

Circular Ref: 2019/0019
Date: 30 December 2019

反技巧性通知

最近 2019 年 11 月 21 日的 *Quiana Navigation SA v Pacific Gulf Shipping (Singapore) Pte Ltd (The "Caravos Liberty") – QBD (Comm Ct) (Cockerill J) [2019] EWHC 3171 (Comm)* 一案阐明了反技巧性条款的相关问题。

涉案船舶 *Caravos Liberty* 经修改的 NYPE 格式以期租方式出租，租船合同包含以下条款：

Clause 4: the Charterers shall pay for the use and hire of the said vessel at the rate of USD9,000 daily including overtime, payable every 15 days in advance ... BIMCO non-payment of hire clause for time charterparties to apply

Clause 5: Payment of said hire to be made in cash in United States Currency (as per clause 34) every 15 days in advance [The "said hire" in clause 5 was the US\$9,000 daily hire set out in clause 4].

Clause 34: Hire and all monies due to the Owner under this Charter Party will be paid to Owner's bank account ... First hire 15 and value of bunkers on delivery to be paid within 3 banking days after vessels delivery and charterer's receipt of scanned/signed/stamped relevant hire statement, thereafter every 15 days hire in advance Bimco Non Payment of hire clause for time Charter Parties to apply.

Clause 37: BIMCO Non-Payment of Hire Clause for Time Charter Parties

If the hire is not received by the Owners by midnight on the due date, the Owners may immediately following such non-payment suspend the performance of any or all of their obligations under this Charter Party (and if they so suspend, inform the Charterers accordingly) until such time as the payment due is received by the Owners. Throughout any period of suspended performance under this Clause, the Vessel is to be and shall remain on hire. The Owners' right to suspend performance under this Clause shall be without prejudice to any other rights they may have under this Charter Party.

The Owners shall notify the Charterers in writing within 24 running hours that the payment is overdue and must be received within 72 running hours from the time hire was due. If the payment is not received

by the Owners within the number of running hours stated, the Owners may by giving written notice within 12 running hours withdraw the Vessel. The right to withdraw the Vessel shall not be dependent upon the Owners first exercising the right to suspend performance of their obligations under this Charter Party pursuant to sub-clause (a). Further, such right of withdrawal shall be without prejudice to any other rights that the Owners may have under this Charter Party.

The Charterers shall indemnify the Owners in respect of any liabilities incurred by the Owners under the Bill of Lading or any other contract of carriage as a consequence of the Owners' suspension of and/or withdrawal from any or all of their obligations under this Charter Party.

If, notwithstanding anything to the contrary in this Clause, the Owners choose not to exercise any of the rights afforded to them by this Clause in respect of any particular late payment of hire or a series of late payments of hire, this shall not be construed as a waiver of their right either to suspend performance under sub-clause (a) or to withdraw the Vessel under sub-clause (b) in respect of any subsequent late payment under this Charter Party.

首次付款（15 天的预付租金）于 2017 年 5 月 27 日到期。此后的付款日期依次为：2017 年 6 月 11 日，2017 年 6 月 26 日，2017 年 7 月 11 日，2017 年 7 月 26 日以及 2017 年 8 月 10 日。承租人在每两个付款日期之间租用运营船舶 15 天，因此产生的每一段的应付金额为 130,652 美元（租金为 9,000 美元/天，共 15 天，再减去佣金）。

在 2017 年 7 月 11 日（第四期付款日），在交换了显示不同金额的账单声明后，承租人少付了 8,015.40 美元。他们（错误地）宣称该船存在燃油过度消耗，所以只交付了 122,637 美元，而非应付的全额 130,652 美元。船东表示抗议，但并没有出具反技巧性通知（anti-technicality notice, ATN）。船东当时没有拒绝收款，并且仍然在等待承租人完成第五期、第六期汇款。在第六批付款之后，他们坚持声称，租金账单是汇总文档，自然列明了之前未偿付金额，承租人仍然少付给他们 8,015.40 美元。因此，他们出具了针对这一金额的反技巧性通知。之后，他们根据 BIMCO 条款撤船。

然而，仲裁庭认定，针对 2017 年 8 月 10 日到期的付款，船东无权启动撤船程序。因为，该付款日期等同于该日期到期时的 15 天租金。措辞“租金”和“到期应付款”仅仅指在该付款日是首次到期的租金（即，不包括在该日期之前到期，但没有得到偿付，且因此在该日期仍是应付款的那一部分租金）。法院确认了仲裁庭的决定。法院认为，事实是有 8,000 美元从 7 月 11 日起一直处于到期状态，在 8 月 10 日仍未被偿付，但它在 8 月 10 日的到期并没有不同于 8 月 9 日已经到期。因此，船东被认定违反了租船合同。

ALCO 抗辩险部（FDD department）给 Andrew Liu 客户提供如下建议：

- a) 撤船程序是一个敏感的策略。在选择撤船之前，应当先咨询律师意见。
- b) 我司抗辩险部门可提供相关咨询协助，帮助客户在撤船这一步骤中起草相关文件。

以上由 Andrew Liu & Co., Ltd 编译，应以英文为准！

信息来源：Andrew Liu & Co., Ltd www.andrewliu.com.hk