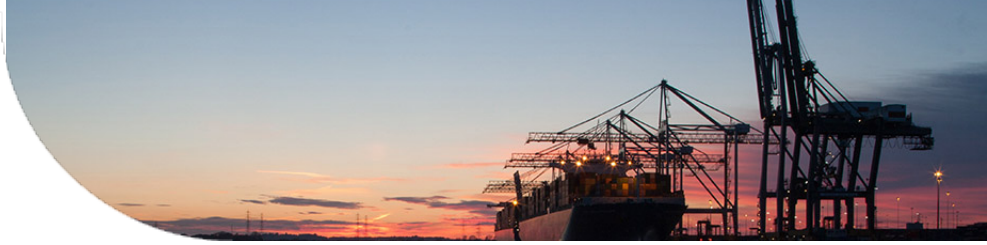

Is drifting an off hire event?

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In *The Athena LLR [2013} EWCA Civ 1723,* the Court of Appeal examined the thorny question of what a charterer had to show in order to deduct off hire when a vessel was drifting for a period of time.

The Athena had been chartered by Minerva Navigation to Ocean Shipping S.A, who in turn sub-chartered the vessel to Transatlantic Commodities. Both fixtures were on a New York Produce Exchange Form 1946. In October 2009, the vessel loaded a cargo of milling wheat at Novorossiysk for delivery at Lattakia or Tartous in Syria. On arrival at Tartous, the Syrian authorities analysed the cargo and decided it was contaminated. They therefore refused importation.

In January 2010, the charterers instructed the master to discharge the cargo in Libya. On 16 January, the vessel left Tartous and the owners ordered the vessel into international waters just outside of Libya and to await further instructions. The charterers re-issued instructions to the master to sail to Benghazi. In the light of the owners' refusal, they put the vessel off hire. The vessel finally proceeded to Benghazi on 30 January after drifting for 10 days.

The off hire clause – clause 15 was as follows:

"That in the event of the loss of time from deficiency sickness, strike or default of master, officers 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; unless caused by the Charterers or Charterers' agents or Charterers' servants and all extra expenses directly incurred including bunkers consumed during period of suspended hire shall be for Owners account and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time lost and the cost of any extra fuel shall be deducted from the hire."

Arbitration proceedings were commenced in order to recover the off hire which had been detained. The charterers claimed the vessel was off hire. They also claimed they had an alternative claim in damages for the time lost as a consequence of the master not following their orders. Two of the three arbitrators decided that the masters failure to comply with the request to sail to the second named port was an off hire event. They also decided on the damages claim that no time was lost to the charterers because had the vessel gone directly to

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Benghazi, rather than drifting – it would have berthed no earlier – so therefore no loss was caused to the charterers. The third arbitrator agreed the vessel was off hire but disagreed that no time was lost. That arbitrators view was that 10 days use of the vessel had been lost because the service immediately required of the vessel had been to sail.

The decision was appealed to the High Court. At first instance, the court found that the charterers were only able to deduct hire to the extent that they could show that there was a net loss of time to the chartered service. On the arbitrators findings there was no net loss of time and therefore the vessel was not off hire.

The matter then came before the Court of Appeal. It decided that the off hire clause was triggered by a cause preventing the full working of the vessel. The full working of the vessel was a reference to her ability to perform that which she was immediately required to do and not with the chartered service of the vessel as a whole. The question to be answered therefore was what time had been lost during the period when the full working of the vessel was prevented. The service that was required by the vessel was to proceed to the roads at Benghazi and the time lost in relation to that was an off hire event.

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