Alexander Kartashov,
Senior Associate, KIAP Attorneys at Law; PhD in Law

Breach of the Safe Port Warranty: Charterers' Liability and the Handling of Insurance Claims

This article examines breach of the safe port warranty as one of the principal risks covered by charterers' liability insurance. It analyses the safe port criteria developed under English case law, and their impact on a charterer's liability in damages. Attention is paid to the handling of insurance claims arising from breach of the safe port warranty, and to the steps to be taken by charterers and their insurers upon receipt of a claim from the shipowner.

Keywords: safe port; marine insurance; safe port warranty; charterers' liability insurance; insured risk; insured event; time charter

1. Introduction

Historically, the shipowner stood at the centre of the marine insurance framework. Such forms of cover as hull and machinery (H&M) insurance and protection and indemnity (P&I) insurance were developed primarily to protect shipowners' interests.

However, the structure of maritime trade is changing, commercial and operational functions increasingly rest with the charterer. The charterer determines shipping routes, selects ports of call, and coordinates cargo operations. As a consequence, the charterer's potential liability has inevitable increased. This has led to the emerged of a distinct form of insurance–charterer's liability insurance. One of the principal risks covered under this policy is the charterer's liability for breach of the safe port warranty. The warranty derives from the charterparty and operates as a mechanism for allocating risk between the shipowner and the charterer. Nevertheless, in contemporary practice, a breach of the safe-port warranty is no longer limited to questions of the charterer's contractual liability. It directly engages the charterer's liability insurer.

2. The Safe Port Warranty as a Term of Charterparties

The charterer's obligation to direct the vessel only to safe ports is a traditional term of charterparties. The NYPE 2015 form, for instance, provides that the vessel is to be employed, inter alia, between safe ports (clause 1 (b)). [1] This obligation justified by the fact that the charterer

[1] NYPE 2015 Time Charter Form, accessed 10 June 2026, https://shipsforsale.su/pro_forma_documents/time_charters/dry_cargo_vessels/151/.

has commercial control over the vessel's employment, therefore, the risk of loss caused by nominating the wrong port should rest with the charterer.

The determination of whether a port is safe has been the subject of extensive consideration by the English courts. It has been analysed and systematised in a considerable number of foreign publications on maritime law and insurance,[2] as well as in several Russian-language studies. [3] Drawing upon these sources, the principal criteria for assessing whether a port may be considered safe can be summarised as follows.

The leading case in which the safe-port test was established is The Eastern City. Under that test, a port cannot be considered safe unless, "in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship."[4] As A. G. Kalpin observed, the case underlines the relative nature of the concept of a safe port. [5] This means that the assessment of whether a port is safe must be carried out in relation to each individual vessel, taking into account her technical characteristics, the physical and navigational features of the port, the prevailing weather conditions, and other relevant factors.

The English courts subsequently refined the criteria for determining port safety, gradually developing the principles already established. In *The Evia (No 2)*,[6] in particular, it was established that the safety of a port shall be assessed prospectively, on the basis of the information and circumstances known, or reasonably foreseeable, at the time the vessel is ordered to proceed there. [7]

Of particular interest are the political factors capable of rendering a port unsafe, such as the risk of attack or of forcible detention of the vessel. In *The Saga Cob*, the court emphasised the need to distinguish between (a) dangers inherent in the port itself and (b) abnormal occurrences which may arise independently of the port's usual characteristics. [8] Thus, where a port has long been politically stable, and a reasonable shipowner or charterer would in ordinary circumstances be prepared to send a vessel there, the port is treated as safe. [9]

This rule takes on particular significance in the context of today's unstable geopolitical environment, where terrorist and war risks arise alongside political risks. As a general rule, loss of or damage to the vessel resulting from such perils is covered by hull and machinery insurance or war risks insurance. Charterparties commonly contain specific clauses entitling the shipowner to refuse to proceed to particularly dangerous areas or ports and, where the vessel is nevertheless ordered to proceed there, to recover an additional war risks premium from the charterer. Accordingly, the charterer is not, as a matter of default, liable for loss of or damage to the vessel, as such risks ordinarily remain with the shipowner and its insurer. However, where the circumstances demonstrate that the unsafety of the port was foreseeable rather than attributable to an abnormal occurrence, and the shipowner objected to calling at the port, liability for the resulting losses may be imposed on the charterer. The characterisation

---

[2] See, e. g., Stephen Girvin, "The Safe Port in Maritime Law: Decade of Certainty or Muddier Waters?" (CML Working Paper, National University of Singapore, 2017), accessed 10 June 2026, https://law.nus.edu.sg/wp-content/uploads/2020/04/019_2017_Stephen-Girvin-CML. pdf; Yvonne Baatz, ed., Maritime Law, 3rd ed. (Abingdon: Informa Law from Routledge, 2014), 138-41.

[3] See, e. g., A. G. Kalpin, "Safe Ports and Berths of Loading or Discharge in Contracts for the Chartering of Sea-Going Vessels" [in Russian], Law: Journal of the Higher School of Economics, no. 2 (2010): 47-56; R. Makarov, "The System of Contracts Governing the Carriage of Goods by Sea, Part III: Time Chartering of Vessels with Crew" [in Russian], Zakon. ru, 9 November 2021, accessed 10 June 2026, https://zakon.ru/blog/2021/11/09/sistema_dogovorov_oposreduyuschih_perevozku_gruzov_morem_chast_iii_frahtovanie_sudov_na_vremya_s_eki.

[4] Leeds Shipping Co Ltd v Société Française Bunge (The Eastern City) [1958] 2 Lloyd"s Rep 127.

[5] Kalpin, "Safe Ports and Berths," 48.

[6] Kodros Shipping Corp v Empresa Cubana de Fletes (The Evia) (No 2) [1982] 2 Lloyd"s Rep 307

[7] C. W. B. Yim, "Safe Port Promise by Charterers: Rethinking Outstanding Complications," Australian and New Zealand Maritime Law Journal 30, no. 2 (2016): 4, accessed 10 June 2026, https://classic.austlii.edu.au/au/journals/ANZMarLawJl/2016/15. pdf.

[8] Baatz, Maritime Law, 138-41.

[9] Girvin, "Safe Port in Maritime Law," 16.

of a port in the context of political and war risks therefore relevant not only for determining the charterer's liability, but also to identifying the insurer ultimately responsible for bearing the relevant risk.

The approaches developed by the English courts are also of particular relevance to Russian law, as the obligation to nominate a safe port is likewise recognised under the Merchant Shipping Code of the Russian Federation (the "MSC RF"). [10] The MSC RF obliges the charterer to designate a safe port of loading (art. 126 (1)). However, it does not define what constitutes a safe port, nor have the Russian commercial courts provided any detailed judicial interpretation of this provision. Notably, the MSC RF at the same time requires the place of loading to be safe (art. 127 (1)). Furthermore, unlike art. 126, the legislator additionally defined a safe place of loading as one which the vessel can reach without danger, where she can remain afloat, and from which she can depart with the cargo.

The requirements that a port must satisfy in order to be regarded as safe have also been examined in the academic literature. G. G. Ivanov, analysing art. 126 of the MSC RF, interpreted the concept of a safe port by reference to the criteria formulated in *The Eastern City*. [11] A. G. Kalpin, the author of the commentary on that article of the MSC RF, suggested that a port may be assessed as safe by reference to navigational (shelter from storms and gusts of wind, the availability of navigational equipment, and so forth), sanitary (the absence of epidemics), political and legal requirements (the absence of war, strikes, potential political persecution of the crew, or arrest of the vessel). [12] In our view, the absence of a statutory definition of a safe port affords the courts greater flexibility in assessing both the factual circumstances surrounding the nomination of the port and whether it should properly be characterised as safe, and to take account of established groundwork laid in the literature.

3. Breach of the Safe Port Warranty as an Insured Risk and the Handling of Claims

What distinguishes breach of the safe port warranty as an insured risk is its derivative nature, as it arises from the charterer's contractual liability. Unlike property insurance, where the insured interest lies in the preservation of a specific asset, in charterers' liability insurance the subject of protection is the risk of incurring an obligation to compensate a third party–the shipowner. Accordingly, the mere nomination of a potentially unsafe port does not, in itself, constitute an insured event. It acquires legal significance only where it gives rise to the charterer's civil liability and results in a financial claim against the charterer.

Unlike liability arising from cargo damage or environmental pollution, this risk is rooted exclusively in the contractual relationship between the parties to the charterparty. Consequently, when assessing such a claim, the insurer is required to analyse not only the circumstances of the casualty but also the terms of the charterparty, the allocation of obligations between the parties, and the circumstances in which the port was nominated.

For the assured's (the charterer's) primary task is to demonstrate that the nomination of port met the standard of reasonable prudence in the light of the information available, including information concerning, for instance, navigational or political risks. Upon the occurrence of a loss, the charterer is therefore well advised to assemble an evidential record comprising information on the state of the port at the time the vessel was ordered to proceed there, navigational warnings, publicly available risk reports, and confirmation that the port was regarded as fit for the ordinary commercial employment of vessels. Such a strategy reduces the risk of the shipowner (or its insurer) characterising the charterer's conduct as a breach of the safe port warranty and, by extension, reduces the likelihood of a coverage dispute.

[10] Merchant Shipping Code of the Russian Federation, Federal Law No. 81-FZ of 30 April 1999 (as amended on 31 July 2025) [in Russian], Collected Legislation of the Russian Federation, 3 May 1999, no. 18, item 2207.
[11] G. G. Ivanov, Legal Regulation of Merchant Shipping in the Russian Federation [in Russian], 2nd rev. ed. (Moscow: Morskie Vesti Rossii, 2009), accessed via the ConsultantPlus legal database.
[12] I. I. Barinova et al., Commentary on the Merchant Shipping Code of the Russian Federation (Article-by-Article) [in Russian], ed. G. G. Ivanov (Moscow: Spark, 2000), accessed via the ConsultantPlus legal database.

From the outset, the charterer is in a less favourable position. This is because the assured might, for example, agree voluntarily to compensate the shipowner for losses caused by the nomination of an unsafe port and subsequently seek an indemnity from the insurer. However, although the principle of good faith and the general rule that the assured must conduct itself as a prudent uninsured continue to apply, this approach may be abused in practice. Accordingly, liability insurance policies and their terms commonly require the assured to obtain the insurer's prior consent before taking any steps to settle claims brought by the shipowner. Where that clause is not complied with, the insurer is entitled to rely on the assured's breach of the contract of insurance as a ground for declining to pay the indemnity.

In determining whether an insured event has occurred, the central question is whether the charterer acted reasonably when nominating the port. For the insurer, this means assessing the information and circumstances that were known, or ought reasonably to have been known, to the charterer when the vessel was ordered to proceed to the port in question. That approach is consistent with the requirement laid down in *The Evia (No 2)*, under which the safety of a port is judged by reference to the circumstances known, or reasonably foreseeable, at the moment the port is nominated. On receiving the charterer's notice of an insured event, the insurer must, in addition to verifying that a claim has in fact been advanced by the shipowner, determine two interrelated matters: (a) whether the port could, from the perspective of a reasonable charterer, have been regarded as unsafe; and (b) whether the charterer exercised due diligence in nominating it.

In the course of adjusting the loss, the insurer should gather and evaluate the evidence bearing on the circumstances of the nomination, including the risk information available to the charterer at the material time. Where, for example, the vessel sustained damage on leaving the port or while manoeuvring, the charterer's insurer should seek to obtain, as promptly as possible, the ship's logs, the master's reports, pilotage records, hydrometeorological data, particulars of the vessel's previous calls at the port, and any navigational warnings. Consideration of alternative scenarios is equally material: could the charterer reasonably have chosen a different port, or withdrawn the order once circumstances changed.

The practical justification for promptly compiling the evidential record is that, as time passes after the incident, reconstructing an objective picture of events becomes far more difficult, if not impossible. It is on the basis of that evidence that it is ultimately determined whether the danger was an inherent characteristic of the port or the result of an abnormal occurrence. This approach reduces the risk of a claim being incorrectly treated as an insured event and helps distinguish the charterer's contractual liability from risks excluded from insurance cover.

4. Conclusion

The foregoing analysis shows that, for the purposes of charterers" liability insurance, what matters first and foremost is not the fact of damage to the vessel or the occurrence of loss, but the legal characterisation of the charterer's conduct in nominating the port, including whether the standard of reasonable diligence was met at the time of nomination. English case law has established a settled framework of criteria for assessing the safety of a port. This framework is relevant both to the resolution of disputes between shipowner and charterer and to the handling of claims under charterers' liability insurance.

Against that background, the prompt compilation of an evidential record substantiating the circumstances of the nomination assumes particular importance. In particular, the insurer should analyse the information available to the charterer at the time the port was nominated, including navigational warnings, meteorological data, public risk reports, and information on the port"s operational status. Equally important is the prompt collection of the primary documents recording the factual circumstances of the incident. This approach makes it possible to assess correctly whether the risk was inherent in the port itself or was attributable to the charterer's specific conduct, and thus to determine whether the claim falls within the scope of the insurance cover. ■