



CHARTER SKIPPER'S LIABILITY INSURANCE

"The devil takes the hindmost..."

...and that's usually the skipper. At least when it comes to issues of liability. In other words: when there's no insurance for culpable damages, the skipper is liable. Charterers are seldom aware of this risk, according to our interviewee, Dr. Friedrich Schöch.

Charter-tour skippers and crews often bear risks of which they are not even aware. Dr. Friedrich Schöch, founder and director of the Yacht-Pool company, has written about liability-related legal issues in numerous professional publications. In his interview with "Nautica", Dr. Schöch explains the risks faced by charter skippers, the liability factors to look for on a charter and how to protect oneself accordingly.

Nautica: Dr. Schöch, Yacht-Pool and other insurance firms recommend that charterers and charter skippers obtain special insurance. Do they really need it?

Dr. Schöch: Of course. And for several reasons. Here's just one: Let's assume that the owner of a charter vessel hasn't paid his nautical liability-insurance premium on time. This means that the charter skipper and possibly the entire crew are now exposed to a serious, hidden risk. This definitely happens in practice, as the late-payment records of the insurance industry show.

To keep this risk as small as possible, several countries have made it mandatory to take out liability insurance. But in most countries, this is still not the case.

Nautica: Why is that? Standard charter contracts give the charterer a guarantee that the chartered yacht is insured for both liability and collision/hull damage. Doesn't this assurance keep the charterer out of danger?

Dr. Schöch: Such terms are certainly the norm, but they don't solve the problem. Here's the basic issue: The skipper is fully and personally liable, without limitation, for personal injury and property damage which he/she culpably causes another party to suffer – in other words, all his/her present and future assets are at stake.

Now, the liability coverage taken out for the charter vessel is supposed to protect the charter skipper from this risk by paying for potential financial losses from third-party liability claims. If the ship's owner hasn't paid his premium on time, however, the insurance company may be released from its obligation to pay benefits. The skipper in charge will then still be liable to the extent of all his/her assets.

Nautica: But if the charter agency has guaranteed in the charter contract that the vessel is insured for liability, then isn't the agency liable for this warranty?

Dr. Schöchl: That depends on whether the charter agency is really only an "agency" – a firm brokering the charter contract between the charter company and the charterer – or if it should be considered an "operator." Making an accurate distinction between an "agency" and an "operator" involves a list of various criteria too lengthy to enumerate here.

But even if the firm turns out to be an "operator", there's still the danger that it won't be able to satisfy the compensation claims of the damaged parties – because it's financially too weak to do so, for example. And it's precisely in bad times that charter companies tend to hold back premium payments.

Nautica: Could you name an actual number? How much liability are we talking about here?

Dr. Schöchl: One should not underestimate this risk. Especially when it comes to personal injury, liability can rise quickly to levels that spell financial ruin for most skippers. Our skipper's liability-insurance policy offers liability coverage of more than 2.5 million Euro.

Nautica: But if the yacht owner does pay his premium on time – which one could expect from a professionally-run charter company – certainly that should ensure smooth sailing for the charter crew, right?

Dr. Schöchl: I'm afraid not. There's another problem, one in the wording of the charter contract. The phrase, "...the vessel is insured for liability" really doesn't tell us enough. In the real world, a charter crew has no real chance of getting a clear picture of a ship's actual liability insurance – what's covered, what's not and how much – especially when it's based overseas.

What's more, the rules for liability are very different from country to country. In Spain, for example, minimum liability-coverage of 200,000 Euro is required by law, while in Croatia the minimum is 190,000 Euro for personal injury and 190,000 Euro for property damage. Personally, I consider that much too low.

I'm also aware of a number of policies which limit their liability coverage to the value of the vessel – this is common practice at Lloyds of London, by the way. And on top of that, they have a number of restrictions.

There was one case where an Austrian club chartered 30 yachts in Croatia for a club-sponsored regatta. Only afterwards did we discover that the Croatian policy specifically excluded regatta risk. De facto, in other words, they had no insurance protection at all!

Then there are other cases where a policy restricts travel to the 12-mile offshore zone. Or potentially requires co-payments from the skipper which were never agreed in the charter contract.

Nautica: So it's clear that the charter skipper can be liable for the damage to the property of third parties. To what extent is he liable for damage he causes to the charter vessel itself?

Dr. Schöchl: Damage to the charter ship is generally covered by a hull-insurance policy, which is usually also provided for in the charter contract.

Nautica: And what happens if the hull-insurance premium isn't paid on time?

Dr. Schöch: Well, there's less danger for the skipper and the crew in that case, since hull-insurance was guaranteed in the charter contract. If it turns out there is no such valid insurance, then the company is at fault, and will not be able to claim recourse against the skipper or the crew.

Nautica: Are there other potential pitfalls that a charter skipper and crew should watch for?

Dr. Schöch: In certain contracts between charter companies and charterers, you sometimes find a provision that the charterer shall be liable for all damages not paid by the insurer. If the charterer agrees to this, then I would urge him or her to clearly find out the scope and extent of the hull insurance coverage. Because whatever is not covered by the hull policy is what he or she will have to pay out of pocket in case a loss occurs.

A liability policy will not offer any protection in this situation, since it only covers liability required by law, and not liability which the charterer freely assumes. What's more, it's highly questionable to what extent such an agreement would even be valid. One would have to verify this case-by-case, based on the general business terms and conditions.

Nautica: What does the picture for personal-injury insurance look like?

Dr. Schöch: You have to differentiate. For the insurer, the crew represents a "risk-bearing community". The charter skipper and each crew member are therefore covered for any damages which they culpably cause to third parties. But a liability policy often offers little coverage for damages which the crew cause to one another, or which the skipper causes to a crew member. This is because the policy excludes coverage for those "collectively insured" vis-a-vis one another, unless specifically agreed in an addendum. This is why we have specifically incorporated just such an addendum.

Nautica: What about the private liability coverage which most of us have?

Dr. Schöch: Private liability insurance doesn't apply at all in this situation, because it completely excludes the risks of operating motorised leisure craft. That's really why a special skipper's liability-insurance was developed in the first place.

Nautica: Does this skipper's liability-insurance take the skipper "off the hook", then?

Dr. Schöch: Usually, at least insofar as the damage to the chartered vessel was not due to "gross negligence". If this is the case, then skipper and crew can still be held liable. You see, almost all hull-insurance providers exclude coverage for this type of risk. In any case, the hull-insurer will retain the right to claim recourse against the culpable party.

Nautica: What constitutes "gross negligence" and who makes the decision?

Dr. Schöch: As a rule, "difficult" cases will be resolved through an expert opinion or, if necessary, by litigation in court. This can be quite problematic at times, because even the opinion of a harbour master, who after all has public authority, can set the legal clarification process in motion. If this then results in a court case, a skipper can quickly find himself "in over his head" with legal fees and attorney's costs.

Nautica: Are cases of "gross negligence" common?

Dr. Schöchel: No, otherwise insurance premiums would be totally unaffordable by now. But when it does occur, the sums involved are usually very high – the total loss of a ship, for example. Yacht-Pool has taken this into account by specifically extending the coverage of the skipper's liability policy to vessel-damage caused by "gross negligence" – both for the crew and the skipper.

Nautica: Can a crew member be held liable as well, or does only the skipper bear the fully liability for everything?

Dr. Schöchel: In principle it's the ship's captain, in other words the skipper, who is responsible for the vessel and can therefore always be held liable for a failure to live up to his/her obligations. But cases are theoretically possible where damages are due not to the grossly mistaken conduct of the skipper, but to that of a crew member in regard to his/her area of responsibility.

Let me give you an example: The skipper orders a certain course to be set. And since the journey lasts several days, he has to get some sleep in his berth every so often. During this time, the navigator makes the conscious decision to take a "shortcut" through a shoal-ridden area, one familiar to him but which the skipper wanted to avoid. If the ship should run aground as a result, liability could well rest with the navigator and not with the skipper, who after all did his duty as best as he reasonably could.

Nautica: Dr. Schöchel, thank you very much for the interview.

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