedore damage and under this particular clause responsibility fell on the charterers and not the owners. Even though the master was made specifically responsible for controlling and directing the stevedores under clause 47, the arbitrators held that in practice it was impossible in many circumstances for him to prevent the stevedores from performing these operations in a negligent manner. They therefore held it was sensible that it was the charterers who actually chose and

appointed the stevedores who should be liable for the stevedores if they were (with a rather uncomfortable term) “unavoidably” negligent. On the facts of this particular case, the arbitrators concluded that the stevedores had been unavoidably negligent and the charterers were held to be liable for the repairs to the damaged crane under clause 48. This case therefore turned very much on the facts (whether or not the stevedores had been “unavoidably negligent” or not).

1.3. Examples of stevedore damage clauses

1.3.1 Some standard C/P forms include a stevedore damage clause.

One such form is the **Shelltime 4** C/P. Clause 16 reads :

> “Stevedores when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers, their agents or any affiliated company); provided, however, that
>
> (i) the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and
>
> (ii) Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefor from stevedores.”

Where there are no express clauses to the contrary, the owners are, as mentioned, responsible for cargo operations. Responsibility for cargo operations performed by stevedores may be transferred to the charterers and clause 16 of Shelltime 4 really has to be read in full as it seems to come in two stages. The first sentence of clause 16, on its own, could be said to mean that the owners should be responsible for stowage whereas responsibility for all other operations performed by stevedores (employed and paid by the charterers) is transferred to the charterers. This would, on the other hand, be countered in the indemnity provisions which are found in the second sentence of clause 16 which specifically states that “… stevedores who are employed by the charterers shall be deemed to be the servants of and in the service of owners and under their instructions”. The overall result under this particular clause is therefore that owners are left with the responsibility for cargo operations and charterers can be made responsible only where they have actively interfered in these operations (and the intervention is the immediate and proximate cause of the loss). Possibly, the opposite would apply for damage to the vessel under this clause.

1.3.2 Other types of stevedore damage clause:

A few randomly selected examples of clauses found in C/Ps:

(Rider stevedore damage clause in C/P dated 2 March 2011):

> "Notwithstanding anything contained herein to the contrary, the charterers shall pay for any and all damage to the vessel caused by stevedores provided the master has notified the charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite charterers to appoint a surveyor to assess the extent of such damage.
>
> (a) In case of any and all damage(s) affecting the vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the vessel, the charterers shall immediately arrange for repairs of such damage(s) at their expense and the vessel is to remain on hire until such repairs are completed and if required passed by the vessel's classification society.
>
> (b) Other repairs not described under point (a) above shall be done at the same time but if this is not possible same shall be repaired by the owners at any convenient time before redelivery in such case charterers to pay for the cost and time against vouchers or ascertained by mutually agreed surveyor or after redelivery. If redelivery is accepted by the owners without any repair, in this case charterers to pay for cost and time estimated joint off-hire surveyor of repairing such stevedore damages, unless repairs are effected simultaneously with dry-docking or other repair for owners' account and no loss of time incurred.
>
> (c) Any time spent in repairing stevedore damage shall be for the charterers' account.
>
> (d) The charterers shall pay for stevedore damage whether or not payment has been made by stevedores to the charterers."

(Stevedore clause in C/P dated 22 September 2011):

> "Master to notify Charterers or their agent stevedore damage latest 24 hours after occurrence in writing and the Master try to obtain written acknowledgement by responsible parties. Any hidden damages to be reported upon detection and Charterers to remain responsible for any expenses and time to repair such hidden damages, but the hidden damages should be always reported not later than redelivery. In case of dispute a joint survey to be taken to clarify the amount of damages and estimated costs of repairs.
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> Charterers have the privilege of redelivering the vessel without repairing the stevedores' damages incurred during the currency of this Charter Party, and for which the Charterers are responsible, as long as damages do not affect the vessels seaworthiness/cargoworthiness.

> Charterers undertake to reimburse the repair against the production of repair bills by a yard, alternatively repairs will be settled between Owners/Charterers by a lumpsum payment to be mutually agreed. In such case, no hire and/or expenses will be paid to the Owners. However, should Charterers repair at the yard exceed the time used for Owners' work, Charterers pay for such time lost at the agreed time charter rate per or pro-rata, provided such time accessing can reasonable be distributed by the dockyard. Stevedore damages affecting seaworthiness and/or cargo/trading capability shall be repaired prior to commencement trading again in Charterers' time and at Charterers' time and at expenses after joint inspection of class surveyor of the particular damage."

1.4. What is usually included in a stevedore damage clause?

Generally, a stevedore damage clause will feature some (but not necessarily all) of the following:

- Who is to arrange and pay for stevedores
- Allocation of liability for stevedore damage
- Notification requirement i.e. master to notify charterers or their agents, usually within 24 or 48 hours
- Hidden damage to be reported when detected
- Who is to arrange repairs
- Whether repairs are to be made immediately or can wait until later
- Liability for time spent for repair
- Redelivery (with or without repairs having been made)
- Usually only dealing with damage to the vessel and not specifically dealing with damage to cargo

Unless the stevedore damage clause deals specifically with damage to the cargo as well, then the stevedore damage clause will not, as such, have any impact on responsibility for cargo damage

1.5. Case law on stevedore damage clauses

In London Arbitration 9/06, the vessel was chartered on an NYPE form for one time charter trip with a cargo of bagged cement in jumbo sized bags. During discharge, work had to be suspended because it was asserted that the cargo remaining on board had been badly stowed and that there were damaged bags and loose cargo. Bags were also being torn as the stevedores tried to lift them upright before hooking them on to the sling.

Clause 8 was left unamended and under that particular clause cargo operations were therefore the responsibility of the charterers.

The arbitration tribunal held that on the evidence in this case the damage to the cargo had been caused by ineffective stowage at the loading port and by stevedore failure to properly lash and secure the jumbo bags. The vessel had encountered heavy weather during her laden passage, thereby dislodging bags stowed in the upper tiers in each cargo hold – it was the negligence of the stevedores at the loading port which lead to the shifting of the cargo on the laden passage. The party responsible under the C/P for the stevedores was the party liable for the cargo damage sustained.

Under clause 2 of the charter it was the duty of the charterers to provide dunnage and lashing material and it appeared that no lashing material had been provided at all which lead directly to bags becoming dislodged from their stowage position.

Also and importantly the provisions of clause 8 had been left unamended and the addition of the loading etc. having to be done to "the master's satisfaction" did not have the effect of transferring responsibility to the master/owners. Accordingly, under clause 8 the charterers were responsible for the cargo operations and also therefore for the actions and/or the negligence of stevedores.

In London Arbitration 5/05, the vessel was chartered on an NYPE form with rider clauses and a rider clause headed "Stevedore damage" read:

> "Notwithstanding anything contained herein to the contrary, the charterers shall pay for any and all damage to the vessel caused by stevedores provided the master has notified the charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite charterers to appoint a surveyor to assess the extent of such damage.
>
> (a) In case of any and all damages affecting the vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the vessel, the charterers shall immediately arrange for repairs of such damages at their expense and the vessel is to remain on hire until such repairs are completed and if required passed by the vessel's classification society.
>
> (b) Any and all damages not described under point a above shall be repaired at the charterers' option before or after redelivery concurrently with the owners' work. In such case, no hire and/or expenses will be paid to the owners except and insofar as the time and/or the expenses required for the repairs for which the charterers are responsible, exceed the time and/or expenses necessary to carry out the owners' work.
>
> (c) Stevedores always to be considered as charterers' servants."

At discharge which was done by the use of shore and barge cranes, chain links broke as a result of which two granite blocks were dropped in the vessel's lower hold no. 5 and caused damage to the tank top and to a bulk head in way of a bunker tank. The master immediately informed the charterers and, as departure was imminent, the parties agreed that the class survey and, if necessary, repairs would be postponed until Xiamen, the next call from Hong Kong.

Later the owners claimed reimbursement of the cost of repairs but no less than four principal issues arose between the parties. The first was whether the owners had given timely notification to the charterers of the second damage incident (some days later than the first incident) and whether owners had therefore complied with the stevedore damage clause. The charterers did accept that they had been informed about the first incident but only learned of the other and later incidents when claim submissions were served. The owners, on their part, said that notification of the damage for the later occasions had been given to the charterers' agents in the same manner as for the first incident.

It was found that the master on each occasion had completed an appropriate damage report and that letters had immediately been sent to the charterers' agents and to the stevedores holding the stevedores responsible. The owners had therefore complied fully with the requirements of the stevedore damage clause and the fact that they may not on the later occasions have expressly invited the charterers to appoint a surveyor to inspect the damage was found not to be material: when the charterers' agents were notified of the damage and were notified of the request to the stevedores to effect repairs, that was held to amount to an implied invitation to the charterers to appoint a surveyor to assess the extent of the damage within the meaning of the clause.

(This London Arbitration 5/05 also includes a finding on when and by whom repairs are to be carried out)

It is, however, recommended always to comply as strictly as possible with the notification requirements in this type of clause.

In the CLIPPER SAO LUIS (decided in 2000), the vessel was chartered on an NYPE form as amended. Clause 8 was amended to say that charterers were to load etc. the cargo under the supervision and responsibility of the captain adding that "however this responsibility not to have any effect on the stevedore damage clause…" Under clause 8, cargo operations were therefore the responsibility of owners. The stevedore damage clause read :

> "Charterers are responsible for damage to the hull, machinery, equipment caused by stevedores in loading and discharging the vessel only when such damage is fully substantiated by the master's prompt notice of claim served in writing upon the party responsible and to the charterers or their agents. For stevedore damage not visible, charterers are not to be responsible unless notified by master as soon as possible but not later than on completion of discharge of the cargo in question."

This vessel loaded cargo of bales of cotton in one of its holds – most of the cotton was stuffed in containers but there were more than 500 loose bales. When the vessel arrived (at Rio de Janeiro) discharge commenced but a fire was detected in the hold. It was subsequently determined that the fire had been caused by stevedores dropping lit cigarette butts and/or matches in the hold. Owners declared general average, and the main issue to be decided was whether or not the charterers were responsible to the owners under the C/P for the damage which had clearly been caused by the stevedores who charterers themselves had appointed.

There was no physical damage to the vessel – only damage to cargo occurred. It was held that the stevedore damage clause, under which the charterers were responsible only for damage to the vessel itself, was not applicable. Consequently, the arguments had to focus on clause 8 and the extent of charterers' responsibility when they appoint stevedores. The judge was willing to imply a term to the effect that the charterers would appoint reasonably competent stevedores, but somewhat remarkably in the court's view the owners had not established that the fire had been caused by the appointment of incompetent stevedores. It is perhaps surprising to note that the court considered that a stevedore flicking a lit match or cigarette into a hold full of loose bales of cotton did not necessarily make that stevedore incompetent. The court indicated that one or more mistakes do not necessarily make a person incompetent. In the court's view in this case there would have to be a history of incompetence and a disabling lack of knowledge on the part of the stevedores and the owners had failed to establish this. The consequence of the loss therefore remained the owners' responsibility under clause 8.

One or perhaps even two acts of outright foolishness or carelessness on the part of stevedores will therefore not necessarily render charterers responsible to owners under a C/P. The result is that the owners will have a heavy burden of proof which must be met if owners are to hold charterers responsible for any loss that is suffered as a result of the stevedores' incompetence.

1.6. The BIMCO Stevedore Damage Clauses

BIMCO have published stevedore damage clauses both in time charter versions and voyage charter versions. The time charter version of the BIMCO Stevedore Damage Clause focuses on the removal of the emphasis (which is often found in this type of clause) on owners to report damage within, say, 24 hours of occurrence. When this standard suggested clause was drafted it was felt that an owner cannot reasonably be expected to do more than exercise due diligence in the discovery of such damage – it may well be important and even imperative that the owners report the damage as soon as possible so that the charterers can take appropriate action against the stevedores, but it was felt unreasonable that charterers should be held liable for stevedore damage if the owners failed to inform them of such damage within a reasonable time. If the owners simply collate all the stevedore damage during a time charter period and then present it to the charterers towards the end of the charter period, it would be difficult and probably impossible for the charterers to establish which stevedores are responsible for any particular damage. In the suggested clause, there is no requirement for the master to seek to obtain any form of acknowledgement of liability from the

stevedores or even acknowledgement that damage has occurred as this is considered too impractical to enforce.

In terms of the seriousness of damage caused by stevedores and the bearing such damage has on the necessity to repair, the BIMCO Stevedore Damage Clause categorises three types of damage. It was felt that this would create a better balance in this particular clause and would be fairer to both parties than many other stevedore damage clauses which are potentially open to abuse.

The most serious damage is that which **affects the vessel's seaworthiness**. This type of damage must be repaired before sailing from the port where the damage occurred or was first discovered. It should be noted that a reference to "class" is not included in this clause because not all damage affecting class is required to be rectified immediately – the classification society may e.g. just require that damage is to be repaired at the next dry-docking of the vessel. The important factor here is that vessels' seaworthiness is not compromised.

The second type of stevedore damage contemplated by the new clause is damage which **affects the vessel's "trading capabilities"** which was a new concept introduced when this clause was introduced in 2008. This type of damage (affecting trading capabilities) does not affect the vessel's seaworthiness but is nevertheless of a sufficient serious nature so as to have an impact on the vessel's ability to comply with the trading requirements on a subsequent voyage. This could for example be where a crane is damaged by stevedores and requires spare parts to be shipped in order to effect repair. If the crane is not required for the next voyage, then it is in that particular situation unreasonable to delay the vessel at charterers' time and expense waiting for the spare part to arrive, but if on the other had the crane is required for the next voyage then the charterers must bear the cost of the delay.

The third type of damage in the BIMCO stevedore damage clause is **"any type of damage" caused by stevedores** which does not affect the vessel's seaworthiness or trading capabilities. This residual category is therefore to be repaired under the clause before the end of the time charter period or before sailing from the last discharge port – whichever is applicable. If it is not practical or possible to achieve this, then the clause provides a mechanism for the owners to effect repairs at a later date and to invoice the charterers for the cost. It is the owners' responsibility to mitigate such repair cost by providing the charterers with supporting invoices.

The **BIMCO Stevedore Damage Clause (2008)** reads:

> "(a) The charterers shall be responsible for damage (fair wear and tear excepted) to any part of the vessel caused by the stevedores. The charterers shall be liable for all costs for repairing such damage and for any time lost.

(b) The master or the owners shall notify the charterers or their agents and the stevedores of any damage as soon as reasonably possible, failing which the charterers shall not be responsible.

(c) Stevedore damage affecting seaworthiness shall be repaired without any delay before the vessel sails from the port where such damage was caused or discovered. Stevedore damage affecting the vessel's trading capabilities shall be repaired prior to redelivery, failing which the charterers shall be liable for resulting losses. All other damage which is not repaired prior to redelivery shall be repaired by the owners and settled by the charterers on receipt of owners' supported invoice."

1.7. Voyage C/Ps

1.7.1. Allocation of liability

Similar considerations will have to be made in connection with voyage C/Ps. Again, if the voyage C/P has no express clause allocating responsibility for cargo operations, this will be an owners' responsibility.

C/Ps may often provide that charterers are to appoint or pay (or both) for stevedores but it does not actually specify whether owners or charterers are to be responsible for the cargo operations (stevedores).

In the context of voyage charterers, the courts have considered various types of wording some of which have been held not to transfer responsibility from owners to charterers and others where the words chosen did exactly that namely transferred responsibility from owners to charterers. Some of the cases listed below relate to time rather than voyage charter parties.

No transfer of responsibility from owners to charterers:

"Charterers being allowed to appoint a head stevedore at the expense and under the inspection and responsibility of the master for proper stowage" (The HELENE) (Sach v Ford) (Union Castle v Borderdale)

"Stevedores to be appointed by the charterers… but employed and paid for by the owners at a current rate" (Harris v Best)

"Cargo on delivery alongside to be received by the master… and to be at vessel's risk…Shipper for the sum of two dollars per load to appoint and pay any stevedore to load the cargo." (Anderson v Crundalle)

"Cargo to be loaded, stowed and discharged free of expense to steamer, with use of steamer's winch or winch men if required" (Ballantyne v Paton)

Transfer of responsibility from owners to charterers:

"Ship to be stowed by charterers' stevedore at the expense and risk of the vessel (The CATHERINE CHALMERS)

"Charterers to provide and pay a stevedore to do the stowing of the cargo under the supervision of the master" (Brys & Gylsen v Drysdale)

"Charterers are to load, stow and trim the cargo at their expense under the supervision of the captain" (Courtline v Canadian Transport)

"Cargo to be loaded, discharged, trimmed and stowed free of any expense to the owners" (Government of Ceylon v Chandris)

"Costs… free in and stowed – the charterers shall load and stow the cargo free of any expense whatsoever to the owners" (CHZ Role Impex v Eftavrysses (The PANAGHIA TINNOU))

It may not always be easy to reconcile these decisions but nevertheless there seems to be a picture which is fairly similar to what would apply under a time C/P:

In the absence of any clause to the contrary, the responsibility for cargo/stevedoring operations remains with the owners. Very clear wording is necessary to transfer the responsibility for these operations to the charterers. That was also the point made in London Arbitration 18/05.

A clause which merely makes the charterers the ones to appoint stevedores does not (without clearer and additional wording) transfer liability for operations as such to charterers.

Effectively, what is needed is a clause which stipulates clearly that charterers are to perform or carry out loading, stowage, discharging etc. in order for responsibility to be transferred to charterers.

1.7.2. The BIMCO Stevedore Damage Clause for voyage C/Ps

BIMCO has also produced a **stevedore damage clause for FIO voyage C/Ps**:

"a) The charterers shall be responsible for damage (fair wear and tear excepted) to any part of the vessel caused by stevedores. The charterers shall be liable for all costs for repairing such damage and for any time lost, which shall be paid in an amount equivalent to the demurrage rate.

b) The master of the owners shall notify the charterers or their agents and the stevedores of any damage as soon as reasonably possible, failing which the charterers shall not be responsible.

c) Stevedore damage affecting seaworthiness shall be repaired without any delay before the vessel sails from the port where such damage was caused or discovered.
Stevedore damage affecting the vessel's trading capabilities shall be repaired before leaving the last port of discharge, failing which the charterers shall be liable for resulting losses. All other damage which is not repaired before leaving the last port of discharge shall be repaired by the owners and settled by the charterers on receipt of owners' supporting invoice."

1.8. Free in/out shipments

In the context of voyage charterers, it is therefore equally important if owners wish to transfer responsibility for cargo operations to charterers that a very clear clause to this effect is included. One such clause is the FIOST amendment to clause 5 of the GENCON form.

Where the FIOST alternative is selected, the owners are therefore under no liability to the charterers for damage caused by careless loading or discharging, bad stowage etc.

Stevedore damage clauses in voyage C/Ps have also been tested by the courts and in London arbitration.

In London Arbitration 18/10 the vessel was chartered on a Sugar Charter Party 1999 form. At discharge in Tartous a court appointed surveyor found short-delivery or damaged cargo and the vessel was arrested by receivers. A cargo fine was imposed. The owners claimed damages for detention, an indemnity for the customs fine for short-delivery and the damages paid for short delivery to cargo interests. Charterers denied liability for the cargo claim and the customs fine and argued that the owners were responsible for the torn bags or the torn empty bags which they argued were caused by the stevedores who charterers maintained were owners' agents. The C/P included a clause 14 which provided.

"Stevedores FIOST 14

> Stevedores for loading, trimming and discharging to be employed by charterers or shippers/receivers at their expense and under master's control. Stevedores shall be considered as owners' servants and the charterers/shippers/receivers are not to be responsible for any negligence of whatsoever nature, default or error in judgment of the stevedores employed. Stevedores' cargo damage for charterers' account both ends but in any case owners are not responsible for stevedores' cargo damage."

It was held that with regard to the cargo claim, the damage was caused by stevedores for whom (although clause 14 was far from clear) the charterers were responsible. (This is an example of a clause where the wording in fact seems to go "in both directions" and presumably the words "stevedores' cargo damage for charterers' account" were decisive).

1.9. Questions whether stevedores are competent

In London Arbitration 6/08 the vessel was chartered on an amended GENCON form. This matter arose in the context of a demurrage claim where charterers said that time had been lost at both load and discharge ports as a result of bad stowage at the load port for which the owners were responsible. The charterers argued that they had appointed competent stevedores, but the master/chief officer had intervened and ordered the stevedores to shift and draft the jumbo bags in the holds to fill up spaces difficult to access from the hatch squares. That led to delays in handling the cargo both at the load port and the discharge port and also to the deterioration of and damage to the jumbo bags, making re-bagging of the cargo necessary at the discharge port. The charterers referred to clause 31 of the charter which was headed "stevedore damage" and provided:

> "The stevedores although appointed and paid by the charterers/receivers or their agents at both ends to remain under the direction and control of the master who will be responsible for the proper loading, stowage, discharging and the seaworthiness of the vessel."

The owners on their part argued that the stevedores were incompetent and therefore the charterers could not rely on clause 31.

It was common ground that the cargo was not well stowed but on the evidence before this particular tribunal the reason why the stevedores stowed the cargo in the way in which they did was not because they were following the instructions of the master and/or chief officer, but it was because the stevedores did not have the benefit of the assistance of forklifts. An experienced firm of stevedores ought to realise at the outset that if they were to load a full cargo, they would have had to make full use of all available space and that meant that they should have realised that the use of forklifts was essential.

It was held that it was almost inevitable that there would be problems in trying to stow the quantity of cargo originally intended to be loaded in the vessel without the use of forklifts.

The obligation on the charterers was to employ a firm of stevedores whose workers were not only themselves competent but who were properly equipped with whatever equipment was needed to efficiently fulfil their task… In the tribunal's view, the lack of proper equipment was sufficient, on its own, to demonstrate incompetency. In the present case, supply of the proper equipment would mean that the stevedores were supplied with the forklifts that were needed to stow the cargo properly. It was not for the ship's officers to insist that they be so supplied.

If the load port stevedores were incompetent in the sense that they were not properly equipped by their employers but doing their best in a difficult situation, the master could not be held responsible "for the proper loading, stowage…" of the cargo under clause 31 including any delay due to poor stowage. The charterers were therefore not excused from liability for any delay.

This is perhaps somewhat in contrast to the result in the CLIPPER SAO LUIS.

1.10 Clauses stating which party is not responsible

In practice, clauses are often found – in particular with regard to stevedore damage to cargo – stating that e.g. "owners are not responsible for any stevedore damage at the discharge port."

Depending on the jurisdiction where the discharging takes place, such clauses will usually have no effect against claims from the receivers under the Bs/L unless such Bs/L state "free out" or similar terms. This is due to the fact that the C/P clause is against the (mandatory) provisions in the Hague or Hague Visby Rules (and other carriage of goods regimes).

In the absence of an agreement to issue "free out" Bs/L, the parties to the C/P should – instead of focusing on who is "not to be responsible" – agree on whether the party who faces the claim (usually the owners) should have an explicit right of indemnity from the other (usually the charterers).

2. Applicable insurance

Owners will usually in terms of responsibility for cargo operations be covered by their ordinary P&I insurance.

Charterers, if they have a charterers' entry with one of the major P&I clubs, will also have charterers' liability to hull cover (CLH) which will cover damage to the vessel. Damage to cargo will be covered under a charterers' entry with the P&I club.

3.When and who to repair the damage

The question of when and how is to repair the damage depends first and foremost on whether or not any specific agreement has been made in the C/P but also (as is clear from at least some stevedore damage clauses and certainly from the BIMCO Stevedore Damage Clause) what damage has been caused. Serious damage affecting seaworthiness etc. will have to be repaired immediately whereas less serious damage can be done later.

The question of when repairs should be carried out has also been dealt with in London Arbitration and one example is London Arbitration 5/05.

The stevedore damage clause in this case is set out in 1.5. above. On the question of repairs namely whether only temporary repairs should be carried out to the vessel's hold (damaged by dropped granite blocks) it was said that the damage to the lower hold necessitated repairs in the immediate vicinity of a double-bottom bunker tank in way of which the charterers' own surveyors had identified traces of leaked fuel oil. In these circumstances, any class surveyor would have insisted on a full repair being carried out as early as possible. Moreover, proper and effective repair facilities were adjacent and readily available. The work entailed the emptying of the affected fuel tank, also of the adjacent bilge tank and their gas freeing so as to enable hot work. It was therefore held that the damage here fell within the provisions of the stevedore damage clause as affecting the seaworthiness of the vessel, the safety of the crew and the trading capabilities of the vessel.

Other holds in the vessel were less damaged where wooden bulk head protection was damaged and it was therefore held to be relatively minor in nature and was capable of being deferred. However, since the vessel was undergoing repairs in relation to the more extensive damage in one of its holds, it made operation sense for the crew to make running repairs to the other remaining holds sooner rather than later. The damage to these holds and the repairs effected fell squarely within the stevedore damage clause in that repairs were effected before redelivery concurrent with the owners' work.