London Arbitration 22/17 – Demurrage and Time Bar

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The charterparty was an amended Asbatankvoy form and the vessel was chartered to carry a cargo of gasoil from Iran to Fujairah (UAE). The owners claimed demurrage of US$51,178.17 plus interest and costs. The charterers rejected the claim stating it was time-barred, relying on the following charterparty clause:

Claims

Charterers shall be discharged and release [sic] from all liability in respect of any claims under this Charter unless such claim has been presented to Charterers in writing with supporting documents within 30 days from completion of discharge."

The charterers interpreted the words "such claim has been presented to Charterers in writing with supporting

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documents" to mean that each claim had to be presented in writing and *simultaneously* accompanied by each and every supporting document which might be relevant. The charterers said that while supporting documents had been produced, they had not been produced at the same time as the owners' demurrage claim. In support of their interpretation, they relied on *The Sabrewing* [2008] 1 Lloyd's Rep 286, *The Eagle Valencia* [2010] 2 Lloyd's Rep 257 and *The Abqaiq* [2012] 1 Lloyd's Rep 18.

The owners contended that cases relating to demurrage claims were not strictly applicable as the clause in question was not confined to demurrage claims. The clause in the present charter differed from most demurrage time bar clauses as it did not specify exactly what supporting documents had to be presented or whether those documents had to accompany the claim, most importantly it did not refer to "*all* documents".

The Tribunal rejected the charterers' construction of the clause. The Tribunal stated that in the cases relied upon by the charterers, the requirement was expressed as "claim… presented…together with supporting documentation" (*The Sabrewing*) or "claim shall be fully and correctly documented" and "claim with documentation" (*The Eagle Valencia*) or "claim…presented…together with all supporting documentation substantiating each and every constituent part of the claim" (*The Abqaiq*) and as such the requirement in those cases was stronger than the provision in the present clause.

Here, the documents that the charterers complained were absent were the notices of readiness at the two load ports. It was not disputed that copies of these were supplied to the charterers before the cut-off date stipulated by the clause, and were in fact supplied contemporaneously with the events to which they related. It was also not disputed that the supporting documents supplied to the charterers, such as the statements of fact, did record when the notices of readiness were tendered and taken as a whole.

As such, the Tribunal was satisfied that the documentation supplied was sufficient for the charterers to evaluate the owners' claim for demurrage, thereby meeting the requirement that the claim was presented "with supporting documents". Discharge was completed on 4 December 2016 and the owners submitted their written claim and supporting documents (bar the notices of readiness which had already been provided) to the brokers for onward transmission to the charterers on 9 December (more than enough time to ensure receipt within the 30-day deadline). The charterers acknowledged receipt on 12 December. The Tribunal stated that if necessary, it would construe the 30-day deadline as a cut off by when supporting documents should be provided, rather than construing "with" as meaning a mandatory requirement that all supporting documents be provided "simultaneously with" the owners' written claim.

Accordingly the charterers' time bar defence was rejected and the owners were entitled to demurrage of US$51,178.17 plus interest and costs.

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