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Yacht Charters: Liability and Insurance Issues

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Charter Types

▶ Bareboat

- Owner allows Charterer full use of vessel
- Charterer provides Master and crew and pays all operating expenses
- Charterer responsible for operations, navigation, and management

▶ Time

- Owner provides crew and operates vessel
- Charterer directs movement and use

Owner's Potential Liabilities

▶ Bareboat

- Provide seaworthy vessel at inception
- *In Rem Claims*
- Crew

▶ Time

- Provide seaworthy vessel
- *In Rem Claims*
- Crew
- Passenger/3rd Party



Charterers

I'M ON A BOAT!



Potential Charter Liabilities

- ▶ Bareboat
 - Crew
 - Third Party
 - Passenger
- ▶ Time
 - Passenger
 - Third Party

Common Yacht Charters

- ▶ American Yacht Charter Association (“AYCA”)
 - Time Charter (U.S. Flag – Uninspected Passenger Vessel Charter Agreement – Revised 2015)
 - Owner furnishes professional captain and crew.
 - Owner required to provide crew insurance:
 - “The OWNER shall maintain insurance throughout the Charter Period against any liability for personal injury or death of the captain or crew, including, without limitation, any liability under the Jones Act or the general maritime law of the United States.”

AYCA Time Charter Continued

- Owner provides liability insurance:
 - “on cover no less than is provided under the Institute Yacht Clauses 1 / 11 / 85, or other recognized terms, extended to provide permission to charter as under the terms of this Agreement and to cover third-party liability.”
 - “The OWNER shall ensure that the CHARTERER is covered throughout the Charter as an “additional assured” or “covered person” under the OWNER’s insurance policy.”
- Charterer acknowledges it’s responsibility to determine if additional insurance is required and that Charterer’s Liability Insurance is not included.



AYCA Time Charter Continued

- ▶ Charterer agrees to:

“indemnify and hold the OWNER harmless against and from any liability for loss, damage, or expense incurred by the CHARTERER or the CHARTERER’s guests or invitees as a result of the negligence or willful act of the CHARTERER or the CHARTERER’s guests or invitees, to the extent such loss, damage, or expense is not covered by the OWNER’s insurance policy.”

AYCA Bareboat Charter

- ▶ Demise Charter:
 - “CHARTERER shall furnish its own crew and pay expenses and operating costs”
 - Similar insurance clause to Time Charter – Owner insures “under the Institute Yacht Clauses 1 / 11 / 85, or other recognized terms...”
 - No crew insurance specified
 - Charterer listed as AI

Potential Issues – AYCA

► Crew Liabilities Covered?

- Institute Yacht Clauses 1/11/85 – Excludes “any direct or indirect payment by the Assured under workmen’s compensation or employers’ liability acts and any other statutory or common law liability in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or by any person to whom the protection of this insurance is afforded by reason of the provisions of Clause”
- Charterer and Owner may be exposed to GML seaman claims under bareboat charter

Potential Issues – AYCA

▶ Typical Policy Exclusions

- Contractual Liability
 - Any liability assumed by an insured person under any contract or agreement, including indemnification agreements, without prior permission.
- Additional Insured
 - Bodily injury to an insured is typically excluded

▶ Misleading?

Mediterranean Yacht Broker Association (Rev. 2016)

- Owner furnishes crew
- Insurance Clause Requires Insurance provided by Institute Yacht Clauses 1 / 11 / 85, but also requires crew coverage or similar.
- Charterer liable for negligence of charterer and guests not recoverable by owner under his insurance.

MYBA

- Charterers coverage for Water Skiers liabilities for use of smaller vessels carried aboard yacht.
- Charterer remains liable for “for any loss, damage or liabilities arising from any act of negligence of the Charterer or his Guests and not recoverable by the OWNER under his insurance.”

MYBA

- ▶ Charterer acknowledges Charterer's Liability Insurance is not included

Insure Your Interest

- ▶ Owners and Charterers should