



Is it paramount for a charterparty to include a Paramount Clause?

Whether or not to include a clause Paramount in a charterparty is a matter of commercial risk – the owner will be in a less strong legal position to defend claims but P&I cover remains unaffected.

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Gard has recently received enquiries from owners about whether they would lose their right to P&I cover for liabilities to the charterer, which otherwise may have been averted or reduced, by accepting a charterer's request to delete the Paramount clause in a charterparty,

This article is a follow-up to the [Gard Insight](#) by Fionna Gavin of Ince & Co, published on 12 February 2014, which highlighted the importance for the owner and charterer of having a common and proper understanding of the legal effect under English law of including a Paramount clause in a charterparty.

The Paramount clause A Paramount clause incorporates the Hague or Hague-Visby Rules into the charterparty, which governs the allocation of risk between the contractual parties. It generally gives the owner additional defences against claims from the charterer.

Whether to leave a Paramount clause in the charterparty, or to delete or amend it is a matter of commercial negotiation between the owner and charterer. Deleting the Paramount clause will result, under English law, in the owner no longer being able to rely on the additional defences to claims from the charterer (as described in the earlier Insight article), and is therefore likely to lead to an overall liability exposure for the owner that is higher than if the clause remains untouched.

Cover Under Gard's Rules, it is not a condition of cover for liabilities falling within the scope of P&I insurance that a charterparty *must* contain a Paramount clause. Therefore, P&I cover is available for liabilities arising under a charterparty which fall within the scope of the Rules and there is no need for any additional insurance. These liabilities will generally be obligations to indemnify the other party for its liabilities incurred to a third party, as well as associated costs and expenses.

Other liabilities arising under the charterparty, such as lack of performance, breach of speed and consumption provisions or liability in damages for breach of re-delivery obligations are not covered by P&I insurance or any additional covers provided by Gard, though legal costs to pursue or defend such claims may be covered by Defence insurance.

The advice in the earlier Insight article remains valid. Owners and charterers are well advised to take this into account when negotiating charterparty terms in order to reduce the risk of disputes. A charterparty which properly reflects the intentions of the parties and which is capable of a clear and common interpretation throughout its lifetime provides maximum contract certainty, which is a virtue from the point of view of both charterparties and P&I insurance.

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