

Circular Ref: 2018/0011

Date: 30 October 2018

航速和油耗的担保 - 一些条款的澄清

在最近的仲裁案 *London Arbitration 21/18* 一案中，涉案船舶在经修订的NYPE格式合同下进行期租租赁，租期为40-45天，航线为从乌克兰的尤日内港到泰国的阁西昌岛港，途经波斯普鲁斯海峡，苏伊士运河和新加坡。案件涉及租约条款中对该船航速和油耗的担保。

租约中相关条款如下：

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.

租家声称，该船在租约规定的航线中存在航速损失，且耗油过度。

法庭再次就这一事项发表澄清：

- (a) 租约条款中的两个“*about*”，指的是误差宽限同时适用于船速和油耗量的担保。
- (b) 就此宽限而言，租约中明确规定为5%。因此，仲裁员没有裁量权调整这一宽限。

(c) 在判断船舶是否满足租约担保的船舶性能时，应当考虑逆流的影响，且排除其在良好天气航速的计算中。如果合同双方都愿意根据洋流/涌浪带来的积极影响对租约保证的船舶性能进行调节，那么仅需通过对条款本身进行调整，这一做法也相当简单。租约中的相关条款并没有就此作出调整，相反，他们选择只考虑洋流/涌浪造成的消极影响。

以上由 ANDREW LIU & CO.,LTD 编译，应以英文为准！

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