

Circular Ref: 2018/0011

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Speed and Consumption Warranty - A few clarifications

In a recent arbitration, London Arbitration 21/18, the subject vessel was chartered on an amended NYPE form for a time charter trip of about 40/45 days duration from Yuzhny, Ukraine to Koh Sichang, Thailand via the Bosphorous, Suez and Singapore. It concerned the usual speed and consumption warranty.

The relevant provisions of the charterparty were as follows:

29. Vessel's description

SPEED AND CONSUMPTION:

BALLAST:

ABT 14K ON ABT 26T IFO 380 NDAS

ABT 13K ON ABT 23T IFO 380 NDAS

LADEN:

ABT 14K ON ABT 29T IFO 380 MDAS ABT 13K ON ABT 26T IFO 380 NDAS

ABOVE SPEED AND CONSUMPTION WARRANTIES ALWAYS UP TO BEAUFORT SCALE FORCE 4/DOUGLAS SEA STATE 3 AND WITH A TOLERANCE OF 5PCT ABOUT. NO NEGATIVE INFLUENCE OF CURRENTS/SWELL [emphasis added]. DSS3 MEANS 1.25M SEA AND SWELL COMBINED.

70. Weather Routing

The charterers have the right to supply independent weather routing service company advice to the master ... Evidence of weather conditions is to be taken from the ship's logs and weather service reports. In the event of a discrepancy between the deck logs and the weather service reports as well as any dispute performance analyse report, the parties are either to jointly appoint a separate weather routing company whose findings to bind or resort to arbitration. The value of the bunkers saved to be deducted from speed claim.

Charterers agree not to use [X] as weather routing company throughout the duration of this Charter Party.

The charterers claimed that the vessel had underperformed and overconsumed on the trip performed under the charter.

It was again clarified in this matter by the Tribunal that:

- a) When there are two "about", the tolerance will be applied to both speed and Consumption warranty.
- b) In this matter, the tolerance was provided in the clause, that is, 5%. So there was no discretion available with the arbitrators to reduce this tolerance.

- c) It was only adverse currents that were to be taken into account when considering whether the warranty was met or not; and periods of adverse current were to be excluded from the calculation of the vessel's good weather performance. If the parties had wished to provide that the vessel's performance was to be adjusted to reflect any positive influence of currents/swell they might easily have done so by providing for such an adjustment to be made in the clause itself. It held that the relevant clause did not do so; instead, they chose to refer only to any negative influence of currents/swell.

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