

Offshore Energy Law

Boil off liability in voyage charters

Anyone with a basic knowledge of shipping knows that a voyage charter is a contract for the carriage of goods, whereas a time charter is a contract for the provision of shipping services. Of course, the services provided are the carriage of goods. Therefore, the difference between a voyage charter and a time charter is often largely a matter of form, rather than content. A prime example is LNG transportation.

Although the vast majority of oil cargoes carried on a single voyage are chartered on voyage charter terms, the LNG industry traditionally favours use of time charter terms for single trips.

Why should the oil tanker and LNG tanker businesses be diametrically different?

As often is the case in LNG, the answer is boil-off. Where there is delay in the provision of services under a time charter, which is described as "off-hire", the owner conventionally compensates the charterer for boil-off that is lost during the period of delay.

"The answer is boil-off."

Under the Shell LNG time form, if the delay causes the vessel to arrive at a port with tanks too warm to load, then it is also responsible for the cost and time of cooling down. Note that this obligation arises even if the cause of delay is not due to an error or omission of the ship owner. If the reason for delay is caused by an off-hire event, as described in the time charter terms, the owner is responsible to compensate charterers for the consequences, even if the off-hire event occurs due to reasons outside the owner's control.

In contrast, an Owner chartering an oil tanker out on voyage terms takes responsibility for all consequences of events of delay occurring during the voyage. If the voyage takes longer than planned, the charterer pays

no more than the agreed lump sum freight, and therefore has no need to dispute the reason for delay.

For an LNG tanker, of course, the inevitable consequence of the voyage delay is that the quantity of cargo to be discharged will be less, due to boil-off occurring during the period of delay. How is the charterer to be compensated for such lost boil-off?

As explained, the solution under time charter terms is easy – liability for lost boil-off is determined by the application of the off-hire provisions.

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Of course, there are no such provisions found in a voyage charter; another solution is needed. The answer is found in the "total boil-off cap". This requires the owner to guarantee that the total natural boil off occurring during the planned voyage will not exceed an agreed volume. The parties are free to agree what this cap should be, but the obvious method of calculation would be for them to apply the maximum guaranteed daily boil-off (usually 0.15% per day) for the period of the estimated voyage

Thus, the maximum permitted boil off for a voyage of 20 days would be a loss of 3%. If the total boil off for the period exceeds this cap, which may be due to delay during the voyage or inefficiency in the vessel's cargo containment system, the owner would be obliged to compensate the charterer for such excess. The applicable LNG price for such compensation would be agreed by the parties in the charter terms – it need not be market price, merely whatever the parties choose to agree.

Nothing could be more simple. However, as the industry has experience only of applying Time Charter terms, it is natural there should be some scepticism as to how such total boil-off cap would apply in practice. For example:

- Does this mean that the owner should be obliged to compensate the charterer if the additional boil-off is due to delay caused by bad weather? The answer to this would be that the owner is free to include in the voyage calculation a contingency for delay due to bad weather.
- The charterer may be reluctant to disclose its LNG price. However, there is no need for the charterer to do so. The LNG price agreed is entirely a matter of negotiation.
- If the owner negotiates a generous boil off cap, there will be no incentive on the owner to complete the voyage as soon as reasonably practicable. This is a complex topic, but the owner gains no advantage from completing the voyage slowly, thereby delaying its opportunity to earn freight from any subsequent voyage.
- Is the owner permitted to "force" boil-off? Only if this is necessary to arrive on time, and does not exceed the boil-off cap.

In conclusion, if the parties wish to carry LNG cargoes using voyage charter terms, in the same way as for carriage of oil, this can be done. However, whether this is done on terms that are more favourable from an owner's or a charterer's viewpoint is a matter of negotiation. It is for this reason that BIMCO and GIIGNL are currently preparing an LNG voyage charter form which both will approve. This hopefully will be of benefit to both owners and to charterers. We shall report on this in more detail in the next edition of Well Heeled.



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