

## Institute of Chartered Shipbrokers Column

### STEVEDORE DAMAGE CLAUSE ON A VOYAGE CHARTER PARTY

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Cargoes of steel and wood are prone to sustaining stevedore damage, as they are heavy and long. The weight of each piece can be as high as 30Mt and the length as long as 12m. During loading, it is not rare for the swinging cargoes to hit the ship's hatch coaming, hold wall, access ladders, tank top or even the ship's hull. Therefore, when carrying these cargoes, the stevedore damage clause is a very important part of voyage charter parties with respect to the load/discharging term of 'free in and / or free out'.

For the charterers, as damage to the ship is a matter of a claim between shipowner and stevedore, they would prefer the stevedore damage clause to be worded in the form which has been generally accepted by shipowners as follows:

#### **SD-A:**

**STEVEDORE DAMAGE, IF ANY, TO BE SETTLED DIRECTLY BETWEEN THE OWNERS AND THE STEVEDORE, BUT CHARTERERS ASSIST TO SETTLE THE STEVEDORES DAMAGE.**

However, nowadays, given that for 'free in free out' shipments, stevedores are appointed by the shipper/receiver, instead of by shipowners, more and more shipowners have brought about a change to the clause, as follows :

#### **SD-B:**

**STEVEDORE DAMAGE, IF ANY, TO BE SETTLED DIRECTLY BETWEEN THE OWNERS AND THE STEVEDORE. SHOULD THE DIRECT SETTLEMENT FAIL, CHARTERERS SHALL ULTIMATELY REMAIN RESPONSIBLE FOR THE DAMAGE(S).**

Comparing SD-B with SD-A, there is a shift of final responsibility of stevedore damage from shipowners to charterers.

Charterers may ask:

- *Why there is a shift of final responsibility?*
- *As it is damage made by the stevedore, why is it not the stevedore to settle the repairing cost?*
- *Are the stevedores, shipowners, charterers covered by insurance for stevedore damage?*

- *Should charterers insist not to accept final responsibility for the stevedore damage?*

### **Who and when to repair stevedore damage?**

Slight damage can usually be repaired by the stevedores on the spot before the vessel sails. In order to avoid delaying the vessel sailing, damage may be repaired by the ship's crew after vessel sailing and the cost of repairing may be negotiated and settled by the stevedores before sailing.

For more serious damage, it may be repaired at the next port by skillful labour. For even more serious damage, it has to be repaired during next dry dock, and the repairing bill will be sent to the stevedore company to be settled directly with the shipowner. Of course we are talking here about a seaworthiness situation.

### **Will the repairing bill being paid by stevedores after vessel sailed?**

At the well-established ports having a long history, such as the European ports, stevedore damages are paid by the stevedore, even after the vessel has sailed.

However, at certain ports in the new rising markets such as China and India, it is likely stevedores won't pay the repairing bill after the vessel sailed.

### **Are the stevedore companies covered by insurance for stevedore damage?**

Yes, they are covered.

### **Why don't they pay the repairing bill?**

Although stevedores are covered by insurance for any stevedore damage, stevedores at certain ports in the rising markets tend not to pay shipowners due to the rebate practice. A stevedore company who doesn't report a claim of stevedore damage will receive a good cash rebate from the insurance company at the year end. For this reason, a stevedore company won't report claim in order to get the year end cash rebate and just won't pay the stevedore damage bill.

### **Why shipowners don't just claim under the insurance?**

Stevedore damage is not covered under the hull and machinery insurance but under the third party cover provided by the Protection & Indemnity Club. However, shipowners can sometimes be reluctant to claim under their P & I cover, in order to avoid higher premiums resulting from claims, and would therefore prefer the repair costs to be dealt with directly by the charterers.

### **That's why there are requests of shifting of responsibility.**

For 'free in / free out' shipments loading / discharging at ports where stevedores have a record of refusing to settle stevedore damage claims, in order to push stevedores to pay any possible repair bills, shipowners would insist for a clause of type SD-B in the charter party, which places final responsibility for stevedore damage on the charterers' account, as they believe it is the best way to push the

stevedores through the shippers / receivers who employ them by pushing charterers who have contract the relationship with shippers / receivers.

### **What are the impacts of SD-B clause on the Charterers?**

Charterers may shift the burden to the shippers, under 'free in' shipment, or to receivers, under 'free out' shipment, by putting the same clause SD-B (with reference to charterers to be changed to shippers or receivers) in the respective purchase or sale contracts. Shippers / receivers, therefore, have to push their stevedores to settle any stevedore damage claim with shipowners.

However, for commercial / trade reasons, it may be not feasible to mention SD-B in purchase / sale contracts.

### **Are Charterers covered by insurance for stevedore damage?**

Charterers should obtain cover under a Charterers Liability Insurance, as stevedore damage is covered as a third party claim in the Charterers Liability Insurance.

### **Should the charterers insist on not accepting the final responsibility of stevedore damage in a charter party?**

This depends on the market situation and bargaining power. When fixing with those shipowners who insist charterers be finally responsible for stevedore damage, charterers may have to accept this, if they are covered by Charterers Liability Insurance.

When charterers are unable to avoid final responsibility for stevedore damage, they may consider amending the SD-B clause wording in the voyage charter party, to a better clause SD-C, including a time frame, as follows:

### **SD-C**

*FOR 'FREE IN' AND / OR 'FREE OUT' SHIPMENTS, CHARTERERS / SHIPPERS / RECEIVERS TO USE THEIR OWN STEVEDORES AT LOADING AND / OR DISCHARGING PORT. STEVEDORE DAMAGES, IF ANY, TO BE SETTLED DIRECTLY BETWEEN OWNERS AND STEVEDORES. SHIPOWNERS BEING UNSUCCESSFUL IN SETTLING STEVEDORE DAMAGE, CHARTERERS TO ASSIST IN OBTAINING DUE SETTLEMENT AND REMAIN ULTIMATELY RESPONSIBLE. MASTER TO NOTIFY STEVEDORES, AGENTS, SHIPPERS / RECEIVERS OF DAMAGES, HOLDING STEVEDORES LIABLE IN WRITING WITHIN 24 HOURS FROM OCCURRENCE, OTHERWISE OWNERS HAVE LOST THEIR RIGHT OF RECOVERY.*

One may also refer to the BIMCO Stevedore Damage Clause which is not widely used under a voyage charter party for steel cargoes. The BIMCO suggested

wording for a voyage charter party stevedore damage clause places responsibility for stevedore damage on the charterers, and as with SD-C, requires the owners to notify the Charterers, though not within a specified period, but does refer to the repair of more serious damage before the vessel leaves port

### **BIMCO Stevedore Damage Clause**

*'The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.*

*The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.'*

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