



Navigating Underperformance Claims in Maritime Law: Key Insights for Charterers

AUTHOR / KEY CONTACT



Linda Jacques
Partner

✉ Linda.jacques@LA-law.com
☎ 01202 702611

Proving that a vessel's speed and fuel consumption warranty has been breached should be a simple mathematical calculation. [BIMCO](#) envisaged that a vessel's logs should be the starting point for that exercise, with a final report from a weather routing company, which was a member of the [World Meteorological Organisation](#), being used to review that data.

Charterers are now increasingly facing a difference in approach by the weather routing companies in assessing whether the warranty has been breached and the approach by [London arbitrators](#) in their preferred methodology in approaching speed and consumption warranties.

London Arbitration 12/24 exemplifies the difficulties faced by charterers in proving a breach of the warranty and highlights what would appear to be a widening disconnect between the weather routing marketplace and the approach of the London arbitration market.

The arbitration was run under the [LMAA SCP](#) and concerned a relatively straightforward claim for a balance of hire. The charterers were disputing the amount of hire based upon a variety of claims for a set-off, including an equitable set-off of an underperformance claim.

The charter set out the speed and consumption warranty. It also included a clause that the charterers could appoint a weather routing company to give the master a recommended route. Evidence of the weather was to be taken from the logs and the weather routing company. In the event of a dispute between the two sets of data – an independent bureau was to be appointed, and their findings were to be binding. This is a common clause, but it is fair to say that independent bureaus or companies are rarely appointed.

In the arbitration, the weather routing company produced several reports on the vessel's speed and performance, highlighting time lost and fuel savings, which the owners denied. The arbitrator was required to decide the dispute and ultimately rejected the weather routing reports. The manner in which the ships' data was recorded and presented does not appear to have been criticised. The arbitrators' focus appears to have been entirely on the weather routings approach to the good weather parameters.

The arbitrator highlighted that the minimum benchmark data required to meet the [industry standard](#) for London arbitration was the following:

1. Wind direction, by reference to compass direction
2. Wind velocity, in m/sec or knots
3. Wind, wave height in metres
4. Dominant swell direction, by reference to compass,
5. Swell height, in metres
6. Combined significant wave height in metres
7. The current set, in compass direction.
8. Current drift in knots
9. Current factor (CF) at six hourly intervals, in knots
10. An averaged diurnal CF for the complete voyage.

The weather routing company had apparently disregarded those benchmark conditions when selecting good weather. This affected 60 per cent of the voyage or 12 days of the data they had examined, and their approach was said to be out of touch with English Law.

- To succeed with a valid performance claim, the Charterers must prove that identified underperformance resulted in a quantifiable loss. The weather routing company had apparently not been able to show that any time was lost on the 19.5-day voyage, where the ship had encountered a variety of conditions, including both adverse and beneficial currents, as well as Beaufort 6 and some sea swell.
- The ship's good weather speed was 13 knots, and there was no overconsumption, so the Charterers should have been advised there was no claim.
- The arbitrator also stated that if a speed deficiency had caused a loss of 9.65 hours, the potential saving in fuel of 18.85 mts of VLSFO had compensated the Charterers for the alleged time lost.
- As the Charterers had suffered no financial loss, they should not have pursued a claim against the owners.

The decision highlights the importance of giving guidance to the weather routing companies on the exact warranty agreed in charterparties.