

The costs of piracy: charterparty implications



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To reduce the risk of a dispute as to liability for AWRP and the costs of armed guards, owners should ensure that they are aware of all of the terms relating to war risk expenses in the charterparty, including those set out in the rider clauses incorporated into the charterparty. Owners should not assume that the terms in a fixture recap will override provisions dealing with similar issues elsewhere in the charterparty. It is preferable for owners to amend or delete any rider clauses that they are uncomfortable with. Alternatively, if owners are prepared to keep the rider clauses, then they should ensure that they fully comply with all requirements.

Owners should keep in mind that standard terms incorporated into a charterparty may require owners to give advance notice to charterers of the estimated cost of war risk premiums and armed guards before liability for such costs can be passed to charterers.

The expenses involved in combatting piracy require careful consideration when forming charterparties.

It has been reported that the Nigerian Navy is continuing to tackle the growing problem of piracy in the Gulf of Guinea. In August 2013, seven suspected pirates died during an assault on the passenger ro-ro ferry Brenda Corlett following intervention by a naval escort vessel. This incident happened just one day after four suspected pirates died during a confrontation with the naval patrol vessel Victory in the same region. Despite this, most predictions suggest that piracy in the Gulf of Guinea will continue to rise in the short to medium term, at least.

In these circumstances, owners are rightly taking additional steps to ensure the safety of their cargo and crew, and the presence of armed guards on board vessels is commonplace. Armed guards, crew bonuses and additional insurances, such as Additional War Risk premiums (AWRP) and Kidnap & Ransom cover (K&R), can add hundreds of thousands of US dollars to the cost of a single voyage in the Gulf of Guinea. It is therefore vital for an owner to know where those costs fall under their chartering arrangements and to ensure the costs can be recovered.

Often, whilst it might first appear that an owner has allocated liability for those expenses to a charterer in the fixture recap, the provisions of many standard war risk terms

that are also incorporated into the charterparty (the standard terms of many oil majors and commodity trading companies contain an 'Additional War Risk Expenditure' clause, or similar) may affect the recoverability of such costs from the charterer and may require strict compliance.

For example, if a fixture recap simply states that the cost of armed guards is "for charterers' account" but the rider clause requires, as a condition, that the owner must give advance notice to the charterer of the estimated cost of armed guards before liability to pay will pass to the charterer, then doubt will arise as to whether the charterer is obliged to reimburse the cost if the requisite notice has not been given.

- Piracy in the Gulf of Guinea continues to rise
- Additional war risk premiums and the supply of armed guards can add significantly to overall voyage costs
- Owners should consider all charterparty terms in relation to such expenses if they intend to pass liability to charterers

The charterer may argue that liability for that cost remains with the owner because the owner has failed to give advance notice of the estimated cost, as the commercial purpose of the notice requirement is to enable the charterer to establish whether cheaper guards are available.