MARITIME DISPUTES NEWSLETTER – MARCH 2020: ARBITRATION AWARDS

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SCROLL DOWN FOR A SELECTION OF RECENT DECISIONS BY LMAA TRIBUNALS, PUBLISHED IN ASSOCIATION WITH THE LLOYD'S MARITIME LAW NEWSLETTER:

Underperformance claims – treatment of positive currents and whether periods of good weather must consist solely of good weather (London Arbitration 27/19)

An LMAA tribunal has held that the time charterers were not entitled to deduct sums for underperformance on the basis that their weather bureau report had wrongly allowed the benefit of favourable currents to reduce good weather performance speed, it used insufficient samples to assess the vessel's performance on the voyage as a whole and it also wrongly treated a period as good weather for subsequent extrapolation purposes when part of that alleged good weather actually comprised heavy weather.

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Underperformance claims – what does "no swell" in good weather definition mean? (London Arbitration 26/19)

In contrast to London Arbitration 24/19 (see below), an LMAA tribunal has held that in order to give meaning and effect to the expression "no swell" in the charterparty's good weather definition, in circumstances where swell is always present in the oceans and where the "no swell" criterion cannot have been intended to exclude all ocean voyages from a performance assessment, only periods of adverse swell should be excluded. The tribunal went on to hold that, notwithstanding the findings of the charterers' weather bureau, whose methodology was inconsistent with the parties' agreement, the vessel had not underperformed.

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Compliance with Pacific Coast Marine Safety Code was safety requirement (London Arbitration 25/19)

An LMAA tribunal has confirmed that compliance with the Pacific Coast Marine Safety Code was, at the very least, a safety requirement under the terms of an amended NYPE 1946 form time charter. The vessel was therefore off-hire in the period stevedores refused to work until appropriate repairs to cranes were carried out.

Underperformance claims – "no swell" in good weather definition meant no identifiable ocean swell (London Arbitration 24/19)

Where a charterparty defined good weather as including "no swell", an LMAA tribunal has found that any identifiable ocean swell would mean the period in question was not good weather, not least because of the potential difficulty of identifying the effect of any swell and whether it was adverse. However, charterers had failed to establish, on a balance of probabilities, how much time was lost due to adverse weather. Their performance claim failed.

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Failure to advance positive case regarding fouling of anchor led to finding vessel was not off hire (London Arbitration 23/19)

An LMAA tribunal has held that charterers' failure to advance a positive case that an anchor had not been fouled meant that, even though the owners evidence was not satisfactory, the anchor had indeed been fouled and that was the cause of berthing delays. Accordingly owners were entitled to unpaid hire.

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