

Soundings

First decision on the SUPPLYTIME 2017: hire payment obligations strictly applied

The SUPPLYTIME 2017 form has been considered by the English courts for the first time since its publication. The case of *Boskalis Offshore Marine Contracting BV v Atlantic Marine and Aviation LLP1 [2019] EWHC 1213 (Comm)*, related to the construction of the payment obligations under the SUPPLYTIME 2017, though the judgment could be relevant to similar payment provisions in other contracts.

Under the charterparty, invoices were to be issued 4 days in arrears and payment of hire was to be made 21 days thereafter. Clause 12(d), based on the original SUPPLYTIME 2017 wording, provided that “if the charterers reasonably believe an incorrect invoice has been issued, they shall notify the owners promptly, but in any event no later than the due date, specifying the reason for disputing the invoice”. The charterers disputed hire but failed to challenge the invoices by their respective due dates as set in clause 12(e), being 21 days from receipt of the said invoices.

The tribunal concluded that the charterers’ failure to challenge the invoices within such time meant that they were debarred from raising a defence against the invoices

and came under an obligation to pay the owners the invoiced amount. The High Court upheld the Tribunal’s decision. The court found clause 12(e) to be clear and unambiguous and commented that this interpretation was in line with commercial common sense bearing in mind that cash flow is a matter of considerable, sometimes crucial, importance to the owners of ships.

This decision is potentially significant and sounds a warning to charterers that they must comply with specified notification provisions in order to preserve their right to defend or bring a counterclaim in due course.

We understand the decision is being appealed and an update will be provided in due course.