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SAILING INTO THE UNKNOWN: VOYAGE CHARTERPARTY CONSIDERATIONS FOR TURBULENT TIMES

INTRODUCTION

As a result of developing events in the Persian Gulf, international trade is facing a level of disruption unprecedented in recent times. Stephenson Harwood has already talked about the impact of liberty and force majeure clauses on parties' performance in our [recent article](#) and our colleagues in Dubai have summarised some vital issues and impacts from their [on-the-ground perspective](#).

Here we explore some options available to shipowners, charterers and cargo interests when unforeseen events make it necessary to change the performance of a voyage charter, offering timely guidance that will be relevant in any scenario where voyage plans need to adapt to new realities. Three areas to consider are:

- + Cancellation rights
- + Laytime and demurrage
- + Stoppage in transit

CANCELLATION

Most voyage charterparties contain clauses which provide that the charterer can cancel the charter before loading if continuing with it would result in the vessel being exposed to "war risks". However, even where it is abundantly clear that a vessel cannot arrive or be physically ready by the cancelling date agreed in the charterparty, disputes can arise over whether a charterer can legitimately cancel *before* that date. In the absence of clear wording there is generally no anticipatory right to cancel a charter, and a charterer is likely to be in repudiatory breach if it tries to exercise its right to cancel prematurely. However, it has been held in an important case that, where it is inevitable that the charterer would have cancelled at the time it was entitled to *anyway*, the owner is entitled to nominal damages only.¹ Be aware that a charterer's ability to exercise its right to cancel can be affected where the charterer has revised its loading port nomination, for example where the estimated time of arrival at the new loading port is later than the cancellation date.² Charterparties can be, and often are, drafted to deal with this.

¹ *The Mihalis Angelos* [1971] 1 Q.B. 164, 208.

² As was the case in *The Kriti Filoxenia* [2015] EWHC 997 (Comm).

IMPACT ON LAYTIME/DEMURRAGE

Delays and the resulting demurrage become much more likely when there is congestion in ports and an unexpected build-up of ships vying for limited loading and discharging capacity caused by disruption to sea routes, or when vessels have had to divert due to unexpected events such as the closure of the Strait of Hormuz. However, it is important to remember that, following the Court of Appeal's decision in *The Eternal Bliss*³, demurrage prescribes and liquidates all of the losses flowing from a charterer's breach in failing to complete cargo operations within the laytime. Additional losses incurred by a shipowner may face in such circumstances, for example in relation to cargo claim liabilities, will only be recoverable if the owner can establish a separate breach by the charterer.

Some voyage charters, such as BPVOY4, provide that delay caused by acts of war or blocking of access to ports will count as one half laytime or demurrage, so long as the delay is not within the reasonable control of either party. Individual charterparty terms should always be checked to see if a particular exception or exclusion to laytime or demurrage will help the parties understand the legal and commercial effect of specific delays.

STOPPAGE IN TRANSIT

Given the anticipated economic fallout, a seller of cargo may find themselves in a situation where their counterparty has become insolvent before goods on board a ship have arrived at their destination, leaving the seller unpaid with cargo still afloat. Assuming the Sale of Goods Act 1979 applies (which it will in the vast majority of English law sale contracts), the seller may have the long-established right of 'stoppage in transit'. This means that the seller or its agent may exercise a right to effectively stop the voyage and take back the cargo either by taking actual possession of the goods, or by giving notice to the carrier. But care must be taken. If the seller decides to exercise this option, notice must be given to the correct person to be valid, and this may not be easy to identify or to implement in practice. This will be the person who has immediate custody of the goods (often the Master

of the vessel) or the carrier's principal. However, notice to the principal is only effective where the principal, by the exercise of reasonable diligence, is in a position to inform the person with custody of the goods of the notice in time to prevent delivery to the buyer. Although a powerful tool in times of global disruption and economic volatility, stoppage in transit is a highly fact-dependent remedy, and advice should be sought before giving notice to exercise the right.

The carrier is also not obliged to accede to the seller's notice if it is aware of a legal defect in the seller's claim. If there is any uncertainty, the carrier can protect its position by interpleading before the relevant court.

COMMENT

While shipping is no stranger to disruption given its vital role in moving 90% of global trade through some of the most dangerous seas in the world, the apparently worsening situation in the Persian Gulf is testing the industry's famed resilience. Voyage charterparties play a key role in the prompt and efficient movement of cargo between ports, but as dozens of vessels under voyage fixtures in the region continue to be impacted, legal questions about the rights and obligations of owners and charterers in the spot market are emerging rapidly. Cancellation rights, delays and sale contract ramifications are but three of the issues to which attention should be paid and advice sought where necessary.

DISCLAIMER

This article is for general information only and it is not intended to provide legal advice.

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³ *The Eternal Bliss* [2021] EWCA Civ 1712.