



THE CHARTER PARTY DILEMMA:

Remain Routine or Elevate to Critical?

In a perfect world, a charter party would totally reflect the negotiated fixture; after all, it is intended to be a document stating the terms and conditions which apply to both parties to the contract. In addition to the basic terms and conditions which apply, the, rights, liberties, inclusions and exclusions applicable to the parties are reflected in this document.

However, we live in a fast-paced, electronic world where charter parties are often dictated by customs of the past. But in today's regulatory environment, charter parties can no longer be treated as low-risk documents.

Charter Party Origins

Carta Partita! Charta Partita! Charta divisa! Medieval Latin for divided document—an agreement torn into two pieces with one half given to each party—is the origin of what we now call a charter party. Whereas a CP is no longer torn in two, it is a full and binding contract that lays out—or *should* lay out—in detail all the terms agreed upon during negotiation of the fixture.

Maritime custom dictates that the charterer's broker draw up the charter party after the fixture has been confirmed. Usually the terms of the negotiation (known as a “Final/CLEAN Recap”) make reference to a previous CP (the Proforma Charter Party), which is then used to prepare a Charter Party for the new fixture/charter.

Are Charter Parties receiving the attention they require?

Unfortunately, the review of a CP, if any, is generally relegated to shipping trainees. It is considered part of their ongoing education and builds on book knowledge imparted in their respective maritime academies. Sometimes it is given to administration staff—who have not had the benefit of attending a maritime academy—to review.

Reviewing is a time-consuming task. To read, audit and verify all the sources

that constitute a CP can take many hours and requires detailed maritime knowledge—including an understanding of the myriad abbreviations from AAAA (always afloat always accessible) to some a favorites like NAABSA (Not always afloat but safely aground) or DANRVAOCLONL (Discountless and non-returnable vessel and or cargo lost or not lost). Trainees, while relatively inexpensive to use, are usually keen to move on to other roles and may not have the necessary knowledge or understanding to find errors or inconsistencies.

Add to that the inherent industry practice of fixing terms 'as per last.' This allows errors to creep from one CP to the next. Unraveling the sequence of errors in the event of disputes can be a formidable task, should it become necessary.

The Charter Party Dilemma

As reported in *TankerOperator* on 4 October 2013, legal and contractual issues are the most important areas of concern to commercial ship owners. This was the finding of the latest member survey conducted by the UK P&I Club.

At CMA's Shipping 2013 this past March, during the Charter Party Dispute session, held by the Society of Maritime Arbitrators, New York, reference was made to the following incidents:

- Time Bar clause; agreed by Broker verbally but not incorporated in the printed CP -- resulted in litigation.
- Wrong Owners name; Incorrect Owners name in recap (Head Owners instead of the Disponent Owner) -- resulted in litigation.
- CP administration clause meant that Physical CP was never drafted -- subsequent claims proceeded into litigation.

An article published by the Association of Corporate Counsel on April 25, 2013 detailed the case of Hyundai Merchant Marine Company Limited (HMM) v. Americas Bulk Transport Limited (ABT)(Pacific Champ) [2013] EWHC 470 (Comm).

According to the article, the case revolved around the fact that negotiations for the alleged fixture were conducted through a series of telephone and email exchanges. The two parties disagreed about the terms that were allegedly accepted. In the end, HMM contended that there was no binding contract between the parties. The case went to arbitration, which held in favor of ABT.

HMM took the case into litigation. Again according to the article, the court was faced with a number of evidentiary difficulties due to factors including factual disputes between the parties about what was said in their telephone calls, as well as the lack of documentation. The court found in favor of HMM, saying there was no consensus and therefore no binding charter party and no binding arbitration agreement.

Had there been a signed charter party that was carefully read, audited and verified, perhaps the time and money spent in arbitration and litigation might have been saved.

The dilemma, therefore, seems to be a question: if contractual issues are such a high concern, why are charter parties seemingly so low on ship owners' priority lists? And what can be done to change that?

Making a Cultural Change

There are three essential steps to take that can help change the established behavior regarding charter parties:

#1: Acknowledge the issue

The first step to changing an established pattern of behavior is to acknowledge its existence. Bringing to light the growing number of arbitration and litigation plus the time and money it takes to deal with each situation, should help owners and brokers understand the scope of this issue.

#2: Elevate the level of scrutiny

Placing more emphasis on the importance of accurate charter parties also means re-evaluating how a charter party is reviewed—and by whom. Having a trainee without adequate experience responsible for assuring the charter party is read, audited and verified is risky at best.

#3: Go to the next level

According to Liz McMahon in an article entitled "A legal wake-up call" in the January 26, 2012 issue of *Lloyd's List*, dealing with the case of Star Reefers Pool v. JFC Group, "Check every contract ruthlessly, then check it again." This is great advice to follow for owners and brokers alike.

Whether owners and brokers use software that helps develop charter parties or a solution that also offers trained individuals who actually read, audit and

verify each detail of a charter party, the lesson is still the same. Give charter parties the attention they deserve.

After all, if an accurate charter party is no longer a nagging concern, owners and brokers can better focus on their day-to-day business.

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