

# The Charterer

SEPTEMBER 2000



## Fixed Premium Charterers P&I Club Surges ahead

The eighteen months since de-mutualisation have been a busy period for the managers, Michael Else and Company.

Following the members' unanimous decision to de-mutualise the Club with effect from 1st January 1999, over 95 per cent of the mutual members transferred their policies to the new fixed premium vehicle. An excellent result by any standards which clearly reflected the members confidence in the deal that was negotiated between the Managers and the capital partners at Lloyd's. Since de-mutualisation the Managers have concentrated on five key areas:

- \* Servicing the existing members
- \* Finalising the affairs of the Mutual
- \* Marketing the new fixed premium vehicle
- \* Strengthening the working relationship with the capital partners at Lloyd's
- \* Preparing the way for the advent of E-commerce

Since the establishment of the new product in January 1999 the amount of business transacted over the Internet and by E-mail has increased substantially. Many members are now E-mail capable and roughly half of the Club's members declare vessels for cover using this medium. This figure will continue to increase and some clients are already talking to us about total E-commerce solutions. Equally the Club remains mindful that electronic media is only a support function, or a means of accessing/distributing information and the Managers are committed to providing less technically minded members with the traditional human touch.

The Michael Else and Company web-site went live in November 1999 and members can now download copies of the Club's Terms and Conditions, Correspondents Books and obtain

further information on our products. The web address is [www.else.co.uk](http://www.else.co.uk) and our contact details are on the back page of this newsletter.

The web site will be developed further to fully support electronic handling of routine administration. Before this happens the Managers will seek the input of members in order to establish their requirements. Gavin Ritchie, The Charterers Club underwriter, will shortly canvass members and brokers in relation to conducting business over the web.

The web and E-commerce are only tools that assist with the transaction of insurance business and will never replace the relationships that exist between the Club, brokers, members and all others involved in the service chain such as correspondents, surveyors and lawyers.

Renewals are taking place continuously and some members have already renewed for 2001. The Managers have been travelling extensively in recent months in order to visit as many members as possible and further visits will be conducted between now and the end of the year. For any member with policies due to renew in the near future statistics will be distributed and discussed shortly.

The last years of the 20<sup>th</sup> Century were dominated by a poor freight market and a soft phase of the insurance cycle. The Club has successfully traded through these adverse conditions and has emerged prepared to embark on a programme of sustained growth. Since de-mutualisation the size of the operation has increased by 20 per cent and with improving market conditions the Club can grow significantly without sacrificing the stability and reputation for service that is associated with The Charterers P&I Club.

# NYPE v Gentime

By Christopher Hill



The NYPE 1946 charterparty is arguably the most popular time charterparty for dry cargo trades in use today. Despite an update and modernisation work resulting in NYPE 1993, the 1946 form has not suffered any reduction in use. The Baltimore 1939 stuck with the label of an "owners charter" is an endangered species, virtually extinct except possibly in short sea trades. Bimco were originally minded to revamp it and thus to rekindle its popularity, but their Documentary Committee rejected the idea and authorised the composition of a totally new dry cargo time charter, which after 3 years in the making is now completed (code named "Gentime") and is on offer to the market.

Why improve a charterparty at all? For two reasons - to reduce the need to draft and attach endless rider clauses, some of which eventually become in such regular use that they ought logically to be elevated to printed clause status. Secondly, to cater for developments in transport facilities and technology.

At present, however, NYPE 1946 rules supreme and is as well balanced a document as you will find (Gentime possibly excepted). But no charterparty is perfect. It, like any other printed contract, has its defects and areas where improvements could be made.

Take the off-hire clause in NYPE 1946. It lists various causes of delay to the ship which,

irrespective of fault, entitled the charterer to place the ship off-hire for the net time lost, but it qualifies (and restricts) the scope of these listed causes by saying that whatever is the cause it should have prevented the full working of the vessel. Case law in England has habitually ruled that unless the listed cause, for which the charterer has opted to place the vessel off-hire, has the effect of physically preventing the full working of the vessel, off-hiring will not be permitted. A charterers ability to invoke the off-hire clause should not, in my view, be restricted in this way. Not only should physical prevention of a ships working capability be relevant, but also legal or even administrative restraints causing delays should be recognised as off-hire events (provided, of course, that the delay has not been caused by the charterer himself). Gentime addresses this problem by a total re-wording of the off-hire clause. Thus, delay caused by process of law or by the hand of lawful authority are equally catered for by the off-hire provisions. NYPE 1993 does not address this point.

The "meat" of any time charterparty (particularly in the dry trades) is the cargo responsibility clause. Clause 8 of NYPE in its virgin form was vague and uncertain of clear definition. The word "supervision" was put under a microscope and its effect minutely analysed. The outcome was that it had little, if any, legal meaning. A ship's master is not only entitled anyway (by common law) to cast an eye over the loading and stowage processes, but moreover has a duty to ensure that whoever directs these processes should do so in a manner that does not prejudice the safety, trim and stability of his ship (and its crew). He has the absolute right to intervene if he believes that the loading/stowage processes are going "off the rails". The word supervision does not, however, have any influence upon swinging the pendulum of responsibility for cargo loss or damage from charterers back to owner. Only the addition of the words "and responsibility" will have this effect.

Because of the lack of distinct pointers of where the cargo responsibility did or should lie, the Clubs in the 1950's devised their own solution by fashioning an agreement which automatically apportioned responsibility for cargo damage according to the nature or the cause of the damage. The agreement which is still in universal use became identified with the NYPE 1946 charter and with some modifications still holds good today, being legally binding if actually incorporated into the charterparty.

NYPE 1993 makes some changes in clause 8. Firstly, it clarifies and enumerates the entire cargo handling process specifically introducing each word - thus loading, stowing, trimming, lashing, securing, dunnaging, unlashings, discharging and tallying, but (and here is what damns the clause from a charterers view point) the entire process is at the charterers risk. This means that the Inter Club Agreement cannot be effectively used nor can the words "and responsibility" be introduced without producing a direct conflict within the clause. Clause 8 of NYPE 1993 thus is less charterer-friendly than its equivalent in the 1946 version.

**"The meat of any time charterparty is the cargo responsibility clause"**

Another subject which received modernisation in both the 1993 version of NYPE and the new Gentime product is the right of cancellation on failing to make the cancelling date. The old rule and one that governs the 1946 version says that there can be no anticipatory cancellation in the absence of any provision to the contrary. The cancelling date must have been reached before the charterer can exercise his cancellation rights. This means a possible wasted ballast voyage, a waste of time which could have been more profitably used seeking alternative employment, and frustration for the charterer who may have a mind to cancel, but is unable to exercise his right to do so until the cancelling date is reached. In both NYPE 1993 and Gentime, the

owner who knows that his ship is unlikely to make the cancelling date can notify an amended eta and can require the charterer to declare within 48 hours whether he still wants the ship. If he does, a new extended cancelling date is agreed. In the NYPE 1993 this process can be repeated more than once. In Gentime, once only.

NYPE 1946 does not definitely deal either with who has responsibility for the stowing/securing of deck cargo or who, as between owner and charterer, must bear the consequences of loss/damage. It contents itself with saying merely that the whole "reach" of the vessel including the deck space is at the charterers disposal. This absence of detail is probably because the container revolution was still in the future and deck space on the then still conventional ships was regarded as not proper cargo carrying space anyway. All risks were, if possible, shovelled off onto the shipper/ receiver under bill of lading terms. Gentime acknowledges that basically deck cargo is charterers "baby", but does make the concession that goods packed in fully enclosed containers with class approved fittings and lashings shall be owners responsibility. With deck carriage there can regrettably be no split of responsibility down the middle. It is one way or the other.

The one general defect, as I see it, in the layout of the NYPE 1946 is that the factual information contained is not readily visible to the user of the document. However familiar one is with the 1946 form one still has to search the lines to find information. The new Gentime does have a box layout containing all the relevant information which goes to make up the fixture. It also has an index of provisions and an appendix of clauses to be used in bills of lading issued pursuant to the charter provisions. Gentime could be said to be not only the contract itself, but to provide its own instantaneous "guided tour" to its contents.

# Charterers Club - News

## Correspondents Details

The Rule Book with list of Correspondents for 2001 is now in the early stages of preparation and will be published in December 2000. All Correspondents are requested to notify us of any changes to their details as soon as possible and in any event no later than November 2000. Particular attention should be given to the inclusion of E-mail addresses or mobile phone numbers which may not have been notified previously.

Correspondents are reminded that their details are displayed on the Michael Else web site and it is these details which will be used for the 2001 book. It is recommended that these are checked before contacting the Club.

## Staff changes

### Christopher Hill

Chris Hill, who joined the Club at its foundation in 1986, will be well known to most members.

Chris was the original Claims Director and joined after 25 years spent with a major International Group club.

Chris's knowledge of shipping and the P&I industry is of benefit not only to members of the Charterers Club but also to the shipping community in general. Chris is the author of 5 books and numerous articles on matters pertinent to Maritime Law, including the standard textbook "Maritime Law"

Chris has lectured for many years at several colleges and institutions and was a founder Member of the London Maritime Arbitrators Association.

After a long career in the industry Chris retired officially in December 1999, however, he has not hung up his gloves completely and now works part time with Michael Else and Company as a consultant. He will also continue his work with

BIMCO, for example with the sub-committee that drafted the new Gentime charterparty.

### Anne-Marie Castle

We are pleased to welcome Anne-Marie Castle to the claims department where she will handle mostly Charterers Club claims.

Anne-Marie previously worked for a leading P&I Club for more than twelve years where she gained experience in all aspects of P&I and Defence claims. She brings not only considerable expertise in claims matters, but also a working knowledge of French and Arabic.

### Fiona Manns

After six years working as a claims handler with Michael Else, Fiona Manns has decided to leave to pursue other interests. We wish her every success for her future career.

## The Charterer Newsletter

This is a new, streamlined, format for the Charterer which will be published in September and March every year.

The next issue will be distributed in March 2001 and will concentrate on the very important role of the Club's international network of P&I correspondents

The Charterer is printed by Michael Else and Company. Comments and contributions are always welcome.

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