



Special Issue – 11 June 2010 – SALDANHA VERDICT

soundings

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UK Defence Club Supports Member in Landmark Ruling on Piracy

The English High Court has today ruled (“The SALDANHA” – [2010] EWHC 1340 Comm) that a ship which was seized by pirates early in 2009 remained on-hire for the period of the detention. The case was brought by a Member entered in the Association.

The issue

The SALDANHA was chartered on a standard NYPE charter. The off-hire clause read:

“...that in the event of the loss of time from default and/or deficiency of men including strike of Officers and/or crew or deficiency of stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry-docking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost.”

On 22nd February, 2009 the ship was en-route from Indonesia to Slovenia when she was seized by pirates in the Gulf of Aden and taken to a location close to Eyl, Somalia. She was ultimately released on 25th April, 2009 however the charterer did not pay hire during the detention, claiming that the ship was off-hire from the time of the seizure.

An eminent London arbitration tribunal initially found that the ship was on-hire, but the charterer obtained permission to appeal to the English High Court.

The appeal

The case turned on the construction of clause 15 of the NYPE charter. The arbitrators had concluded that the capture of the ship had prevented the full working of the ship, leading to loss of time.

However in order to put the ship off-hire, the charterer would need to attribute this loss of time to one of the causes set out in clause 15.

The charterer argued that the seizure by pirates amounted to a “default and/or deficiency of men.” Alternatively it suggested that the seizure amounted to “detention by average accident.” Finally it claimed that the taking of the ship fell within the definition of “any other cause” preventing the full working of the ship.

The judgment

The case was heard by Mr Justice Gross on 5th February, 2010 and judgment was handed down on 11th June, 2010. The judge found that the charterer’s appeal failed on all counts.

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So far as default or deficiency of men was concerned, the judge agreed with the tribunal that this simply referred to a failure by an owner to supply enough crew or a refusal by the crew to perform their duties.

Equally the judge had “no hesitation” in agreeing with the tribunal that seizure by pirates did not amount to “detention by average accident”. This would have required some damage to the ship (“average”), and an element of fortuity (“accident”) neither of which were present. He agreed with the tribunal that “nobody would naturally say that President Kennedy had an accident in Dallas in 1963.”

Finally, the judge agreed that the words “any other cause” in the NYPE off-hire clause amounted to a sweep up provision which did not extend to unrelated causes affecting the ship.

The judge concluded that if parties wished to treat seizure by pirates as an off-hire event under a time charterparty, they could do so by way of specific wording to that effect. He also suggested that if the off-hire clause had been amended so as to refer to “any other cause whatsoever” then this may have made a difference, but suggested that this was not certain.

Implications

The judgment is clearly a very important decision which has wide ranging implications for the shipping industry as a whole, particularly in the current climate where pirate attacks remain prevalent. In light of this ruling, and subject to any appeal by the charterer, unless there is clear wording to the contrary, a ship chartered on unamended NYPE terms will remain on-hire if seized by pirates. The Club has seen a number of recent clauses, including the BIMCO piracy clause, which specifically address the issue of hire upon the capture of a ship, and every charter should be checked for its specific terms.

Nevertheless, this is the first English Court judgment which specifically addresses the charterparty implications of piracy and provides welcome guidance from the Court on an issue of great relevance to owners and charterers alike.

The Member in this case was represented by Ince & Co.

If you have any questions relating to the judgment or its wider implication, please speak to your usual UKDC contact or Alan Mackinnon (Senior Director of Claims +44 207 204 2408 / alan.mackinnon@thomasmiller.com)

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