



## Losses award for missed follow-on fixture

*A recent London Arbitration award reviewed owner entitlement to claim loss of profits from a missed follow-on fixture, in the case of absent specific knowledge at the time of entering into the charterparty. A report by [Henry Setiono](#), Senior Associate.*

Since the House of Lords decision in *The Achilleas*, the shipping industry has understood that where a vessel is redelivered late under a time charter, owners are only entitled to claim the difference between the market rate and charter rate for the overrun period. Absent specific knowledge at the time of entering into the charterparty of a specific follow-on fixture, owners are not generally entitled to claim loss of profits from a missed follow-on fixture. Such losses are considered too remote.

In the recent arbitration award in London Arbitration 1/23 (“**LA 1/23**”), these principles were reviewed by an experienced London Maritime Tribunal and the Tribunal awarded owners their losses arising from a missed follow-on fixture.

In LA 1/23, the relevant charterparty required the vessel to be redelivered by 1 July 2021. It was known, based on the contractual documents, that the vessel needed to be redelivered at this time so the vessel could be drydocked for its class certificates to be renewed. Clause 119 of the charterparty provided as follows:

*“The Charterers warrant that they will not order the vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the vessel within the maximum period (on or before 1<sup>st</sup> July 2021) stipulated in this charter party. If, nevertheless, such order is given, the Order shall have the option:*

- i. to refuse the order and require a substitute order allowing timely redelivery of the vessel, or*
- ii. to perform the order without prejudice to their right to claim damages, including consequential damages, for breach of charter in case of late redelivery of the vessel.”*

(Emphasis added)

Prior to redelivery, a repositioning charter was fixed by owners from the redelivery port to nearby where owners intended to drydock the vessel (the “**Repositioning Fixture**”). Charterers’ final voyage was delayed, and the vessel was only redelivered on 14 July 2021 (about 13 days late). Whilst this delay did not cause any issues with class (as owners were able to obtain a temporary extension), the delay caused owners to lose the Repositioning Fixture and thus they had to incur the costs of the ballast leg to the shipyard themselves.

Accepting the usual measure of damages per *The Achilleas*, charterers paid owners the sum of around USD 290,818 being the difference in between the market and charter rate for the 12.508 days of overrun. However, owners claimed that they are entitled to recover additional damages in the sum of USD 306,617.19 for the loss of the Repositioning Fixture or time valued at the Repositioning Fixture at USD 37,250/day for 7.354 days and bunkers consumed during that period.

The tribunal found clause 119 to be unique in that it provides for a right to “*claim damages, including consequential damages, for breach of charter in case of late redelivery of the vessel*”. Charterers argued that the words “*including consequential damages*” adds nothing to the equation as it merely expresses owners’ right to damages, a right which owners have in any event. In this respect, Clause 119 referred to owners being entitled to perform “*without prejudice to*” their right to claim damages.

Further, charterers argued that at the time of contracting, they were not aware of the Repositioning Fixture (bringing them in line with *The Achilleas*). However, the tribunal found that because the importance of the redelivery date for the purposes of dry-docking and class certificate renewal, were communicated to charterers prior to fixing the vessel, charterers would have been aware that “*opportunities for the vessel’s employment after redelivery were limited to a direct voyage to drydock or a repositioning fixture that would bring the vessel near to the chosen shipyard, so as to avoid a costly ballast voyage*”<sup>1</sup>.

In the tribunal’s view, clause 119 was included to specifically provide for this type of loss of employment towards the drydock. The tribunal further held that if their construction of clause 119 was wrong, they found that charterers had sufficient knowledge and the remoteness test in *Hadley v Baxendale* would be satisfied. Owners were thus awarded their additional claim for damages of USD 306,617.19.

### Comment

In this case, the usual rule of damages for late redelivery as set out in *The Achilleas* was displaced by a specific clause referring to “consequential damages”. The tribunal decided that this wording displaced the usual common law position.

The tribunal decided that, in circumstances where both sides knew that the vessel would be entering drydock in around July 2021, this wording made charterers liable for loss of the Repositioning Fixture. This is despite the fact that the follow-on fixture was not arranged by owners until after charterers had given their final voyage orders.

The Tribunal determined that charterers’ potential liability would be limited by the dry-docking timescale (presumably limited to a follow-on voyage from the delivery port to dry-docking location) and that charterers’ liability was therefore not unpredictable, unquantifiable or disproportionate.

Curiously, the tribunal also decided that even without clause 119, the fact that charterers were aware that the vessel needed to dry-dock following redelivery, meant that owners were entitled to claim damages under the second limb of *Hedley v Baxendale*.

### Take Away Points

This decision is an important reminder for charterers to carefully consider any additional clauses which make them liable for “consequential damages” as this could be given an expansive definition when damages are assessed.

This decision also suggests that, even absent such a clause, in certain circumstances owners may be entitled to claim damages for loss of a follow-on fixture following late redelivery even where charterers have not been given specific notice of this fixture prior to entering into the charter or at the time of giving the final voyage order. However, this appears to be contingent on charterers being aware of an “important event” immediately subsequent to redelivery (i.e., such as dry-docking) that makes timely redelivery important.

Hence, charterers will need to carefully consider whether they have been given notice of any “important events” subsequent to redelivery as this may increase their liability for late redelivery beyond the common law measure to include loss of profit under a missed follow-on fixture.

A report by [Henry Setiono](#), Senior Associate and [William Pyle](#), Director.

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<sup>1</sup> LA 1/23

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