

# Maritime Law Update

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# **Speed and Performance – Recent Examples**

*London Arbitrations 3/12 and 4/12*

# Introduction

- The law concerning underperformance is relatively settled (“The Didymi” case)
- Disputes on underperformance still arise
- Recent examples: London Arbitrations 3/12 and 4/12

# Charterparty

- Starting point: Charterparty clauses
- NYPE 1946 (lines 9-10)
  - *“... and capable of steaming, fully laden, under good weather conditions about ... knots on a consumption of about ... tons of ... best grade fuel oil ...”*
- Performance at the date of the C/P or at the time of delivery
- Charterer has to rely on further warranty in the C/P
- Sample:
  - “Speed/consumption is provided based on good weather conditions winds not exceeding Beaufort Scale 4 and/or Douglas Sea State 3 and not against adverse currents and adverse swell ... throughout the period of this charterparty”*

# London Arbitrations 3/12 and 4/12

## Facts

- NYPE form (1946) for 30-36 months at Charterer's options
- Charterer withheld hire to reflect their underperformance claims on voyages nos. 13 and 14
- Owners claimed for withheld hire and denied underperformance

# London Arbitrations 3/12 and 4/12

## The Issues

- 1) Subject of assessment – entire period or each voyage?
- 2) How to resolve inconsistent weather data between vessel records and independent weather bureau records?
- 3) Can bunkers savings offset against underperformance claims?

Subject of assessment –  
entire period or each voyage?

# Subject of assessment – entire period or each voyage?

## Introduction

- Settled law: “*The Didymi*”
  - If a vessel fails to meet its performance warranty in good weather, then it is deemed to have underperformed during bad weather
  - Charterer only needs to show the vessel underperformed during good weather to claim underperformance for the chartered period



# Subject of assessment – entire period or each voyage?

## Clause 29. Detailed Description of Vessel

### *“(b) Speed Clause*

*Throughout the currency of this Charter, Owners warrant that the vessel shall be capable of maintaining and shall maintain on all sea passages from seabuoy to seabuoy speed and consumption as per vessel’s description ...”*

# Subject of assessment – entire period or each voyage?

## The Arguments

- Charterers' argument:
  - Vessel underperformed for voyages nos. 13 & 14 during good weather based on independent weather bureau reports
  - Deemed to have underperformed during bad weather: “*The Didymi*” and “*The Gas Enterprise*”
  - Therefore, underperformance for voyages nos. 13 & 14

Voyage no.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Underperformance (during good weather)																	

# Subject of assessment – entire period or each voyage?

## The Arguments

- Owners' argument:
  - 1) Calculation of the Vessel's average performance by reference to performance on those two voyages – not reasonable
  - 2) Calculation should be made by reference to laden voyages during the whole charter
  - 3) Based on good weather days as recorded by the Master in his voyage reports
  - 4) An average performance of 13.79 knots over the entire charter period

Voyage no.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Underperformance (during good weather)																	

# Subject of assessment – entire period or each voyage?

## The Arguments

- Charterers response
  - Clause 29(b): “... *the vessel shall be capable of maintaining and shall maintain on all sea passages from seabuoy to seabuoy speed and consumption as per vessel’s description...*”
  - Therefore each sea passage should be considered separately of its performance

# Subject of assessment – entire period or each voyage?

## The Tribunal's Decision

- Agreed with Charterers on the construction of Clause 29(b)
- Since the warranty was "*on all sea passages from seabuoy to seabuoy*", the correct interpretation was for each voyage to be considered separately
- Found underperformance for voyages nos. 13 and 14

How to resolve inconsistent weather data between vessel records and independent weather bureau records?

# Inconsistent weather data – vessel records vs. independent weather bureau records

## Introduction

- Weather data from vessels and independent weather bureaus are the two main sources of information
- Inconsistency between the two is common
- Historically, vessels' data was sometimes preferred
- However, independent weather data is increasingly relied upon
- This issue was considered in London Arbitrations 3/12 and 4/12

# Inconsistent weather data – vessel records vs. independent weather bureau records

## Clause 29. Detailed Description of Vessel

*“(c) Weather Routing and Speed/Consumption Deficiencies  
... Evidence of weather conditions to be taken from the  
vessel’s deck logs and independent weather bureau reports.  
In the event of a consistent discrepancy between the deck  
logs and independent bureau reports, then the matter to be  
referred to arbitration, if not settled amicably.”*



# Inconsistent weather data – vessel records vs. independent weather bureau records

## The Arguments

- Charterers argued underperformance based on independent weather bureau's records
- Owners argued otherwise based on the vessel's log book records

# Inconsistent weather data – vessel records vs. independent weather bureau records

## **Tribunal's Decision**

- Found a sufficiently consistent discrepancy (of over 0.5 on the Beaufort Scale on average)
- Found that the vessel's records were over 6 times more likely to record wind force as greater than that in independent bureau records
- Noted some discrepancy between the vessel documents themselves (the passage reports and deck logs recorded different conditions)

# Inconsistent weather data – vessel records vs. independent weather bureau records

*“Log entries were at times made with half an eye on charter warranties”*

## **Our View**

- A surprisingly frank comment
- No reciprocal acknowledgement that independent weather bureaus are instructed by charterers

Can bunkers savings offset against underperformance claims?

# Offset bunkers savings in underperformance claims?

Owners argued for a right to off-set bunkers savings “*across the Charter*” against Charterer's deduction of hire for underperformance

## **The Tribunal's Decision**

- Rejected Owners' argument
- Could not rely on underconsumption “*across the Charter*” in the absence of a specific charter clause
- At most, Owners can deduct the savings of bunkers in respect of the two voyages in question (“*The Ioanna*”)

What can we learn from the case?

# What can we learn from the case?

- Clear drafting of the relevant C/P clause
- “... vessel’s performance on an average basis throughout the duration of the charter” or “on all sea passages from seabuoy to seabuoy”
- Specify which data (vessel or independent weather bureau) is to prevail over the other and under what circumstances
- Specify whether savings of bunkers would be given credit

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