

Circular From SKULD**Date: 21 March 2019****The “PACIFIC VOYAGER” - Court of Appeal decision**

In November last year the Court of Appeal handed down judgment in the *PACIFIC VOYAGER* [1], a case concerning the circumstances in which an owner under a voyage charter is under an absolute obligation to proceed to the loadport by a certain date. The Club has previously reported on the earlier High Court decision.

To recap the facts

- The party entered into a charter on amended Shellvoy 5 terms for loading in Rotterdam and with a laycan that expired about a month after the charter was fixed.
- At the time the fixture was entered into, the vessel was carrying out a voyage for the previous charterers from Egypt to Antifer, France.
- Part 1(B) of the Shellvoy 5 form has a box headed "Position/Readiness" to be filled in under two entries, one under "Now" and the other under "Expected ready to load" (ERTL). No ERTL was given, but an itinerary for completion of the current voyage including an ETA at the disport Antifer.
- While transiting the Suez Canal on the way to the disport, the vessel struck a submerged object and repairs were needed.
- The vessel missed the laycan and the charterers terminated the charter.

The Law

It's settled law that where a charterparty contains

1. an obligation on the owner to proceed to the loadport with "utmost despatch" (as in clause 3 of Shellvoy 5) or "with all convenient speed", and
2. an ERTL or ETA at the loadport

there is an "absolute" obligation to start the approach voyage by a date when it is reasonably sure that the vessel will arrive at the loadport on time.

It's important to keep in mind that both parties accepted that the charterers were allowed to cancel the charter due to the vessel missing the laycan. The dispute was about whether the charterers could also claim damages: the additional costs of a substitute fixture, which in this case were considerable. To succeed with that it was necessary to show a breach of an absolute obligation to commence the voyage to the loadport by a certain date.

In the first instance judgment the High Court found in favour of the charterers by extending the rule

mentioned above and applying it to the facts of the current case, where there was no ERTL or ETA at the loadport, but there was an ETA for the completion of the prior voyage.

The Court of Appeal Decision

The Court of Appeal agreed with the High Court's decision.

In short, there is (as the Court put it) "no particular magic" in the concept of an ERTL or an ETA at the loadport. An ETA set out in the recap for completion of the prior voyage was equally valid as a point from which to determine the date by which the approach voyage to the loadport had to be commenced.

The decision emphasises that where the parties have agreed that the vessel must proceed to the loadport with "utmost despatch" (or, by analogy, "with all convenient speed"), the obligation is an important one, intended to give comfort to the charterer. To give it meaning, there needs to be a date by which the approach voyage must be commenced, and that will be determined by looking at all relevant terms of the charter- not only by reference to an ERTL or an ETA at the loadport.

The Court did not give permission to appeal.

[1] CSSA Chartering and Shipping Services SA -v- Mitsui OSK Lines [2018] EWCA Civ 2413

Source of Information: West of English P&I Club