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## Early termination of a charter – the pitfalls of claiming damages

The Commercial Court has recently looked at the question of damages following the early redelivery of a vessel under a NYPE charter. In *Dalwood Marine Company and Nordana Line A/S “The Elbrus”* [2009] EWHC 3394 (Comm) a London arbitration award came before the Court on a point of law.

The background to the dispute that the vessel “Elbrus” was redelivered 39 days earlier than the fixed period of the charter. On redelivery owners claimed there was no available market for the vessel off the West Coast of Africa and a decision was taken to sail the vessel to dry dock in Setubal. There was a dry docking provision in the original charterparty. After dry docking she was then delivered into a sub charterparty. The sub charter ended some 4 weeks after the date on which the “Elbrus” would have been delivered under the original charter. The charterers were keen for the arbitrator to look at the money made on the sub charter as a whole - not just up to the period when they would have redelivered the ship. The owners were keen to restrict any consideration of the hire made up to the date the ship would have been redelivered under the charter.

The arbitrators concluded that the owners had acted reasonably in dry docking the vessel. However, the difficulty for the owners was that the rate they fixed the vessel for on her sub charter was at the USD18,100 per day as opposed to the charter rate of USD10,800 a day. In financial terms, if the charter had not been

prematurely terminated the owners would have earned USD421,200, i.e. USD10,800 per day from 4 April to 13 May 2005. As a result of the premature termination, the owners were able to earn the higher rate under the sub charter of USD18,100 per day from 6 March to 13 June 2005. Effectively this meant they earned USD226,000 more between 4 April and 13 June. The question for

**“The owners had suffered no loss because the Court took into account the increased earnings”**

the arbitrators was to determine how much of the owners profits on the overrun period if any should be taken into account - when deciding how much loss they had made as a result of the early redelivery. They answered that by taking all of the profit into account

This reasoning seems to run counter to some well known legal publications such as *Scrutton on Charterparties* where it specifically says that “no attempt will normally be made to determine the relative position to the ship owner in the period after the date on which the charter voyage would have been completed unless there was clear evidence the ship owners retained the benefit by reason of a longer duration of the substitute charter”.

Against that background, the tribunal and the Court decided that even though there had been a breach of the charter in re-delivering the vessel early, the owners had effectively suffered no loss because the arbitration tribunal/Court was prepared to take into account the increased earnings beyond the fixed period of the charter.