

soundings

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Message from the Managers



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The Association's AGM is being held at 1000hrs on 17th September, 2009. The supporting papers for the AGM have been mailed to all Members and are also available on the website or by contacting the Managers.

On another matter, a seminar is also scheduled to be held in Athens on 8th October. As in previous years this seminar will take the form of a role play and cover a range of legal issues arising from a fictitious piracy incident. Invitations to this seminar are shortly to be sent to those Members in Greece. We plan to hold similar seminars in other regions in due course.

Take no notice...

In the recent case of *The Zenovia* ([2009] 2 Lloyd's Rep. 139) the English High Court ruled that a time charterer is not bound by a qualified 30 day redelivery notice. Given that redelivery notices are almost always qualified in some way, can an owner ever rely on such a notice?

The *Zenovia* was employed under a chain of charters which required redelivery by "minimum 20 September 2007/ maximum 22 November 2007."

The charterer was obliged to give "not less than 30 days followed by 20/15/10/7 days notice of approximate redelivery date and intended port thereafter 5/3/2/1 days definite notice of redelivery date and port."

On 5th October 2007, the charterer gave a 30 day "approximate notice of redelivery ...at DLOSP 1 sp China on about 4th November 2007 basis AGW, WP, WOG, UCE ..." This notice was passed up the charter chain. However, with market rates rising, the charterer then realized it could fit in an extra voyage before the end of the maximum charter period, and so 10 days later, sent a further notice to the owner with a revised redelivery date of "about 20th

November." By this stage, relying on the previous notice, the head owner had fixed the ship for her next employment, which had a cancelling date of 11th November. The owner claimed the charterer was not entitled to change the expected redelivery date and insisted on redelivery by 4th November, as originally anticipated. Unsurprisingly the case headed for arbitration...

The arbitrators found in the owner's favour. They concluded that the charterer was bound by the original notice of redelivery because of the doctrine of promissory estoppel – in short, they considered it would be unfair for the charterer to change his mind, having given a notice which the owner had relied on. They also decided there was an implied term in the charter that where an approximate date of redelivery was given the

The Supreme Court - farewell to the House of Lords...

For hundreds of years the House of Lords has been the final appeal court in England and Wales. Many of the most famous shipping disputes have been resolved in the wood panelled rooms of the Houses of Parliament, overlooking the River Thames...

However from October, 2009 this will all change as the Supreme Court for the United Kingdom will commence work and decide those cases formally heard by the House of Lords and the Privy Council. Is this a radical change or simply a re-branding exercise?

The Supreme Court was established with the enactment of the Constitutional Reform Act 2005. This Act transfers the judicial functions of the House of Lords to the new Supreme Court. The Court will be situated in Parliament Square, London – just across the road from the Houses of Parliament. As with the House of Lords the Supreme Court will only hear those cases which involve issues of wide public interest.

The Judges of the Supreme Court will, barring a number of retirements, be the current Law Lords of the House of Lords and will be known as Justices of the Supreme Court. A new appointment process for future Justices has however been established whereby a selection commission will be formed where

vacancies arise. In a departure from previous practice in the House of Lords, Supreme Court judges will no longer be drawn exclusively from former High Court and Court of Appeal judges.

So what does this all mean in practice? In terms of the process, little is likely to change, particularly as the same Law Lords will be hearing the cases where leave to appeal is granted. Constitutionally however this is a major step. The Constitutional Reform Act reinforces the independence of the Judiciary and the separation of powers between it and Parliament. A transparent process of judicial appointments made by an independent body reinforces these values. Although this may not feel like a major change the fact that it has taken several hundred years to effect means that it cannot and should not be taken lightly. As Members will be aware the Association has supported the costs of many cases in the House of Lords – this will undoubtedly continue with future appeals to the Supreme Court.

Take no notice...

continued

charterer was obliged not to deliberately do anything which would prevent that approximate date being met.

However, the charterer appealed however and the English High Court overturned the award. It decided that a notice of approximate redelivery expressly given 'without prejudice' could not give rise to any sort of binding commitment on the charterer to reliever according to the notice, and that the charterer had not made a clear and unequivocal promise to the owner that it would not seek to retain the ship in its employment until the last permitted date for redelivery. The court also decided that there were no grounds for implying the additional term suggested by the arbitrators.

This decision has caused much surprise and is arguably at odds with commercial practice. The owner was refused permission to appeal so the ruling is final and a charterer is now unlikely to be bound by a redelivery notice given with qualifications. Given that the vast majority of such notices include qualifications such as WP and WOG the case calls into doubt the whole purpose of redelivery notices. Owners should therefore exercise caution before relying on these notices – especially in a rising market. One solution would be to include a provision in the charter whereby a redelivery notice can only be "withdrawn" due to circumstances outside the charterer's control.

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