

中国船东互保协会文件

中船保赔字[2014]14号

关于由埃博拉病毒蔓延所引起的潜在合同争议的通函

各会员公司：

近期西非埃博拉病毒（Ebola virus）迅速蔓延，感染人数和死亡人数不断上升，引起了世界各国人民的恐慌。协会已经在官方网站上发布“防损信息2014035号—埃博拉病毒—西非—船舶营运”，以及赔字2014年第11号关于埃博拉病毒在西非蔓延的警示通函。本通函做为有关热点问题的进一步补充，将讨论“埃博拉”疫情引起的潜在合同争议问题。

1. 船东是否有权拒绝去病毒感染的港口？

在船船员可能不愿意驶往受感染的港口，船长也可能为了挂靠未受感染的港口而选择绕航。这就牵涉到一个关键问题：船东在相关租约条款下，是否有权采取上述做法，比如通过援引“安全港口”保证条款等方式。如果船东想背离合同条款，除非租船人同时也是货物所有人，否则船东必须考虑到，在提单关系中对有关第三方所承担的潜在法律责任或风险。

如果提单载明特定的港口，船东具有在该港口装载货物或向收货人交付货物的合同义务。未履行合同义务，船东可能会遭到提单项下因绕航或转运而导致产生额外费用的索赔。除非有条款规定，船东可以自由选择另外一个港口进行卸货的权利，或者援引海牙-维斯比规则所允许的除外条款。

若提单中含有“安全港口”的保证条款，不论是明示的条款或是从租约中并入的，均视为相关租约中已包含该条款，并拥有效力。然而，考虑到世界卫生组织所提出的“如果采取正确的预防措施，可以避免病毒传染”的意见，目前爆发的“埃博拉”病毒是否会必然导致受感染的港口为“不安全港口”，还存在一定的疑问。同时，证明“不安全港口”的举证责任十分艰巨，船东很可能需要证明存在着“可能”被感染的风险。

合同亦可能包含“航行自由”条款，允许在特定的情形下绕航。运输合同应在总体上被仔细考量，包括任何有可能并入提单中的相关租约条款。

船东应该认识到，如果船舶绕航，保赔险的承保范围将受到影响，在开始任何绕航前应当与保赔协会进行确认。即使是必须作出调整，变更的港口也应当认为是合理的替代选择。

2. 如果船长被指示避开病毒感染的港口将会产生什么影响？

根据相关租约条款，租船人可能要求船舶停靠另一个卸货港口，以避免船东向租船人要求赔偿的潜在风险。如果租船人并不是提单持有人，会引起船东将承担必须按照提单所规定的特定港口交付货物的义务，正如上文所述。在此类情形下，建议船东可以向租船人索赔因遵循租船人绕航指示所产生的损失。

3. 如果靠近因“埃博拉”病毒而受限的港口将产生什么影响？

截止发文为止，目前并未有港口因“埃博拉”疫情而关闭。但如果形势升级，不排除有关关闭港口的可能。

在此种情形下，船舶无法进入租约约定的港口，船东则会面临无法履约的困境。在缺少“允许绕航”或“替代港口交付”的条款保障下，合同是否能顺利履行，将取决于港口关闭/限制的时间长短。

如果海牙-维斯比规则并入提单，船东则可能依据“罢工、工厂关闭或停工”的免责条款，免除在非约定港口交付货物的责任。尽管该问题取决于租约条款的约定，我们仍建议船东在此种情形下向协会寻求专业意见。

4. 如果船员感染“埃博拉”病毒将如何处理？

如果船员感染“埃博拉”病毒，通常而言应当立即安排离船治疗。正如绕航一样（如果在航期间发现病情），将产生遣送费用和治疗费用。

为救助人命所产生的绕航是合理的，因此并不会导致船东面临提单下的索赔。当海牙-维斯比规则并入提单后，船东可以依据“合理绕航”的除外条款向潜在索赔人进行抗辩。

因为运费是固定不变的，绕航所产生的额外时间损失将由船东自行承担。不过因此而产生的额外医疗费用、遣返费用以及在保赔险项下的其它费用，可以由协会来负担。

可以预见的并发问题是：

- (1) 港口愿意接收治疗被感染船员后，船舶将面临下文所述的来自港口当局的检疫；
- (2) 若所属船舶爆发“埃博拉”病毒，船东应遵循协会建议进行处理；
- (3) 在船舶上发现来自感染区域或者疑似受病毒感染的偷渡者，将面临十分严重的问题。这种情形下，很少有国家愿意接收此类偷渡人员，此种情况应当向协会寻求协助。

5. 如果船舶因停靠受病毒感染的港口而遭受检疫限制将如何处理？

船舶停靠受感染港口或者载有被感染船员，将会被要求所在港或下一港进行隔离检疫一段时间或者进行清洁处理。

如果适用于海牙-维斯比规则，船东可以依据“检疫”或者“政府扣押”的条款，对由于在疫区港口或其后港口因检疫限制导致货物延迟或变质的索赔进行抗辩。

船东也可依据这些除外条款对绕航进行抗辩，以防止船舶遭受扣押。然而，适用该类条款，前提是“检疫限制”确实发生了。船东若提前知悉某港口具有检疫限制，而进行绕航挂靠其它港口，则船东无法援引“检疫限制”或者“政府扣押”的除外条款。

通常而言，为避免捕获或者征用的绕航是正当的，因此在船东有合理事由相信目的港存在“检疫限制”和“扣押”的风险时进行的绕航，可能也会得到支持。

由于船舶发生传染病所产生的额外费用（包括检疫和消毒费用，额外燃油、保险、工资、物料、食品和港口费用的净损失）在保赔险承保范围之内。同时，协会也承担因停靠“埃博拉”病毒传染港口所遭受的罚金损失。

6. 起草合同的注意事项？

目前正在洽谈涉及病毒感染港口/可能感染港口的租约双方应谨慎订约，建议并入相关的合理防损条款。（期租租约的建议条款见附件）。

7. 协会的承保范围是否会受到影响？

船东应当谨记由于“埃博拉”病毒所产生的特定损失，通常在保赔险的承保范围之内，但利润、租金或商业设备的损失为除外风险。

根据协会条款，以下潜在损失在保赔险的承保范围之内：

- （1）船员或乘客生病、死亡所产生的责任
- （2）遣返或替换船员所产生的费用
- （3）船舶绕航费用
- （4）检疫和消毒费用
- （5）检疫期间所产生的额外运营成本
- （6）罚款
- （7）货物延迟或变质所导致的索赔

船东在考虑绕航以避开“埃博拉”病毒感染港口时，应当谨慎考虑其在提单或者适用租约下所承担的合同义务。

在实践中最为重要的措施，即船东要求船员采取正确的预防措施，并保证严格执行。在必须做出困难决定的情况下，应当搜集完整而正确的信息并进行保全，以备将来诉讼之用。

附件：期租租约中埃博拉病毒条款的建议格式



主题词：中船保、埃博拉病毒、 通函

抄送：大连分部、上海分部

中国船东互保协会

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EBOLA CLAUSE FOR TIME CHARTERS

1. In this clause:
 - 1.1 "*Ebola*" means the ebola virus or other virus causing severe haemorrhagic fever in those infected with it;
 - 1.2 "*Ebola Affected Area*" means any port, place, area, anchorage or zone, or any waterway or canal (hereafter "Area") where it appears that:
 - 1.2.1 In the reasonable judgment of the Master and/or Owners there is a risk (whether existing at the date of this Charter or arising thereafter) that the Vessel's Master, any member of her crew, and/or any other person(s) aboard the Vessel, may be exposed to and/or infected with Ebola in the course of Vessel's service there, and/or that the Vessel may be boarded (legitimately or illegitimately) by person(s) (including but not limited to agents, stevedores, officials and/or stowaways) who may themselves been exposed to and/or infected with Ebola; or
 - 1.2.2 Case(s) of person(s) being infected with Ebola, either in the Area itself or in the vicinity thereof, have occurred and/or are reported to have occurred, whether before or after the date of this Charter.
 - 1.3 "*Owners*" includes the shipowners, bareboat charterers, disponent owner, managers and operators of the Vessel;
 - 1.4 "*Quarantine Port*" means a port or place at which the Vessel is, or is liable to be following her arrival at or off the same, blacklisted, boycotted by pilots, tugs, agents, stevedores and/or other port workers (officially and/or unofficially), quarantined, detained and/or refused entry, berthing and/or free pratique, by reason of her previously having entered an Ebola Affected Area in the course of her service hereunder.
2.
 - 2.1 The Vessel shall not be obliged to proceed or required to continue to or through any Ebola Affected Area. The Vessel shall not be obliged to load or to continue to load cargo for discharge at any port(s) or place(s) in an Ebola Affected Area, and the Master shall not be obliged to sign or to authorise the signature of bills of lading and/or waybills naming any port(s) or place(s) in an Ebola Affected Area;
 - 2.2 In the event that an Area to which Charterers have ordered the Vessel to proceed becomes an Ebola Affected Area, or it becomes apparent that it is an Ebola Affected Area, after the Vessel has entered it, the Vessel shall be at liberty to leave it;
 - 2.3 In the event that the Vessel is laden with cargo for carriage to and discharge in an Ebola Affected Area, Owners shall be entitled to require Charterers forthwith to nominate an alternative port or place of discharge for the said cargo outside of any Ebola Affected Area, and to issue a letter of indemnity in Owners' P&I

- Club's standard wording addressed to Owners for discharge at such alternative port or place instead of that named in the relevant bill of lading;
- 2.4 In the event that Owners accept Charterers' orders to proceed to an Ebola Affected Area, then:
- 2.4.1 The Vessel shall nevertheless be at liberty to leave such Area, or to refuse to enter it, in the event that the Master and/or Owners reasonably judge that the circumstances at such Area and/or the consequences and/or risks of entering it have significantly altered since Owners' acceptance of such orders;
- 2.4.2 The acceptance shall be without prejudice to Charterers' rights under sub-clauses 3 to 7 below;
- 2.4.3 Charterers shall reimburse Owners in respect of any reasonable bonus which Owners may reasonably pay to the Vessel's crew in respect of the Vessel's entry into an Ebola Affected Area; and
- 2.4.4 Charterers shall indemnify Owners against such additional costs, expenses and/or liabilities that Owners may incur, whether before or after redelivery hereunder, by reason of Owners' compliance with Charterers' orders to proceed to an Ebola Affected Area.
3. In the event that in the course of the Vessel's service hereunder she enters an Ebola Affected Area or other Area where in the reasonable judgment of the Master and/or Owners it is reasonably prudent to take the preventive measures hereafter defined, Owners shall be at liberty to take reasonable preventive measures to protect the Vessel, her Master, crew and/or other persons aboard her from the risk of exposure to and/or infection with Ebola, including but not limited to (1) re-routing en route to and/or within such Ebola Affected Area or other Area; (2) the provision of protective equipment for the Master and crew such as (without limitation) new sealed facemasks, nitrile or latex gloves and Tyvex suits, and the replacement of the same after each watch on which they are used; (3) the provision of disposable plates, cups and cutlery; and/or (4) the employment of security personnel to prevent stowaways and/or other person(s) who may have been exposed to and/or infected with Ebola from boarding the Vessel. Charterers shall promptly reimburse Owners in respect of the cost of any such reasonable preventive measures taken by Owners.
4. The Vessel and Owners shall be at liberty to comply with all orders, directions, recommendations and/or advice provided by the World Health Organization (WHO), Centers for Disease Control and Prevention (CDC) and/or other similar governmental or non-governmental organisation, the Flag State of the Vessel or other government to whose laws Owners are subject, the government having jurisdiction over any Ebola Affected Area and/or Quarantine Port at which the Vessel calls hereunder, and any other government of any state or territory (whether recognized or not) acting with power to compel compliance with their orders or directions. The Vessel shall remain on hire throughout such compliance and any delays occasioned thereby, and Charterers shall reimburse Owners in respect of any additional expenses which Owners may reasonably incur by reason of such compliance.

5. In the event that, by reason of the Vessel having entered any Ebola Affected Area in the performance of the Vessel's service hereunder, it is reasonably necessary for the Master, any member of the crew and/or any other person(s) aboard the Vessel to be repatriated, landed and/or provided with medical assistance, Charterers shall reimburse Owners in respect of any and all costs and expenses reasonably incurred in connection with the foregoing, and the Vessel shall remain on hire throughout any delay, deviation or putting back caused by the foregoing.
6.
 - 6.1 In the event that Charterers' orders and/or the Vessel's service hereunder requires her to call at any Quarantine Port:
 - 6.1.1 The Vessel shall remain on hire throughout any delays incurred by reason of her calling at a Quarantine Port;
 - 6.1.2 Charterers shall reimburse Owners in respect of any additional expenses which Owners may reasonably incur by reason of the Vessel calling at a Quarantine Port.
 - 6.2 In the event that the Vessel is laden with cargo for carriage to and discharge at a Quarantine Port, and in Owners' reasonable judgment there is no reasonable prospect of the Vessel being able to commence discharging that cargo there either at all or within four (4) weeks of her arrival at or off that Quarantine Port, Owners shall be entitled to require Charterers forthwith to nominate an alternative port or place of discharge for the said cargo, and to issue a letter of indemnity in Owners' P&I Club's standard wording addressed to Owners for discharge at such alternative port or place instead of that named in the relevant bill of lading.
7. When acting in accordance with any provisions of this Clause anything is done or not done by Owners, such shall not be deemed a deviation, but shall be considered due fulfilment of this Charter Party. Charterers shall ensure that any and all bills of lading and/or waybills issued in respect of cargoes carried hereunder shall accord to Owners rights consistent with those provided for in sub-clauses 2.1, 2.2, 2.3, 2.4.1, 3(1), 4, 5 and 6.2 above.
8. For the purposes of this clause, references to "expenses" shall be deemed to include (without limitation) the cost of bunkers, boat charges, anchorage dues, fumigation, quarantine, inspection, fees and fines.