



STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



## Ebola Risk Alert - Potential Charterparty Issues

November 2014

The potential charterparty issues arising out of the Ebola outbreak in West Africa were discussed in an [article](#) by Ince & Co in August, 2014.

Since that time, and given the continuing spread of the virus, a number of charterparty clauses - for both time and voyage charters - have been produced by Owner and Charterer interests but as yet there is no "industry standard" clause.

In broad terms the framework of the clauses produced to date is:

- » An owner has an option not to proceed to a port in an 'Ebola area';
- » Notwithstanding that option if the Owner decides to proceed, the Charterer will indemnify the owner against certain types of costs, expenses or liabilities, and the cost of medical treatment for any crew that might be or are infected with Ebola;
- » The option to proceed turns on whether the vessel or persons on board "may be exposed" to a highly infectious disease, including Ebola (some clauses refer only to exposure to Ebola, or a risk or actual risk of Ebola).



Whether there is a risk of exposure to Ebola under these clauses is in the main based on the reasonable judgement of the master/Owner, and/or by reference to WHO guidance and recommendations. Other clauses are simply silent in that respect and refer to the Owner's sole discretion to proceed or not.

Irrespective of how the danger or risk of exposure in a particular area or port is determined, the test under most clauses is "... may expose ... to danger or risk ...". This means a real probability of danger to the vessel or crew.

While this may be a high threshold for an Owner to establish, there are potential cover issues for Owners and Charterers alike.

This is because where a real probability of danger in fact exists (i) it is possible that by agreeing to perform a voyage which may be imprudent, unduly, hazardous, or improper, the Owner will have jeopardised his P and I cover whilst (ii) the Charterer, by providing an indemnity, will have agreed to assume potential liabilities that would otherwise be for the Owners' account.

An Owner relying on such an indemnity in these circumstances should be aware that an indemnity will not reinstate Club cover and, for this reason, should also be fully satisfied as to the financial standing of the party giving the indemnity.

Until an industry standard clause is established Members are advised to contact the Managers for advice on Ebola clauses which they may wish or be requested to incorporate in their charterparties.