

# MLA RECREATIONAL BOATING COMMITTEE MEETING

## Yacht Charters: Liability and Insurance Issues

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This presentation will discuss potential insurance issues associated with commonly used yacht charterer agreements.

### I. Conflicting Interests and Potential Liabilities

#### A. Potential Owner Liabilities

1. Bareboat – Charterer has exclusive use
  - a. Duty to exercise due diligence to provide a seaworthy vessel at beginning of charter.
  - b. In Rem claims
  - c. Crew
2. Time Charter – manned/operated by owner
  - a. Duty to provide seaworthy vessel extends through charter term.
  - b. In Rem claims
  - c. Crew
  - d. Passenger/Third Party

#### B. Potential Charterer Liabilities

1. Bareboat – Charterer treated as owner (*pro hac vice*)
  - a. Third Party
  - b. Crew
  - c. Passenger
2. Time Charter
  - a. Passenger/Third Party

### II. American Yacht Charter Association (“AYCA”) Charter Agreements

#### A. Bareboat

1. Charterer furnishes crew (no crew insurance provision)
2. Owner provides insurance, names charterer as AI
3. Agrees to indemnify owner for liability incurred by Charterer or Charterers guests to extent not covered by Owner’s policy.

B. Time Charter

1. Owner furnishes crew
2. Owner provides insurance and names charterer as AI
3. Owner insures for crew liabilities and agrees to indemnify charterer.
4. Agrees to indemnify owner for liability incurred by Charterer or Charterers guests to extent not covered by Owner's policy.

C. Potential Issues

1. Insurance Clause Requires Insurance provided by Institute Yacht Clauses 1/11/85 or similar
  - a. Does not cover crew liability:
  - b. Charterer and owner may have no insurance coverage for crew claims under bareboat charter depending on policy and endorsements!
2. Typical Policy Exclusions:
  - a. Contractual Liability – excludes any liability assumed by insured (including additional insured) in a written contract without prior approval.
  - b. Bodily injury to insured person (includes AI), excluding crew
3. Potentially Misleading?
  - a. Charterer may believe has insurance in place.
  - b. Owner may be uninsured for crew liabilities under bareboat charter

III. Mediterranean Yacht Broker Association (Worldwide Yachting Association) Charter

A. Description

1. Owner furnishes crew
2. Insurance Clause Requires Insurance provided by Institute Yacht Clauses 1/11/85, but also requires crew coverage or similar.
3. Charterer liable for negligence of charterer and guests not recoverable by owner under his insurance.
4. Charterers liability coverage provided for use of pwc's and vessel's carried aboard yacht, but nothing else.

B. Potential Issues

1. Charterers liability coverage very limited.

IV. Conclusion - Insure your Interest!