



Alternative Approaches to Loss Calculation in Hull-Fouling Cases

Disputes concerning hull fouling frequently turn on whether the alleged fouling was in existence at the time of delivery into a charterparty. They also turn on how any resulting loss should be measured.

Parties can seek to measure loss through alternative methodologies. This can include an assessment of the vessel's performance using weather routing assessments, comparative performance modelling, or fuel consumption projections.

London Arbitration 4/26 illustrates the evidential and methodological challenges that can arise when alternative approaches are relied upon to establish both the [underperformance of a ship](#) and consequential financial loss.

Background to the Charter and the Claims

In the dispute, the ship was engaged for a single trip charter under an amended NYPE time charter from Mauritania to Italy. A dispute arose concerning a balance of account for unpaid hire. The Owners of the ship sought US\$13,190.34 in hire and a Fuel EU penalty of €12,710.10, as well as the transfer of 475.04 European Emission Allowances under the EU Emissions Trading Scheme. The matter was determined by a sole arbitrator under the [LMAA Small Claims Procedure 2021](#).

Charterers' Allegations of Hull Fouling and Underperformance

The Charterers disputed liability and advanced their own counterclaim for US\$16,779.22. They alleged that the ship had been delivered at the load port with hull and propeller fouling, which led to the ship's underperformance during the voyage. To establish their counterclaim, they relied on a weather routing company (WRC) report based on an all-weather performance assessment as well as an alternative loss calculation spreadsheet they prepared.

The report of a diver's inspection which had been conducted at the load port and the video footage they had taken was relied upon to demonstrate that the fouling could not have developed during the vessel's stay at the load port between 30 January and 6 February. The Charterers contended that the fouling breached the Owners' warranty and was a 'defect in the hull' within clause 15 of the NYPE form. They further argued that the existence of fouling established, in principle, their entitlement to recover losses, leaving only the quantification of damages

for determination.

Performance Assessment and Loss Calculations

Based on the WRC report, the ship had lost 17.14 hours due to reduced performance and consumed excess 23.64 metric tonnes of fuel oil and 0.04 metric tonnes of gas oil from the load port to the discharge ports. The report split the voyage into two periods; full speed and consumption settings, and eco speed and consumption settings.

The Charterers had adopted a period of 78.7 hours stated in the WRC as the representative good weather period to produce an alternative loss calculation. They applied a speed reduction of 8.7%, attributed to hull fouling, across the entire voyage. The resulting time loss was converted into days and multiplied by the ship's average daily fuel consumption to calculate the additional bunkers consumed by the protracted voyage.

Owners' Response

The Owners rejected these calculations. They noted that the diver's video had been taken 20 days after delivery and was therefore not proof of the ship's condition at delivery. At best, they said it showed minor slime accumulation typical of ships that remain stationary in tropical waters and was not capable of affecting the ship's performance.

The Owners also challenged the WRC report stating that it was not reliable evidence as it was marked 'for reference only'. They also claimed it did not apply the contractual parameters in the Charterparty and the weather conditions had not been verified against the ship's logbook data.

They further argued that the ship's performance could only be assessed by reference to the contractually defined good-weather conditions, which the Charterers' analysis exceeded.

Tribunal's Findings

The tribunal found that the diver's report was incomplete, noting in particular the absence of measurements describing the extent of any fouling. The video footage showed a largely clean hull with only limited areas of growth. On the evidence, the tribunal was not satisfied that sufficient fouling existed at the time of delivery to amount to a breach of the Owners' anti-fouling warranty or a defect of the hull.

In relation to performance analysis, the tribunal held that the methodology used in the weather routing report did not reflect the contractual framework. Reports designated "for reference only" were not generally treated in the industry as reliable bases for a definitive performance assessment.

In addition, the analysis considered all weather conditions, did not highlight the effect of weather on the ship's

performance and was weak evidence. The bunker consumption warranty did not also apply in all weather conditions. The report extended the benchmark conditions for assessing the ship's performance without accounting for the additional fuel consumption required for increased weather resistance, the tribunal therefore concluded that the Charterers had not proven an underperformance claim.

The tribunal further observed that, even if the Charterers had proved their claim that the ship was delivered with sufficient fouling to trigger clause 15 or the warranty, the report did not prove the loss suffered. Their loss assessment relied on a simplified percentage-based approach and alternative calculations that lacked proper analytical support and was 'for reference only'.

FuelEU Maritime penalty and EU Emission Allowances

The charterparty incorporated the [BIMCO ETS Allowances Clause](#) for Time Charter Parties 2022 and the [BIMCO FuelEU Maritime Clause](#) for Time Charter Parties 2024.

The Charterers contended that liability for emission allowances and the FuelEU penalty arose in part from the increased fuel consumption attributable to the alleged fouling and the resulting off-hire. The Owners maintained that no causal link had been established between any breach and the emissions liability, and that there was no reliable evidence of excess consumption.

Given the tribunal's findings rejecting Charterers' loss calculations, the underperformance and the fouling claims, the Charterers' counterclaim failed. The Owners' claims for the FuelEU penalty and EU Emission Allowances were therefore granted.

The Owners claim succeeded in its entirety. The Owners recovered costs of £5,000 in full, with interest at 6 per cent per annum, compounded quarterly. They were awarded costs of £5,000 together with interest at 6% per annum, compounded quarterly. Interest at the same rate was also awarded on the awarded sums, with a 30-day allowance from redelivery given.