

Measures Would be Taken by the Courts in Deciding whether to Trigger the Off-hire Clause

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Abstract: In the scope of carriage of goods by sea, the central issue is the vessel. Obviously, the efficiency of the vessel is of utmost importance not only to the shipowner who render the vessel to earn hire but also the charterer who pay the hire in the purpose to utilize the vessel. Sometimes, the vessel might be out of order or cannot work efficiently. Therefore, there must be the collision of interests between the parties on whether paying the hire continuously in this situation. In other words, it is the problem of triggering off-hire clause in the charterparty. Though the standard forms, such as NYPE and Baltime form have the off-hire clause, however, the utilization of the clause is ambiguous according to different situation. Therefore, the critical challenge faced by the Court is how to trigger the off-hire clause more reasonable so that the interests of parties can be balanced.

Key words: On-hire; Off-hire; Seaworthiness

1. INTRODUCTION

It is commonly believed that the most critical point involved in the charterparty is the efficiency of the vessel. The reason of the charterer signing the charterparty is to utilize the full efficient vessel for affreightment. Meanwhile, the shipowner wants to earn the hire by putting the vessel under the charterparty with least risk. So, there is collision of interests between charterer and shipowner. In essence, the keystone of the collision is whether the vessel is fully efficient and how to apportion the risks between two parties.

In this essay, the current approaches taken by English Courts for alleged failure of the shipowner to provide fully efficient vessel to render the service required by the charterer will be analyzed. Meanwhile, the irrationality of some of them will be discussed, and be compared with those taken by the Courts of US.

This topic will be discussed as follow. Section II argues that the causes of off-hire and are these causes reasonable to trigger the off-hire clause? Section III discusses when should the hire be resumed? Section IV talks about how could the shipowner escapes from responsibility.

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2. THE RATIONALITY OF SEVERAL CAUSES OF OFF-HIRE CLAUSE UNDER STANDARD CONTRACTS

In Anglo-American common law, during the period of charter, the obligation of the charterer to pay the hire on time continuously is absolute.² Namely, “hire is payable throughout the charter period irrespective of whether the charterer has any use for the vessel”³. The charterer cannot postpone, deduct, reject paying the due hire relying on any reason.⁴ But the charterer’s object of paying hire is to utilize the ship full efficiently, so, it is unfair to ask him to pay the hire continuously irrespective the efficiency of the vessel. To protect his own interest, shift the risk of time loss, the charterer will turn to the off-hire clause of the time charter party. So, the challenge of balancing the interests between charterer and shipowner is faced by the court. The central issue of this problem is the rationality of the causes of off-hire.

In respect of the freedom of contract, the parties have to put corresponding clauses into the particular contract to protect their relevant interest. Therefore, it is up to the parties’ choice of the contents of the contract. This principle is also involved in the off-hire clause, the nature of which is an allocation of risk not damage breach.⁵

Therefore, when the charterer alleged that the vessel is not in full working order, and intended to shift risk to shipowner, it has to inspect whether the off-hire clause has been inserted into the charterparty. As Kerr, J said in *The Mareva A.S.*⁶ “It is settled law that prima facie hire is payable continuously and that it is for the charterers to bring themselves clearly within an off-hire clause if they contend that hire ceases.” However, it is not to say without the off-hire clause the charterer can get no remedy. Under English common law, if the breach goes down to the root of contract, the innocent party also can terminate the contract.⁷

Nowadays, with the development of the affeightingment, the standard contracts are used frequently. Especially, the NYPE 46’, NYPE93’, and Baltime form, all of them including the off-hire clause. However, there are some differences between these standard charterparties as well as different interpretation of the clause according to particular tradition of a country. Hereafter, several ambiguous points involved in the application of the off-hire clause will be discussed critically.

2.1 The tests of whether the vessel is in full working order or not—the central issue in deciding the application of off-hire clause

As the words in NYPE 46’, “...preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost...”⁸ So, the charterer has to prove there is loss of time and this loss is caused by the vessel’s inability to work fully.⁹ It is easy for the charterer to prove that there is loss of time. But, the critical issue is how to decide the inability of full working of the vessel.

There are two leading theories in testing this ability of full working. They are “...whether she is fully capable of performing the service immediately required of her;”¹⁰ and “...preventing the full working

² See, <http://lib.hzu.edu.cn/q.htm?237334>

³ Supra note 1, pp84.

⁴ Michael Wilford, Terence Coghlin, John D.KlmBael. *Time Charters*, 5th edn. London, HongKong, LLP.2003. pp405.

⁵ Supra note 9.

⁶ [1977] 1 Lloyds Rep. 368.

⁷ Supra note 1, pp14.

⁸ New York Produce form, 1946. Article 15.

⁹ The HR. Macmillan [1974] 1 Lloyd’s Rep. 311. CA.

¹⁰ The AQUACHARM [1982] 1WLR. 119.

of the vessel' dose not require the vessel to be inefficient in herself."¹¹

By far, the Court prefers the former test.¹² However, proponents of the second idea argue that there is ambiguous in application of the concept 'the service immediately required by charterer' in practice'.¹³ The arbitrators and judges in *The Berge Sund* case¹⁴ came across this problem. In this case, the arbitrators and the court of first instance held that the charter's immediate requirement is loading, so that the vessel was not in full working order in that sense. And because of the loss of time, the charterer has the right to cease the payment of hire. However, this judgment was overset by the Court of Appeal. It deemed the immediate requirement of charterer is to continue the cleaning activity for which the vessel is fully efficient, so that there is no loss of time. According to this case, the hardship of estimating the service immediately required by charterer is obvious. Accordingly, there is dispute of rationality between these two types of test.

2.2 What the Court should always keep in mind when trigger the off-hire clause – differences between the standard contracts and different interpretation between the UK. and the US

Suppose that the vessel cannot work fully, and accordingly leads to the loss of time to the charterer, the Court has to inspect which kind of standard contract is applied before trigger the off-hire clause. Under the Baltime form, there is a tolerance of 24 hours before triggering the off-hire clause. For example, in *Jacobs* case¹⁵, the vessel was not in full working order, however, it just kept in that status less than 24 hours. Therefore, the Court held that the vessel is not off-hire. What the Court should pay attention to is that under neither NYPE46' nor NYPE93' there is this period of tolerance. So, the Court will trigger the off-hire clause so long as those requirements are satisfied under NYPE form. Therefore, if the Court does not inspect which kind of standard contract is in use, mistake might be made.

The dispute exists not only in the rationality of two distinct tests of triggering the off-hire clause, but also in the differences inside these two tests.

2.2.1 When the vessel is inefficient in herself.

The charterer has the absolute right to cease the payment of hire when the loss of time is caused by the inefficiency of the vessel. The inefficient vessel means that the vessel cannot render the service immediately required by the charterer according to its own defect—internal causes.¹⁶

It is easy for the Court to award the charterer with the right to cease paying hire in this situation. Although the those standard contracts have listed some express causes which are according to the inefficiency of the vessel, there still exist some disputed points which the Court should keep eyes on before trigger the off-hire clause.

For example, there is difference between the UK. and the US. in interpreting the deficiency of crew. In the leading case, *Royal Greek Government v. M.O.T.*¹⁷ the Court held that the words "deficiency of men" of this charter meant numerical insufficiency, the contrasting word being "sufficiency". So, the rejection by the officers and crew to sail did not trigger the off-hire clause. Under English law, the words "deficiency of men" just be read in terms of quantity not quality. This interpretation is reasonable under NYPE46'.

¹¹ The LACONIAN CONFIDENCE [1997] 1 Lloyd's Rep. 139.

¹² The Roachbank [1987] 2 Lloyd's Rep. 498.

¹³ Moquan Zhu, *Off-hire Clause*, Annual of China Maritime Law. 1995.

¹⁴ [1992] 1 Lloyd's Rep. 460.

¹⁵ Meade King v. Jacobs. [1915] 2KB. 640.

¹⁶ Supra note 11, pp407-412.

¹⁷ [1948] 82 Ll.L.Rep. 196.

However, under American law, the meaning of these words be extended to include the incapability and unwillingness to work of the full complement of officers and crew.¹⁸ The Court in the US gives more protection to the charterer than the UK. Nevertheless, under NYPE46' there is no express provision for these qualitative causes, so it is questionable whether these inefficient issues could be deemed as "deficiency of men" under that form.¹⁹ The English Court considers that these qualitative causes held by Americans are included in the "any other causes" under NYPE form.²⁰ However, the interpretation of the Americans is more reasonable for balancing the interests of two parties. To make these words unambiguous, the NYPE93' replaces "deficiency of men" with "deficiency and/or default and/or strike of officers or crew".²¹ Evidently, the NYPE93' support the view of Americans.

To make sure the judgment is correct. The Court should distinguish the law system on which the off-hire clause has been constructed and the form under which the clause been interpreted before triggering the off-hire clause.

In practice, there is another listed cause be disputed, the "detention by average accidents to cargo". Indeed, it is the problem of distinguishing the "delay" and the "detention". The English Court deem that the "detention" means the issue by which the full working order of the vessel be prevented,²² eg. The loading process is suspended by the fire during the laytime. However, if the average accident to cargo just leads to a longer working time not preventing the full working order of the vessel, the charterer cannot cease to pay hire resort to this. This prolongation just constructs the "delay" not "detention". In the *Mareva A.S.*,²³ the Court held that this damage to cargo lead to a "delay" at most, because the vessel's ability to work fully is not thereby prevented or impaired, so, it is not a "detention" which can trigger the off-hire clause in that sense.

What should be talked about is the nature of "detention". In *The Vogemann v. Zanzibar Steamship Co.Ltd*²⁴, Phillimore,J., held that "A vessel is detained when she is sent back to a port for repairs and so long as she is kept for the purpose of being repaired. But when the repairs have been finished, it is not detained any more."²⁵ This traditional concept of "detention" had been challenged by Rix, J., in *The Jalagouri*²⁶. He argued that according to the view of Kerr,J. in *The Mareva A.S.*,²⁷ "a detention was intended to refer to some physical or geographical constraint upon the vessel's movements in relation to her service under the charterparty."²⁸ So, "the order by the port authorities, as well as being a physical constraint was also a legal restraint, also within the logic of the concept of a detention"²⁹. And in this case, the immediately required service by the charterer is to discharge all of the cargo which the vessel cannot render due to the constraint by the port authorities. So, the Court in this case held the vessel was detained and be off-hire for this period.

The judgment of this case leads to the consideration of the distinction between causes which are totally extraneous--extraneous or external causes, and causes which are attribute to the condition of the ship itself—internal causes³⁰. Because of the rule which the English Court always follow is that the totally extraneous causes cannot trigger the off-hire clause. This point is of extremely importance to the Court when make the judgment refer to off-hire. So, the problem faced by the Court when the vessel is efficient but cannot fully work will be criticized below.

¹⁸ Supra note 11, pp426-428.

¹⁹ Ibid, pp428.

²⁰ Supra note 21.

²¹ 1993 revision of the New York Produce form.

²² Supra note 21.

²³ [1977] 1 Lloyd's Rep. 368.

²⁴ [1901] 6 Com. Cas. 253.

²⁵ Ibid.

²⁶ [2000] 1 Lloyd's Rep. 515 (C.A.)

²⁷ Supra note 31.

²⁸ Ibid, 382-383.

²⁹ Stephen D. Girvin. "Detention" and the NYPE Off-Hire Clause L.M.C.L.Q. 2001, 2(May), pp191.

³⁰ Weale, *Can an Efficient Vessel be Placed Off-Hire?* (2002) 33 Journal of Maritime Law&Commerce, No.2.

2.2.2 When the vessel is efficient.

By now, the drastic dispute occurs on the question: can an efficient vessel be off-hire? In other words, it is the problem about external causes of off-hire.

Under the standard contracts, this problem is governed by the words “any other causes”. According to the “ejusdem generic rule”, “any other causes” must be limited in the scope of its context in the off-hire clause and the charterparty.³¹ So, these causes must have some connection with listed causes in the standard contracts. English Court held that any other causes should refer to the vessel’s physical status. So, these causes which has no connection with the physical status of the vessel such as disaster, war, prevention by local authorities or arrest according to debt are not “any other causes” in off-hire clause.³² However, when the words “whatsoever” be added, the interpretation of the clause becomes ambiguous. In common sense, when the “whatsoever” be added, the clause will not be limited by the “ejusdem generis rule”. But, to what extent the limitation is eliminated? Can the off-hire clause be triggered by totally extraneous causes with “whatsoever”?

Where the “external” is an underlying cause that is “internal” to the vessel

In *The Mastro Giorgis*³³, the word “whatsoever” was added. Lloyd.J., said “But here the arrest was not an extraneous cause in that sense as Court line case³⁴. Since it affected the legal status of the vessel...There is no distinction to be drawn between legal incapability and physical incapability.”³⁵ In this case, the vessel had been arrested in respect of cargo damaged during the voyage. The essential cause of the off-hire is the damage of cargo which is the internal inefficiency of the vessel. So, the Court held the vessel off-hire.

Another example is *The Apollo* case³⁶, in which the vessel had been delayed because of the port authorities had good reason to believe there was typhus on board the vessel. If the alleged health risk made good, would undoubtedly affect the efficiency of the crew, so that trigger the off-hire clause. In fact, this alleged health risk is an underlying cause which is “internal” to the crew.

In a word, the Court will award off-hire to the charterer without hesitation, when the external cause is connected with an internal cause which if made good would trigger the off-hire clause.

Could the totally extraneous cause trigger the off-hire clause?

The most critical point for the Court is whether an efficient vessel can be off-hire by totally extraneous causes?

English Court follow the rule that the off-hire clause cannot be triggered by totally extraneous causes which is supported by Mr Justice Lloyd in the “*Mastro Giorgis*”³⁷. And this rule is quoted by several leading cases.

In the Court line *Ltd v. Dant & Russell Inc.*³⁸ though the vessel was prevented by the boom in the river, the Court held that the vessel is still on-hire because she herself remained “in every way sound and well found”. Branson J., in this case deemed the artificial obstruction in a river was a totally extraneous cause, so the vessel was not off-hire.

The similar excuse is purported by the Court in *The Aquacharm*.³⁹ In which Lloyd. J.,said “ If the vessel is fully efficient in herself, then she is not off-hire, even though she is prevented from performing that service by some external cause...”

³¹ Supra note 11, pp418.

³² Supra note 21.

³³ [1983] 2 Lloyd’s Rep. 66.

³⁴ Court line v. Dant & Russell [1939] 3 All ER. 314.

³⁵ Supra note 41.

³⁶ [1978] 1 Lloyd’s Rep. 200.

³⁷ Supra note 41.

³⁸ [1939] 3 All ER. 314.

³⁹ [1980] 2 Lloyd’s Rep. 237.

However, in *The Laconian Confidence*⁴⁰, Rix J. deemed that the extraneous causes can trigger the off-hire clause. He said "...the qualifying phrase 'preventing the full working of the vessel' does not require the vessel to be inefficient in herself. A vessel's working may be prevented by legal as well as physical means, and by outside as well as internal causes."⁴¹ In fact, his idea is more reasonable. Because, the reason that the charterer to rent a vessel is to utilize it for his purpose. So, if ask the charterer to pay hire when the vessel is not in full working order is obviously unfair. From this view, the judgments of Court line case and *The Aquacharm* are unreasonable to the charterer. The proponents of the traditional rule may argue that these two cases are reasonable, because there is no added "whatsoever" in any one off-hire clause. Herewith, another example should be given, *The Roachbank* case⁴².

The off-hire clause in this case was amended, but the vessel remained on hire. In this case, the vessel was refused to berth by the Kaohsiung port authorities according to the large number of refugees on board. To the natural meaning of the "whatsoever", a totally efficient vessel maybe prevented from working, so that the full working order of the vessel was prevented. And the external cause was connected with the problem of the vessel herself, namely the refugees on board. Accordingly, the judgment in this case was unfair to the charterer.

The question "if the 'whatsoever' be added into the off-hire clause, should the rule that totally extraneous causes cannot trigger the clause be followed or not" is always in front of the Court. It is the problem of distinguishing the efficient vessel in narrow sense and that in broad sense. Mr Justice Webster in *The Mastro Giorgis* in which the clause was amended said that a fully efficient vessel might under certain circumstances, come within the words 'preventing the full working of the vessel'.⁴³ However, Mr Justice Lloyd in this case took the different view. He deemed that when the vessel was fully efficient and capable in herself, there is no problem of "preventing the full working".⁴⁴ The different opinions of these two judges come from their different angles. Lloyd J was considering the cause while Webster J was considering its effect. The function of the "whatsoever" to extend the scope of causes is affirmed by Rix J, in *Laconian Confidence*, where he said "Where the clause is amended to include the word 'whatsoever', I do not see why the interference of authorities which prevents the vessel performing its intended service should not be regarded as falling within the clause, and I would be inclined to say that remains so whether or not that interference can be related to some underlying cause internal to the ship or is merely capricious."⁴⁵ So that, in his view, the totally extraneous causes can lead to off-hire, provided the full working of the vessel is affected by them.

English Court always hold that the totally extraneous causes cannot trigger the off-hire clause.⁴⁶ However, it is unfair to the charterer because these causes also can affect the full working of the vessel which is opposite to the purpose of him. English Court gives too much protection to the shipowner without thinking about the balance of the interests between parties.

Compared with English Court, American Court gives more protection to the charterer. Take the arrest of the vessel for example. In most of the cases under American law, the charterer has the right to cease the payment of hire when the vessel is arrested without the responsibility of him.⁴⁷

Can extraneous causes lead to off-hire without the word "whatsoever"?

The Court may come cross the case in which a fully efficient vessel is prevented from full working. However, there is no amendment of the off-hire clause. Should the Court keep the charterer paying the hire continuously or award him the right to cease the payment?

This problem would be solved easily if there was express provision in the charterparty. In *The*

⁴⁰ [1997] 1 Lloyd's Rep. 139.

⁴¹ Ibid.

⁴² [1988] 2 Lloyd's Rep. 337.

⁴³ Supra note 38.

⁴⁴ Ibid.

⁴⁵ Supra note 48.

⁴⁶ Supra note 21.

⁴⁷ Supra note 11, pp432-434.

Jalagouri⁴⁸, the parties put a protection provision for the vessel be seized or detained during the currency of the charterparty. So, the Court treated the detention of the vessel by the port authorities as a cause of off-hire in respect of the parties' intention without added "whatsoever" into off-hire clause.

However, the critical point is when there is no this kind of express provision, what will the result be?

Rix J in *The "Lanconian Confidence"* advocates that the reasonable intervention of authorities acting on the suspicion of a named event is enough to trigger the off-hire clause without amendment of the off-hire clause.⁴⁹ And in *The Bridge Maru No.3*.⁵⁰ Mr. Justice Hirst held the same view. He argued that "the failure of the pump to comply with the regulations was a potential challenge to the efficiency of the vessel"⁵¹. Therefore, the off-hire clause should be triggered without the word "whatsoever" in his view.

However, because this view is inconsistent with the traditional rule followed by English Court, it is challenged by a lot of scholars. As what said by Weale in his article, if the provision does not include 'whatsoever', the Court should not award off-hire to the charterer by analogy what suppose to be with that actual existence.⁵²

The basis of this confusion is the intention of the Court to protect charterer or shipowner. Under English law, because of the "contra proferentem rule", the charterer takes the risk of this confusion. So, the English Court act in the interest of owner.

3. WHEN TO RESUME THE HIRE?

When the problem of triggering the off-hire clause is solved, the Court has to decide when the hire should be resumed. There are different points of resumption under different standard forms, and the utilization of a same form is distinct in different countries. Currently, the basic distinction is drawn between "net loss of time" and "period" off-hire clause.⁵³

3.1 Net loss of time

Both NYPE and Baltime form take this measure.

Pure "net loss of time" asks the Court to put the whole period be lost by the inability of full working of vessel off-hire.⁵⁴ However, under English law, the resumption points in these two forms are when the vessel is again fully efficient.⁵⁵ It is unfair to the charterer, because the period cost by the vessel from the repairing port back to the point where the accident occurred is also lost.

Most of disputes come out under NYPE form, because the new Baltime clause stipulated the resumption point at the moment when the vessel is again able to perform the service immediately required.⁵⁶ In the UK, the leading case *Vogemann v. Zanzibar*⁵⁷ laid the rule that so long as the vessel is fully efficient again, the hire should be resumed. The reason of the judgment in this case is that the calculation would be too complicated to do which is farfetched in logical. In practice, though the account of the net time loss might be difficult, however, it does not mean that is impossible to work it out. So, the authority of this case is suspect.

⁴⁸ [2000] 1 Lloyd's Rep. 515 (C.A.)

⁴⁹ Supra note 48.

⁵⁰ [1985] 2 Lloyd's Rep. 62.

⁵¹ Ibid.

⁵² Supra note 38.

⁵³ Supra note 11, pp406-407.

⁵⁴ Ibid,pp406.

⁵⁵ Ibid, pp407.

⁵⁶ Baltime 1939.

⁵⁷ [1902] 7 Com Cas 254.

The American Court adopts the pure “net loss of time”. In *The Chris S.M.A.No.199*[1958]⁵⁸, the vessel had a screw loose so have to deviate to repair. Arbitrators held that only when the vessel came back to the point where the deviation occur the hire should be resumed. Due to this confusion, the 1993 revision of NYPE form insert the putting back clause into the Article 17, so, supporting the view of Americans.

Anyway, the Americans pay more attention to the interests of the charterer compared with English.

3.2 “Period” off-hire clause.

It is no denying that, sometimes, the calculation of the net loss of time might be very difficult for charterer. To avoid this burden, the “period” off-hire clause comes in to sight.

Under English law, when the vessel lose efficiency totally, “period” is same with the “net loss of time” clause. Under this clause, the complex account of net loss of time could be avoided. However, when the vessel is partial efficient, the “period” clause cannot allocate the risk between charterer and owner exactly. In *the Hogarth v. Miller*⁵⁹, though the high-pressure engines were broken down, the low-pressure engines were still working. So, in the view of owner, the charterer might got more from the off-hire clause than that his actual loss compared with under “net loss of time” off-hire clause.

In sum, the English Court should take the pure “net loss of time” way to calculate the loss of charterers, because of the failure of the purpose of charterers to rent the vessel during the whole period. Meanwhile, it can balance the interests well when the vessel is in partial efficiency.

4. HOW CAN THE SHIPOWNER BE RELEASED FROM THE RESPONSIBILITY OF OFF-HIRE CLAUSE?

When the charterer alleged that the vessel cannot provide the service then required, and the fact is that the vessel is not in full working order, does the shipowner has to take the risk of the off-hire clause absolutely? The answer is “no”. The court should allow the owner to prove that he is relieved from the responsibility possibly.

If the owner can prove that the inefficiency arises from the charterer’s responsibility or non-actionable fault, he takes no responsibility for this inefficiency, and the hire is still payable.⁶⁰

In case the delay is caused by the charterer’s breach, he has no right to trigger the off-hire clause. Under the English Contract Law, there is a common principle that: no one can get benefit from his own breach.⁶¹ Clearly, the off-hire clause is also restricted by this principle, therefore, the off-hire clause cannot be triggered in this situation.

According to the “fortuitous” feature of the “any other cause” under the off-hire clause⁶², if the cause of the delay is the natural result of complying with the charterer’s order, the hire is payable continuously. For example, if the vessel is ordered by the charterer to wait for an extremely long time in the port for loading, accordingly, the vessel’s bottom is fouled so that lead to the reduction of speed. The hire should not be deducted because the inefficiency is the natural result of the order of the charterer.

In the end, the attention should be put on the detention caused by the status of the cargo itself. Although the NYPE46’ dose not prescribe the rule Court should follow refer to the cargo itself, the NYPE93’ stipulates that the average accident caused by “inherent vice, quality or defect of cargo” cannot

⁵⁸ Supra note 21, pp185.

⁵⁹ [1891] A.C. 48.

⁶⁰ Supra note 38.

⁶¹ Supr note 7.

⁶² Supra note 11, pp420.

trigger the off-hire clause.⁶³

To sum up, the Court has to care about these circumstances in which the off-hire clause should not be triggered.

5. CONCLUSION

The warranty of efficiency of the vessel is a continuous process from the point of loading to the expiration of the charterparty. The inability of the vessel to render the required service by charterer will lead to different results at different phrases of the charterparty. The efficiency of the vessel in the voyage is governed by the off-hire clause. Most of the confusions come out of the decision of triggering the off-hire clause by the Court. This paper has analyzed the approaches taken by the English Court in the situation when the vessel is alleged not in full working order from an objective perspective, emphasized several confused points involved in the utilization of the off-hire clause under standard forms, and compared the different interpretations of the clause between the UK. and the US. Meanwhile, discussion of what is the more rational interpretation of the clause by the Court was inserted.

On all accounts, under NYPE form, the American court gives more protection to the charterer compared with English Court. However, it still does not balance the interests between charterer and shipowner. When come across the case in which the vessel is alleged cannot provide the service then required, the English Court should not only think about which standard form is in use and under which country's law this contract be constructed but also keep eyes on the rational way to balance the interests between the parties. Though, every proposition has its limits. Much more discussion on this topic is required.

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