

## **ICS\* Column – Commercial Aspects of Shipping**

### **Article 11 – June 2006**

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## **“Commercial Aspects of Shipping – Speed and Consumption Warranties in Time Charterparties Part II”**

Jagmeet Makkar, FRINA, FICS, FIMarE (I), ACI Arb  
Education Officer, Institute of Chartered Shipbrokers, Hong Kong Branch

### **Evaluation of Under performance - Precedents**

In one of the decisions (The Didymi 1988.2 LLR. 108), the court had established a two stage test for determining loss resulting from under performance.

This required, firstly, an assessment of under performance based on good weather conditions. Once this was established the second stage required an assessment of the under performance in all weather conditions, with the necessary extrapolations calculated by an expert.

The Court of Appeal, while endorsing above approach further clarified the position by the following three stage approach :

*“... First, assess the vessel’s performance in good weather conditions as defined on all sea passages from sea buoy to sea buoy, excluding altogether any period of slow steaming at charterers’ request.*

*Secondly, if a variation of speed from the stipulated norm is shown, that variation should be applied with the necessary adjustments and extrapolations to all sea passages from sea buoy to sea buoy and all weather conditions, but excluding the periods of slow steaming at the charterers’ request.*

*Thirdly, if there is a variation of consumption from the stipulated norm, that variation should be applied, with the necessary adjustments and extrapolations to all sea passages from sea buoy to sea buoy and all weather conditions, but excluding the periods of slow steaming at the charterers’ request”.*

Overall then the speed/performance clause to all weather conditions, only excluding the slow steaming where speed reduced at charterers’ request.

### **Speed Claim Calculations - An example**

Vessel Name : MV Example

CP Speed : about 14.0 Knots

CP Fuel Consumption : about 24 mt

Vessel undertakes a voyage from Port Top to Port Bottom about 8000 Nm apart, taking 655.7 hrs to complete the voyage with an average speed of 12.2 Knots.

On the days when the weather was good, it is observed that the vessel did not perform as warranted. Charterers had appointed a weather routing company and it is found that even the ship’s records showed under performance on the fair weather days.

Thus the deficiency in performance is to be applied for the complete passage after duly taking effect of weather into account for calculations of the Performance Speed.

As per weather routeing company, the calculated weather factors are as :

Weather Factor = -0.6 Knots

Current Factor = + 0.4 Knots

(Calculation of these factors is a subject in itself and is not being considered here in detail).

Basis above and interpreting “about” as allowing 0.5 Knots to get an effective speed of 13.5 Knots (when CP speed is 14.0 Knots), we achieve the “Performance Speed” as follows :

$$\begin{aligned}\text{Performance speed} &= \text{Effective Speed} + \text{Weather Factor} + \text{Current Factor} \\ &= 13.5 - 0.6 + 0.4 \\ &= 13.3 \text{ Knots.}\end{aligned}$$

Chartered Time (basis Performance Speed) = 8000 Nm / 13.3 Kn = 601.5 hrs

Actual Time Taken = 655.7 hrs

Computed time lost = 54.2 hrs.=2.2583 days

Speed Claim Amount = US \$ 9,000 x 2.2583 = **US \$ 20,324.7**

Where US \$ 9,000 is the daily Charter Hire rate.

Above is an example how claims can arise in such cases. Higher consumption can also result in expensive claims.

**An actual case (SMA Award No. 2040) -**

|                  |          |                   |          |
|------------------|----------|-------------------|----------|
| Sailed Inchon    | 28/09/80 | Arrived Mizushima | 01/10/80 |
| Sailed Mizushima | 04/10/80 | Arrived Kawasaki  | 09/10/80 |
| Sailed Kawasaki  | 10/10/80 | Arrived Kaohsiung | 19/10/80 |
| Sailed Kaohsiung | 22/10/80 | Arrived Singapore | 02/11/80 |
| Sailed Singapore | 02/11/80 | Arrived Lagos     | 04/12/80 |
| Sailed Lagos     | 10/01/81 | Arrived Cape Town | 30/01/81 |
| Sailed Cape Town | 06/02/81 | Arrived Singapore | 27/01/81 |

In assessing the degree of non-performance, the panel adopted the method described by OceanRoutes, making allowance for favorable currents, adverse winds and the customary half knot to cover the word "about" in the warranted description. The basis to determine the warranted minimum speed for the initial C/P has been set at 13.7 knots. The Panel found from the documentary evidence that the ship failed to perform at that speed on "good weather" days and assessed the degree of failure as set out below.

For the first leg of the voyage Inchon/Japan/Hong Kong/ Singapore, OceanRoutes was not employed and only the vessel's log is in evidence. For this period, charterer has impliedly used the same OceanRoutes formula to this leg in asserting its claim.

On the last leg of the voyage, Cape Town/Singapore, OR report shows performance better than the adjusted warranty (10.1 knots), but charterer has made no claim for speed deficiency on that leg, limiting itself to a claim for overconsumption of fuel oil.

The Panel decided that, under the terms of this C/P, the correct method of determining performance is to examine all the sea passages during the period of time charter and apply any deficiency to the entire period. However, in making its calculations, the Panel gave Owner due allowance for the minimum warranty on those passages where a deficiency occurred, and on the last leg where the performance actually slightly exceeded the C/P warranted figure, gave credit for the saving of time based on the C/P figure rather than on the OR formula. This method was adopted as being equitable to both parties within the terms of the C/P and the custom of the trade.

For the first leg the weather conditions were taken from the ship's log, but on all the subsequent legs OR weather reports were considered more reliable. In all cases only those days where the weather was Beaufort Force 4 or less were considered, thus reflecting the intent of the parties as expressed in the relevant clause the Charter Party.

The results showed the following:

|                                      |                  |                  |                 |              |
|--------------------------------------|------------------|------------------|-----------------|--------------|
| A. Westbound.Inchon/Japan/HKG/S'pore | 1.57 k deficient | 3.11 days lost   | at \$7,150/day  | \$22,236.50  |
| B. Lagos/Port Harcourt/Lagos         | 6.07 k deficient | 5.44 days lost   | at \$ 5,000/day | \$27,200.00  |
| C. Eastbound. Lagos/Cape Town        | 2.6 k deficient  | 1.86 days lost   | at \$ 5,000/day | \$ 9,300.00  |
| D. Cape Town/Singapore               | 0.35 k over      | 0.37 days gained | at \$ 5,000/day | \$(1,850.00) |

**Net: Awarded to Charterer 10 days lost due to underperformance      \$ 56,886.50**

### **Avoiding the Underperformance Claims**

*Can you imagine an under performance claim in today's market when the freight rates are at levels never ever seen in the history of shipping !*

- Avoid clauses which prescribe that if there are discrepancies between vessel's log entries and a performance monitoring company, then the information submitted by the latter should be considered decisive for the reasons mentioned in the above text.
- Maintain proper and correct records during the voyage.
- Substantiate the logging of “Adverse Current, Head Swell, Heavy to Moderate Swell” etc. by known/accepted documents/publications.
- Immediately investigate and advise the Head Office if any indication of underperformance becomes apparent.
- During “fair weather days”, pay additional attention to vessel performance to ensure that vessel is performing better or as per the Speed/Fuel warranty.

***Careful monitoring of the Vessel Performance by the Senior most officers on board the vessel and timely action can result not only in savings but also in enhancing the reputation of the Owner/Operator and better the claims record.***

### **References :**

1. Institute of Chartered Shipbrokers Course Material
2. Sea Venture (The Steamship Mutual Underwriting Association (Bermuda) Limited Publication) Vol 11, Page 70, Vol. 12, Page 50/51.
3. BIMCO Bulletin 6/84, 3/85, 4/85, 2/86

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For feedback and comments, please contact: [shiplearn@yahoo.com](mailto:shiplearn@yahoo.com)

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