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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
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