



Speed and consumption claims and good weather conditions

AUTHOR / KEY CONTACT



Linda Jacques
Partner

✉ Linda.jacques@LA-law.com
☎ 023 8082 7416

A recent London arbitration decision wrestled with the construction of a good weather clause which included two descriptions of the wave height, causing the charterers and the owners to take opposing views on what had been agreed.

The troublesome clause reads as follows:

“Speed and consumption in good weather conditions are as follows:

Good weather conditions are understood to mean wind speeds of maximum Beaufort Force 4 (11-16) and total-combined (sea and swell) significant wave height confined to limits of Douglas Sea State 3 (0.5-1.25 metres) with no adverse currents and no influence of swell... Ballast... about 12.50 knots on abt ifo rmg380 plus abt 0.2 mdo dmb.”

The weather routing company AWT, used by the charterers, calculated the vessel’s good weather speed was only 9.88 knots, rather than the warranted speed of about 12.50 knots after factoring in a 0.04-knot boost to the vessel’s performance.

The owners rejected those calculations claiming there were no good weather days or days on which the conditions set out in the charterparty were met. The matter was referred to arbitration with the central question for determination focusing around the description used by the parties to describe good weather. There was clear conflict in the good weather clause between the words “significant wave height” and “Douglas Sea State 3”.

The charterers’ views

AWT claimed that the “significant wave height” was a measure of the highest third of waves encountered by the vessel and should be described as an average height in metres rather than in a range of heights.

Douglas Sea State 3, in contrast, was intended to refer to a range of wave heights which matched each number on the Douglas Scale and Sea State 3 matched waves between 0.5 and 1.25 metres.

The charterers relied upon an article written by AWT in 2011, which referred to a London arbitration decision

4/11(2011) 826 LMLN 2 in which the arbitrators concluded that a swell height of up to 2-metres fell within the definition of Douglas Sea State 3. Using that arbitration decision, the charterers claimed that it was fair to use a 2-metre swell height as falling into Douglas Sea State 3.

The charterers argued that the word “significant” should be ignored when looking at the recap and the parties’ intentions had been for the good weather to be assessed on the basis of Douglas Sea State 3 with waves of between 0.5 and 1.25 metres in height.

The owners rejected the charterers’ approach to the clause

Their view was that when looking at good weather, the warranty had to take account of the following issues:

1. Wind speeds should not exceed a maximum of Beaufort Force 4 (11 to 16 knots).
2. The total combined sea and swell wave height should not exceed 1.25 metres.
3. The vessel’s speed should not be affected by adverse currents or swell.

They argued the charterers’ approach to wave height, which was that a population of waves between 0.5 and 1,25 m in height, could not correspond to an average height of 2m for the highest third of those waves, as the highest third of the waves in the range could be no higher than 1.25m.

The combined sea and swell height should be restricted to 1.25m. The owners’ expert asserted that “a significant wave” was made up of the wind wave and the swell wave but the Douglas Scale only reflected the wind wave. The ambiguity in the Charter clause should limit the significant wave height to 1.25m.

The reference to Douglas Sea State 3 was simply to explain the range of 0.5 to 1.25m was chosen. They rejected the charterers’ position that good weather was restricted to a period where the total combined (sea and swell) significant wave height was 2m or less. There was no reference to that height in the charter. They also contested AWT’s view that on some days there was no adverse influence of swell.

In addition, they asserted that AWT took no account of the vessel’s deck logs which included data showing that the weather was worse than AWT’s data. They conceded that the AWT report had found one period of good weather but it covered a mere 6% of the voyage and that could not be considered sufficiently representative of the entire voyage.

The decision

The case highlighted the uncertainty that could arise over a good weather description particularly as there was

no objective industry standard of how to equate significant wave height with the Douglas Sea State. The two descriptions were different measures of sea conditions with no apparent formula to convert one into the other.

The arbitrators rejected the charterers' argument that the word "significant" should be ignored. The use of the words "total combined" (sea and swell) that the two parties had in mind a wave height that included both sea and swell waves.

The tribunal had to choose between the owners' interpretation of a significant wave height of up to 1.25m or the charterers' view of 2m. Their preference was to accept the owners' view. The significant wave height should not exceed 1.25 m.

The tribunal also took the view that the vessel's logs should be given weight as the charter clauses did not specify what weight should be given to the weather routing companies report and the logs. In the absence of evidence that the logs had been falsified or the conditions deliberately exaggerated, the logs represented the best evidence of the conditions experienced. The tribunal accepted that there were no periods of contractually good weather and dismissed the charterers' claim.

The arbitrator's approach

The principal issue was with the meaning of "good weather" conditions as described in the recap i.e. the total combined (sea and swell) significant wave height limited to Douglas Sea state 3 (0.5-1.25 metres) with no adverse current or swell.

It was agreed that there was difficulty in reconciling references to "significant wave height and Douglas Sea State 3".

The charterers had argued that the significant wave height was the measure of the highest third of waves encountered and was expressed as an average height in metres rather than in terms of a range of heights. Their view is that Douglas Sea State, on the other hand, referred to a range of wave heights corresponding to each number on a scale. Douglas Sea State 3 corresponded to a population of waves between 0.5 and 1.25 metres.

Their view was that the range of wave heights and the recaps corresponded to a significant wave height of 2 metres and the reference to a significant wave height was either typographical error or the word was not intended to have its technical meaning. This is because the measure of the height of the highest third of the waves could not have meant a general reference to wave height. Their view was that the clause should be read without the "significant" and the attention of the parties was the good weather sea state to be defined as per Douglas Seas State 3 with waves between 0.5 and 1.25 metres in height.

The owners took a different approach.