

Charterers liable for loss of hire for 2-day delay at Perth and additional 3 days required to sail to Singapore; loss of hire during delay at Singapore (at hire rate of Europe fixture); difference in hire rates between Europe fixture and replacement fixture

Damages claimed must be factually and legally caused by the breach (*Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782), must not be too remote, and claimants must reasonably mitigate losses arising from the breach

i) Factual causation satisfied

Charterers' breach factually caused delays at Perth, late arrival at Singapore, consequent reduction in subsequent hire income from loss of fixture and from delay while seeking alternative employment

ii) Legal causation satisfied

Fair to hold Charterers responsible notwithstanding supervening effect of fuel treatment issues:

A. Contracting parties intended to allocate to Charterers the risk of all consequential losses associated with their supply of off-specification bunkers

Clause 65 of the charterparty provides at (5) that Owners shall not be held responsible for consequences in the event that off-specification bunkers are supplied

B. Charterers' breach gave Owners no viable remedial options other than to adopt fuel treatment measures

No chance for vessel to meet Europe fixture if Owners had elected to debunker. Fuel treatment was the only option that allowed Owners to remedy the effects of Charterers' breach while still meeting the laycan at Singapore

Fair to hold Charterers responsible for problems arising from the treatment measures as their breach dictated the circumstances of Owners' remedial actions

iii) Damages are not too remote

The House of Lords has held that the loss of hire income arising from loss of a subsequent fixture due to a charterer's breach is too remote to be recovered (Transfield Shipping Inc v Mercator Shipping Inc [2009] 1 AC 61) ("*The Achilles*")

In light of the uncertain ratio in *The Achilles*, the Singapore Court of Appeal has clarified in MFM Restaurants Pte Ltd v Fish & Co Restaurants Pte Ltd [2011] 1 SLR 150 (at [115]) that the position in Singapore remains open and subject to analysis under the remoteness principle in Hadley v Baxendale [1854] 9 Exch 341 ("*Hadley*")

Under *Hadley*, damages are not too remote if they are a natural result of the breach in question (establishing imputed knowledge of the breaching party) or held in the reasonable contemplation of the breaching party (establishing actual knowledge) (Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [1949] 2 KB 528)

Charterers' had imputed knowledge that breach would cause loss of hire income due to loss of subsequent fixture, and delays while seeking alternative employment

Charterers supplied off-specification bunkers with the knowledge that it would remain onboard at time of redelivery. Delays due to fuel treatment or debunkering arise naturally as a result of Charterers supplying off-specification bunkers at redelivery

The House of Lords endorsed the view that "in a market where owners expect to keep their assets in continuous employment", charterers of vessels could be expected to foresee that any delays would likely result in the missing of the subsequent fixture (*The Achilles* at [30])

Reasonable charterers would also expect delays to arise while seeking replacement fixtures, thus resulting in loss of hire income while vessel remains unemployed

iv) Owners have reasonably mitigated losses arising from breach

The requisite standard of reasonableness in mitigation takes into account subjective commercial circumstances; threshold "will not be difficult to meet" except in cases of total inaction (The "*Asia Star*" [2010] 2 SLR 1154 at [31], [45]) ("*The Asia Star*")

Owners' decision to treat fuel instead of debunker minimised costs of rectifying breach and made it possible for Owners not to miss subsequent fixture in spite of delays; Owners also sought replacement fixture to minimise loss of hire income.