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# COMMODITIES IN FOCUS WEEKLY - ISSUE 153

## RETHINKING DAMAGES FOR LATE REDELIVERY UNDER TIME CHARTERS: SKYROS MARITIME CORPORATION & ANOTHER V HAPAG-LLOYD AG [2025] EWCA CIV 1529

**The Court of Appeal held that the owners under two time charters were entitled to substantial damages for late redelivery, notwithstanding the fact that the owners had contracted to sell the vessels and therefore would not have earned hire from any subsequent fixture.**

### BACKGROUND

The claimants and appellants ("Owners") chartered two vessels (the "Vessels") to Hapag-Lloyd ("Charterers"). The terms of the time charters (the "Charterparties") were materially identical. In breach of charter, the Vessels were redelivered late (by two and seven days respectively). During the overrun period, Charterers paid hire at the rate agreed in the Charterparties.

It was common ground between the parties that Owners would not have rechartered the Vessels after redelivery, even if they had been redelivered on time, because Owners had agreed to sell the Vessels and had entered memoranda of agreement to that effect (the "MOAs").

By the time the Vessels were due to be redelivered, the market rates had risen substantially above the Charterparty rate. Owners claimed the difference between the market hire rate and the contract rate for the overrun period.

### PROCEDURAL HISTORY

The dispute was referred to arbitration, in which the Tribunal was asked to decide the question of Owners' entitlement to damages as a preliminary issue. The Tribunal held that Owners were entitled to substantial damages based on the principles of *quantum meruit*. Alternatively, Owners were entitled to recover user damages or, in the further alternative, negotiating damages.

Charterers appealed to the High Court. Mr Justice Bright overturned the Tribunal's decision, rejecting the findings that the Owners were entitled to *quantum meruit*, user damages or negotiating damages. He held that, although the normal measure of damages was the difference between the contract and the market rate, the normal measure was not applicable on the facts because Owners had not lost the opportunity to take advantage of the market rate during the overrun period; they had precluded that possibility by entering into the MOAs.



## COURT OF APPEAL DECISION

Mr Justice Bright granted permission to appeal on two issues: (i) whether, in the assessment of damages, the existence of the MOAs must be disregarded; and (ii) whether Owners were entitled in principle to recover user damages.

The Court of Appeal allowed the appeal unanimously, with Lord Justice Males (who gave the leading judgment) holding that the MOAs were *res inter alios acta* in that their existence arose independently from the circumstances giving rise to the breach, and they therefore had no impact on whether Owners were entitled to the normal measure of damages. Citing *The Achilleas*, Males LJ held that, while the normal measure of damages may over- or under-compensate the owner in some cases, that was not a reason to depart from it. Any other finding would mean that a charterer could not be certain of the extent of its liability without investigating what plans the owner might have for the use of the vessel following redelivery. Such a situation would create uncertainty and encourage disputes.

Males LJ said that it had been “*clear for over a century*” that the normal measure of damages for late redelivery where the market had risen above the contract rate, was the difference between the two rates for the period of overrun. A “*formidable*” line of authority to that effect is reflected in the key texts, including *Scruton on Charterparties and Time Charters*. In contrast, there was no authority for the proposition that Owners’ entitlement to recover damages on this basis was dependent on whether Owners would have put either Vessel back on the market with the aim of concluding a new fixture.

As Owners had succeeded on the first issue, it was not necessary to consider the question of whether user damages were recoverable. However, Males LJ held that, while much existing authority regarding user damages could be applied to late redelivery under a time charter, he considered that to do so would be to extend the principles to a novel situation and this was not justified.

## COMMENT

The Court of Appeal’s decision in this case marks a notable shift away from a strict application of the orthodox principle of damages, i.e. that damages are compensation for loss actually suffered by the innocent party. Instead, the Court has endorsed a more predictable and easily ascertainable measure of loss for late redelivery, based on the difference between the contractual hire rate and the prevailing market rate at the date of breach, irrespective of the owners’ subsequent commercial plans. In doing so, the Court acknowledged that this approach may result in an inexact indemnity and, in some cases, a windfall to owners. However, it considered that to be an acceptable and justifiable trade-off in the interests of commercial certainty.

What remains less clear is whether the Court of Appeal intended to establish a fixed principle that the market-rate differential will always represent the correct measure of damages for late redelivery, or whether its conclusion arises from the application of the *res inter alios acta* principle. The Court’s emphasis on certainty and predictability may suggest a broader policy-driven preference for a standardised measure of loss for late redelivery. In either case, the Court of Appeal’s decision pushes the debate on *res inter alios acta* a step further and does so in opposition to the approach taken by the Commercial Court. That divergence, coupled with the Court’s express acceptance of imperfect compensation in pursuit of certainty, suggests that *Skyros Maritime* may not represent the final word on this issue.

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