



# LA Marine Charterparty bulletin

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## News

La Marine are hosting a workshop on the Rotterdam Rules on 16 December 2009 at their southampton office. Please contact us for further information.

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## Laytime and waiting for free pratique

In AET Inc Ltd v Arcadia Petroleum Ltd [2009] EWHC 2337 (Comm) – the English Court was required to consider whether laytime continued to run after NOR had been given but before free pratique had been granted.

The tanker "Eagle Valencia" arrived at Escravos but was unable to berth because it was already occupied. The vessel gave N.O.R at 11.48 hours on 15 January 2007 and the owner's view was that laytime commenced 6 hours later in accordance with clause 13(3) and 14 of Shellvoy 5. Unfortunately the port health authority only granted free pratique the next day. Charterers accepted the NOR was valid when it was given but claimed that it was "invalidated" when the vessel failed to secure free pratique within six hours of being given. This was because of the wording of a supplementary Shell clause - S.A.C 22-headed the "clearance clause" which seemed to say that time would not run if the owners failed to obtain free pratique within 6 hours of giving NOR. They had failed to obtain free pratique from the authorities with six hours of giving NOR and the charterers alleged time should therefore not count until berthing on the 19 January. The charterers arguments would have stopped laytime running for two days.

The owners claimed that the delay in obtaining free pratique was for a matter wholly out of their control. In the event if charterers were right it would produce an unreasonable result. That result could be avoided by using three general principles for construing contracts:-.

1. Those general principles were that the vessel in an ideal world would have entered the berth immediately on arrival and that time should run 6 hours after the vessel was lying in an area where she was ordered to wait; the usual waiting place.

2. that a written NOR had been tendered.
3. that the specified berth was accessible - and if not accessible what was to happen?

The Court was required to address the underlying conflict in the wording of the Shellvoy form and SAC 22 – "where the parties had not used language with precision". The Court took the view that charterer's view of precise words in SAC 22 were misplaced and that the dispute should be decided against the background of more general principles. The Court decided that there was no "immediate" requirement on the owners to obtain free pratique in the six hours following N.O.R. The obligation on the owner was to obtain free pratique before entering the berth and since this had been done the original N.O.R. was valid and time continued to run.

The Judge concluded that "this demonstrated that SAC 22 was a very badly drafted clause. It was very difficult and perhaps not possible to interpret it in a way which achieved absolute coherence. Rather one should be looking to give the clause a fair and reasonable commercial construction, so far as language permitted". He concluded that owners succeeded in their interpretation of the clause and the general principles that should be applied.

The number of clauses dealing with laytime and demurrage in charterparties continues to grow. The wording of clauses have become more convoluted and are sometime difficult to construe when there are a number of them. This decision perhaps demonstrates the unwillingness of the courts to spend vast amounts of time trying to unpick/construe very precise clauses attempting to deal with very particular instances where time should not count.