



## **Beast from the East**

Frigid arctic air nicknamed “the Beast from the East” brought sub-zero temperatures to much of Europe for periods in February and March 2018. The severe winter has reminded us that ice remains a significant source of hazard in shipping. Operating in ice conditions can lead to damage to vessels that are not classed to operate in ice.

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The difficult ice conditions have forced many shipowners and charterers to carefully review insurance contracts and charterparty ice clauses. In this Insight, we take the opportunity to review the treatment of ice under Hull and Machinery terms and charterer's liability policies.

Hull and Machinery insurance has always paid attention to the hazards of ice and underwriters have regulated their exposure through different ice related warranties and exclusions. There are permanently excluded areas, such as Arctic and Antarctic areas, where ice and navigational risks are very high due to such factors as multi-year ice, remoteness, inadequacy of charts, limited emergency response and extreme weather variations. There are also "conditional area" such as Gulf of St. Lawrence, Alaska, Sakhalin area and Baltic Sea, including Gulf of Bothnia and Gulf of Finland, where policy terms allow trading on terms agreed by the underwriter. Below, we will be looking at the treatment of conditional areas. For more information about operating in the Arctic region see Gard's article about the [Polar Code](#).

Historically English marine insurance policies contained Institute Warranties Limits (IWL) that identified conditional areas. These clauses contained a description of the excluded and conditional areas, as well as date limits when warranties applied. Similar conditions were used in the other marine insurance contracts, including the Nordic Plan, and the geographic limits were quite similar. Below we will be looking at the English terms as such terms are frequently incorporated in charterparties that are subject to English law.

The type: asset-hyperlink id: 34c3ac161b8041948b60d7f52e7128c8 was revised and replaced in 2000 by the International Navigating Limits (INL) that became effective in 2003.

type: asset-hyperlink id: 2ec8fe16d7f9456e9c89b5960cb6ced1 has improved the description of both excluded and conditional areas compared with the IWL 1976.

## **The insurance significance of conditional areas**

### *Hull and Machinery*

Under English terms, the vessel owner's breach of an insurance condition means that resulting damage to the ship would fall outside of the Hull and Machinery cover. However, by seeking prior permission from the underwriter to breach INL and adhering to amended terms of cover and any additional premium, the cover for damage to the ship may be reinstated.

### *Charterers Liability*

Charterers determine where the ship is to go and may wish to enter conditional areas. The risk of navigating in ice is allocated by contract terms – the charter party between the Owner and the charterer. Some common charter party clauses, do not specifically reference International Navigating Limits but provide in general that the vessel "shall not be obliged to force ice" (BIMCO Ice Clause for Time Charter Parties). Other clauses refer to IWL or INL and may provide for charterers to pay additional premium if Owners both agree to breach the limits and obtain approval to do so from the Owner's Hull and Machinery underwriter.

Charterers will be exposed to potential liability for damage to the ship and related financial losses caused by ice either generally under a safe port clause or under a specific ice clause. Liability for damage to hull is a covered risk under the type: asset-hyperlink id: 693792ad544f4d1b965a90f1afc73201. However, the policy contains the following condition:

- \*The cover for liabilities, losses, costs and expenses arising from trade of the Ship in icebound waters outside Institute Warranty Limits (IWL) or similar trading limits, including but not limited to the trading limits as set out in the Nordic Marine Insurance Plan, Clauses 3-15 and 17-3, is conditional upon the Ship at the time of the trade:

a. Being ice-classed for the trade by a classification society being a member of the International Association of Classification Societies Ltd. (IACS); and \*b. *Having Hull & Machinery insurance in place for the trade to at least the fair market value of the Ship.*

When the charterer instructs a non-ice classed ship to breach ice trading limits, the charterer will prejudice its cover with Gard even if the charterer pays the additional premium required to reinstate the Owner's Hull and Machinery policy. The charterer can, however, notify Gard underwriters and confirm cover on amended terms. The key is the prior notification to Gard and approval on amended terms which may include additional premium, increased deductible, a sub-limit or any combination of these.

## **Conclusion**

We have reviewed the potential insurance consequences of breaching ice trading limits for both Owners and Charterers insured by Gard for hull and machinery risks and charterer's liability for damage to hull. Despite this winter's visit from the "Beast from the East", trading in conditional areas has been on the rise due to generally warming seas so we expect to receive increasing requests from both Owners and Charterers for confirmation of cover on amended terms.