

Skyros & Agios Minas Court of Appeal Accepts Market Rate Recovery on Late Redelivery

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PRACTICES International, Shipping, Ship Sale and Purchase, Europe, Middle East and Africa, Shipping Dispute Resolution, Offshore Oil and Gas, Offshore Oil and Gas Dispute Resolution

In a significant judgment handed down at the end of 2025, *Skyros Maritime Corporation and Agios Minas Shipping Company v Hapag-Lloyd AG* [2025]¹, the English Court of Appeal held that where a time-chartered vessel is redelivered late, the owners are entitled to recover substantial damages assessed by reference to the market rate for the period of overrun, even if the owners would not have chartered the vessel again had it been redelivered on time.

Facts

The owners of two vessels (the “*Skyros*” and the “*Agios Minas*”) chartered the vessels to the charterers under two New York Produce Exchange charterparties on materially identical terms. Both charterparties were governed by English law.

Separately, and before the redelivery dates under both charterparties, the owners entered into memoranda of agreement with third-party buyers for the sale of the vessels (the MOAs). Under the MOA terms, the owners (as sellers) agreed not to enter into any further charter fixtures before delivering the vessels to the buyers. It was therefore common ground between the owners and the charterers that, even if the vessels had been redelivered on time, the owners would not have chartered them again and therefore would not have earned any further hire.

In breach of the charterparties, both vessels were redelivered late. During the overrun periods, the charterers paid hire at the charterparty rates. Market hire rates for the vessels were, by this time, significantly higher than the charterparty hire rates.

Procedural Background

Against the background of certain assumed facts, the parties asked an LMAA arbitral tribunal to determine, as a preliminary issue, whether the owners were entitled to recover: (i) substantial damages, compensation, remuneration or other monetary relief (owners’ case); or (ii) nominal damages only (charterers’ case). The arbitrators held that the owners were entitled to a substantial award on several bases, their primary basis being that the owners were entitled to a *quantum meruit* for an implied request by the charterers for services outside the charterparties’ scope (i.e. the redelivery overrun period under each charterparty) together with an implied agreement by the charterers to pay for this at current market rates, thereby compensating the owners for providing services outside the scope of the charterparties. The arbitrators also found, in the alternative, that the owners had an entitlement to recover “user damages”, which are available where there has been an invasion of the claimant’s rights to property but no pecuniary loss or physical damage to the property in question, (i.e. user damages consisting of the difference between the charterparty and market rate during the overrun period) or, alternatively, “negotiating damages” (i.e. what would have been agreed in a hypothetical negotiation between the parties in respect of the period of

overrun, which would not necessarily have been the same as the market rate). The charterers appealed the arbitrators' decision under Section 69 of the Arbitration Act 1996.

On appeal, the Commercial Court judge disagreed with the arbitral tribunal's award on both the tribunal's primary basis and its two alternative bases and allowed the charterers' appeal on all three grounds, holding that the owners were entitled to nominal damages only. The judge concluded that the usual measure of damages for late redelivery in circumstances where the market rate is higher than the contract rate is the difference between the two for the overrun period, but that such damages cannot be recovered if the owners have not lost the opportunity to take advantage of the market during the overrun period, which he concluded they had not due to their commitment under the MOAs not to enter into any further charter fixtures before delivering the vessels to the buyers. The judge granted permission to appeal on two issues only: (i) whether the owners are entitled in principle to recover user damages; and (ii) whether the MOAs must be disregarded in assessing any damages.

The Court of Appeal's Decision

The Court of Appeal allowed the owners' appeal and restored the award of the arbitrators, albeit for different reasons. The court held that:

1. The owners were entitled to recover damages in respect of the overrun period consisting of the difference between the market rate and the contract rate and pointed to a "*formidable line of authority*" in support of this.
2. Whilst late redelivery meant that the owners lost the opportunity to conclude a new fixture at the market rate, whether they would or could in fact have done so – or when – is *res inter alios acta* or, put another way, "*a collateral matter disregarded by the law for the purpose of assessing damages*". The arrangements which the owners may have made for the further employment of their vessel, or in this case for the sale of the vessels, arise independently of the breach and, as such, are ignored by the law in assessing damages.
3. (Addressing user damages in the alternative): There is no justification for introducing "...*a novel basis of recovery, outflanking the basic compensatory principle...*" into the law of damages.

Comment

Although the Court of Appeal's decision (and the authorities cited with approval in that decision) may mean that an owner is over-compensated or under-compensated for loss suffered as a result of a charterer's breach, demonstrating that English law, as it stands, does not always give exact indemnity, the decision provides commercial certainty and potentially avoids disputes and litigation.

The Court of Appeal explained that this approach "...*enables accounts to be closed and disputes settled with a minimum of complication and expense. If it were otherwise, a charterer could never know the extent of its liability without investigating what the owner had arranged for the future use of the vessel, and there would be an incentive to take every case to an arbitration in the hope that something would turn up on disclosure*".

What's Next?

On 23 February 2026, the charterers were granted permission to appeal the Court of Appeal's decision to the Supreme Court. The issue to be considered by the Court is whether the owners are entitled to recover substantial damages assessed by reference to the market rate for the period of

the overrun, taking account of the late redelivery and that owners were precluded from chartering the vessels again. At the time of writing, it remains to be seen whether the Supreme Court will uphold the Court of Appeal's findings or reach a different view. This decision raises a point of importance and interest to many in the shipping industry, and we will continue to monitor developments closely.

¹ [2025] EWCA Civ 1529