

Circular Ref: 2018/0004**Date: 28 March 2018**

Speed and Consumption Warranty - A few Guidance

Recently, FDD division has been involved in a few speed and consumption disputes. Though the law is pretty clear for years, but we thought to provide some clarification and guidance.

FDD division of ALCO, wish to highlight key points that can pre-empt disputes in usual Speed and Consumption claims:

- (a) The wordings of the Speed and Performance claims should be clear, concise and should not be ambiguous.
- (b) Warranty of Speed and Consumption can be at a date of the charter, or at a date of delivery into the charter. There are at times continuous warranty of the speed and consumption throughout the duration of the charterparty. However, a clause can be drafted where only speed is guaranteed throughout the duration of the charterparty, but not the consumption. It depends on what is drafted in the clause. The knowledge of one similar clause can not be imputed on the different speed and consumption clause in another charterparty.
- (c) The clause can be drafted, in case of a dispute, where deck logs are to be binding, or independent weather bureau appointed by the charterer to be binding, or both shall be used just as an evidence, or Owners can also appoint their own weather bureau to prepare reports, and that can also be one of the evidence or may be binding. Again, any number of permutation and combination is possible. It all depends on what is more convenient to the Owners or Charterers and ultimately will depend on the bargaining position of the parties.
- (d) Deduction of Speed and Consumption can be deducted as off hire (if the clause allows it) or as a breach of warranty, or could be both. Again, it depends on the nature of the clause. Care must be taken in presenting the claim by the Charterers to the Owners, and correct wording needs to be used on presentation of such claims.
- (e) If Owners want Charterers to provide accurate information before any deductions are made from the hire, in contrast to just the estimated amount, then it should be made clear in the clause. FDD division has seen cases where the addition of the word 'estimated' amount gives considerable leeway to the charterers to deduct from hire. However, it will again depend on the clause.
- (f) If the Owners want the warranty to apply only to the voyages within the charter or to the whole duration of the charter as an average, then it should be made absolutely clear in the clause.
- (g) The inclusion of Clause Paramount will not make the time period for speed and consumption claims

to just 12 months. However, the formal requirements to present speed and consumption's claims in a particular format can be added in a clause and a time period to that can be added.

- (h) From the above, clearly any number of permutation and combination are possible and clauses need to properly be analysed by trained people. From the recent case of Arnold v Britton [2015] AC 1619, in case of ambiguity in the wording of the clause, the tribunal will identify the intention of the parties by reference to “what a reasonable person having all the background knowledge, which would have been available to the parties would have understood them to be using the language in the contract to mean.”

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk