



AUTHOR / KEY CONTACT

Always Afloat



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In a recent arbitration, the Tribunal was asked to consider whether the charterers had breached their warranty that in the ports to which the ship would be ordered, the vessel would always be afloat.

The charter was for a one-time charter trip via the US Gulf to China. The vessel was delayed in berthing at New Orleans/Mississippi River due to the passage of Hurricane Ida and waited at Alliance Anchorage for 34 days. Then the vessel departed and was redelivered in China on 7 December 2021.

Disputes arose between owners and charterers in relation to the final hire accounts.

Factual background

The vessel arrived in the Mississippi River on 18 August 2021 and anchored at the Alliance Anchorage. The master tendered a notice of readiness, and the vessel waited to berth. The weather was calm and sunny.

On 26 August, the master received a weather forecast indicating that a hurricane was fast approaching by the evening of 28 August. He contacted the charterers to seek their urgent instructions regarding the berthing intentions and the availability of tugs to ensure the vessel's safety while at anchorage. The charterers' agents provided a list of precautionary measures. The charterers decided not to shift the vessel out of the river.

On 28 August, the master recommended, before the arrival of the hurricane, to shift the vessel to a loading berth, to have a pilot and tugs on standby and/or to arrange for the vessel to leave the river/anchorage. The charterers did not respond to the master's recommendations. The charterers took the view that these were navigational matters for the Owners and the port authority to decide. The vessel remained at the Alliance Anchorage.

As anticipated, the wind strength increased on 28 August and continued through until 30 August. During the hurricane, the vessel went aground. The master requested a pilot and tugs to shift and re-anchor the vessel. The charterers paid USD 12,320 for the tug assistance and later deducted that amount from the hire. After loading at New Orleans, the vessel finally arrived in China at the discharge port on 26 November.

Hull fouling

Before the vessel arrived at her final destination, while in Singapore on 18 November, the owners instructed a surveyor to examine the underwater hull. The inspection revealed significant fouling. The owners tried to argue that the water at the Alliance Anchorage was not fresh but brackish and that, due to the prolonged stay of the vessel at the Mississippi River anchorage, the vessel's hull became fouled with marine organisms.

The owners advanced a claim for the costs of the tugs' assistance, the time lost during the tug operations, inspection, and cleaning of the hull.

The charterers denied the validity of any of the owners' claims. They said that there was nothing in the characteristics of the port or in the conditions encountered by the vessel that exposed her to risks that could not be avoided by the exercise of good navigation and seamanship and that it was the master's failure in those respects that resulted in his request for tug assistance.

Both parties' nautical experts agreed that:

- The hurricane was not an abnormal occurrence. Hurricane Ida was of an intensity that was within what was expected for the season in the Gulf of Mexico.
- On the anchorage itself, the experts agreed that the initial position was both safe and suitable for the vessel.
- As for the grounding, the experts agreed that the riverbank and bottom were such that a soft contact with them was not detrimental to the vessel's safety.

Conclusion

The Tribunal concluded that the master did not fail to exercise good navigation and seamanship. In those circumstances, it was necessary for the master to request the tug's assistance. Without any causative negligence on the part of the master, the vessel grounded. That amounted to a breach by the charterers of their warranty that at the ports and places to which she would be ordered, the vessel would always be afloat. Re-floating, shifting, and re-anchoring were justified on that basis, and the costs of doing so were for the charterers' account as damages for breach of warranty. Furthermore, the Tribunal held that a ship is not off-hire in circumstances in which the loss of time is caused by events for which the charterers were responsible.

- Accordingly, the owners' claim for the costs of the tug's assistance and the loss of hire succeeded.

Regarding the owners' claim for hull fouling, the Tribunal concluded that the owners' evidence that the water at the Alliance Anchorage was not fresh but brackish and that it sustained the development of marine organisms was weak. The charterers' expert evidence that the water at the Alliance Anchorage was fresh and that the vessel's hull could not have become fouled in fresh water was to be preferred.

- Accordingly, the owners' claim for the costs of the inspection and the hull cleaning in Singapore failed.

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