



### **Damages for Late Redelivery - Owners Restricted to Damages During Period of Overrun Only, Not Loss of Profit for Entire Period of Subsequent Fixture**

Transfield Shipping Inc v Mercator Shipping Inc (The "Achilleas") [2008] UKHL 48

Charterers ("Transfield") have struck the final blow in this climactic end to the ongoing battle as to the extent of liability to Owners ("Mercator") for loss of hire under a subsequent fixture upon late redelivery, thereby restoring the *status quo* in relation to claims for damages for late delivery.

The facts and a summary of the Queen's Bench decision can be found in our earlier article [here](#). Briefly, Mercator chartered the "Achilleas" to Transfield at a daily hire rate of US\$16,750. Transfield gave notice of redelivery and Mercator fixed the vessel on a subsequent hire for US\$39,500 per day. Transfield failed to redeliver the vessel on time and, prior to the expiration of the cancellation date under the subsequent charter, Mercator sought and obtained an extension of the cancellation date in return for reducing the daily hire by US\$8,000 per day.

Mercator claimed damages of \$8,000 per day for the entire duration of the subsequent charter, totalling US\$1.36 million. Transfield claimed that in accordance with settled principle, Mercator was only entitled to damages from the due date for redelivery to the

date of actual redelivery (called "the overrun"), totalling a mere US\$158,301.17.

Owners succeeded in arbitration and in the two subsequent appeals brought by Charterers (Queen's Bench and Court of Appeal), obtaining damages for the entire duration of the subsequent fixture. In a final counter-attack, Transfield appealed to the House of Lords who overturned the earlier decisions and restricted Owners to damages only for the period of the overrun, being US\$1,206,247.20 less than Owners' earlier victories.

#### **Earlier Decisions for Owners**

The lower Courts did not accept Charterer's argument that there was a "rule" that Owners could only recover the difference in the charter hire rate and market rate during the period of the overrun. Rather, the lower Courts held that commercial parties in the chartering market must be aware that Owners would fix their vessel's for subsequent hire and it was a "hazard of late redelivery" that Owners could lose the value of a subsequent fixture. The

lower Courts held that such a result was not unusual and therefore such loss was within the contemplation of the parties upon contracting and recoverable in full by Owners.

These were the first reported decisions where Owners were awarded damages for loss of hire on a subsequent fixture (as opposed merely to loss of use of the vessel during the overrun).

### **House of Lords Decision for Charterers**

The House of Lords overturned the earlier decisions, holding that the details of any subsequent fixture (length of time, charter hire rate, laycan etc) could not be known or anticipated by the parties at the time of contracting and were therefore too remote to recover. It was held that unlike in tort, contractual liability must be voluntarily undertaken and the only damages that reasonable contracting parties could be sure of and taken to have assumed responsibility for were for the loss of use of the vessel during the overrun period. The measure of such damages was the difference in the rate of hire and market rate during

the overrun, regardless of the particulars of any subsequent fixture.

### **Effect of Decision**

Absent special knowledge of profitable subsequent fixtures at the time of contracting, Owners will be limited to claiming damages for loss of use of the vessel during the overrun and will not be entitled to claim loss of profit for a subsequent fixture.

Whilst this decision restores the *status quo* in respect of damages for late redelivery, it also serves as a timely reminder to Owners who wish to preserve their position in relation to subsequent profitable fixtures. In order to ground any claim for loss of subsequent fixture Owners should ensure that at the time of contracting Charterers are given notice of any subsequent fixture and any other specific or unusual losses that Owners might suffer in the event of late redelivery. This is particularly so in the current climate of highly fluid market conditions. The failure to give such notice in this case cost Owners US\$1,206,247.20.

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