LEGAL COSTS COVER (LCC) - OFF-HIRE ISSUES

SHIPOWNERS

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OFF-HIRE ISSUES

Time charterparties provide for a specific period within which the charterer can make use of the vessel. Unless otherwise provided in the charterparty, the charterer is under an obligation to pay hire from the time the vessel was delivered to them, until the time of redelivery. However, it is usually the case that the parties have agreed to certain circumstances which would allow charterers to stop paying hire for specific periods of time. This guide provides some general guidance for owners and charterers on off-hire issues.

What is hire?

Hire is the owner's reward for making a vessel available to a charterer. It is a concept of particular relevance to time charters (although it also applies to bare/demise charters). Hire is expressed as a rate per time unit, which is usually a day rate.

What is off-hire?

The payment of hire is an obligation under a charterparty; this obligation is usually to pay hire without deduction or set-off. However, it is normally qualified by an off-hire clause which suspends the obligation to pay hire if the ship is prevented from performing the required services.

It is important to remember that off-hire is a contractual concept. Therefore, the exact scope of what and how off-hire operates will vary depending on the wording of the specific clause. With that in mind, the comments in this note are based principally around the NYPE '46, which is widely regarded as the "classic" off-hire clause.

Issues

Has the ship been prevented from working?

What exactly this means is dependent upon the wording of the clause. In the NYPE form it is described as prevention of the "full" working of the vessel. This means even a mere impairment of the operation of the vessel is sufficient to put it off-hire and is a question of fact. For example, a partial breakdown of the ship's discharge gear could render a ship off-hire[1] during discharge.

However, the position is not totally straightforward. Because to bring itself within the clause, the charterer must show that the prevention of working was in relation to the next service required of it, which again is a question of fact. This may mean a ship is not off-hire when she is carrying out an operation required by charterers (such as tank cleaning) even where the charterers may wish another service to be carried out (for example loading).

Other clauses reference the "efficient" working of the vessel. This efficiency is with reference to the physical condition of the vessel.

[1]Tynedale v. Anglo-Soviet (1936) 41 Com. Cas. 206 (C.A.).

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What was the event?

For an off-hire clause to take effect, there must be an "off-hire event". This means the event that led to the prevention of performance must be one within the scope of the clause. This is usually a closed list of events that includes:

- Correspondence exchanged between Owners, Charterers (including their respective brokers), before, during and after the fixture;
- The relevant chart(s) used; Deficiency of men
- Default of men
- Breakdown to hull, machinery or equipment
- Damages to hull, machinery or equipment
- Detention by average accidents to ship or cargo

It is common, in addition for this closed list, for there to be a sweep up provision stating: "any other cause". While this may appear to significantly widen the application of the off-hire clause, the English Law principal of ejusdem generis means such wording only applies to causes of a similar type to those in the list. This position though can be altered by the addition of the word "whatsoever" which further widens the scope of the clause. This wording that means any cause (be it legal or physical) may put the vessel off-hire if it is directly linked to a loss of time.[2]

An off-hire event is distinct from a breach of the charterparty and does not require fault. However, an event may be both a breach of the charter (meaning damages may be payable) and an off-hire event (leading to the suspension of hire payments).

It is important to remember that the cause of the off-hire event must be a fortuity, and not a natural consequence of the charterer's orders. For example in the Rijn[3] marine growth that fouled a propeller as a result of a period waiting to load, was seen as a natural consequence of charterers orders and was thus not an off-hire event. Equally, an off-hire event cannot arise from a breach of the charterparty by the charterer.

To ascertain whether an event is within the scope of the clause, you will need to look at the specific wording.

Was there a loss of time?

There are two forms of off-hire clauses:
(i) period clauses; and (ii) net loss of time clauses.

Period clauses are calculated by simply taking the time from the off-hire event, to the point at which that event ceases. This is regardless of whether any time is actually lost. Such clauses are perceived as charterer friendly and are the simplest form of off-hire clauses.

Net loss of time clauses are more common and less straightforward. These require a calculation of the time actually lost in the voyage as a result of the off-hire event. These clauses are more owner friendly, because there is a chance that overall time will not be lost from the voyage, despite the fact there is an off-hire event.

For instance, if one of the vessel's cranes broke down during loading, but the remaining two cranes did the required job in the same amount of time, there would be no lost time under a net off-hire clause[4] . That said, it is not generally possible to "make back time" later in

[2][The Mastro Giorgis [1983] 2 Lloyd's Rep 66
[3]The Rijn [1981] 2 Lloyd's Rep. 26

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the voyage and thus reduce a claim under a net off-hire clause for an earlier off-hire event.

Conclusion

The above illustrates the fact that off-hire clauses are often not straightforward and the rights of a charterer to suspend hire payments may be unclear. Due to the fact that wrongfully withholding hire can lead to various penalties, including the withdrawal of the vessel, the Club recommends always seeking relevant legal advice before taking substantive action.

[4]The H.R. Macmillan [1974] 1 Lloyd's Rep. 311

For further information please visit www.shipownersclub.com/lcc

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