

B.J. MACFARLANE & CO.

Solicitors for Insurance, Shipping and Trade
4 Lombard Street
London EC3V 9HD

SAMPLE REPORT

**TRANSFIELD SHIPPING INC OF PANAMA V MERCATOR SHIPPING INC OF
MONROVIA (THE “ACHILLEAS”)**

18th OCTOBER 2007

Description of the Case: Breach of contract - Loss of profits - Loss of use - Measure of damages – Remoteness - Time charterparties - Late redelivery causing loss of profit on subsequent charter

Case name: *Transfield Shipping Inc of Panama v Mercator Shipping Inc of Monrovia (The “Achilleas”)*

Date of Judgment: 6th September 2007

Court: Court of Appeal (Civil Division)

Judge: Lord Justice Ward, Lord Justice Tuckey and Lord Justice Rix

Citation: [2007] EWCA Civ 901

Background: The Appellant charterers, Transfield shipping Inc of Panama, appealed against a decision of the Commercial Court¹ that the Respondent shipowner, Mercator Shipping Inc of Monrovia, was entitled to the loss of profit on a subsequent charter as damages for late redelivery of a time chartered vessel.

The Respondent shipowner time chartered their vessel, the *Achilleas*, to the Appellant charterers on an amended NYPE 1946 form. Under the charter, the Appellant charterers gave successive notices of redelivery. Relying on the notices of redelivery, the Respondent shipowners had fixed the vessel for a new charter. The Appellant charterers then sub-chartered the vessel for a final voyage. Thereafter when the Respondent shipowner realised that the vessel would not be redelivered within the laycan period under the new charter, they agreed an extension of the cancellation date with the new charterers in return for a reduction in the hire rate of \$8,000 per day. The vessel was then redelivered eight days late.

The Respondent shipowner claimed damages from the Appellant charterers for loss of the original hire rate of \$8,000 per day over the period of the new charter. The Appellant charterers’ case was that the Respondent shipowner was only entitled to damages for the period between the due redelivery date and actual redelivery. The Arbitrators, by a majority, held that the loss of the fixture had been caused by the late redelivery and that the loss was of a type that the Appellant charterers should have contemplated at the time of contracting and was therefore not too remote. The Commercial court agreed that the loss of the fixture was within the first limb² of *Hadley v Baxendale*³ and upheld the Respondent owner’s claim to the larger sum.

¹*Transfield Shipping Inc of Panama v Mercator Shipping Inc of Monrovia (The “Achilleas”)* [2006] EWHC 3030 (Comm)

² “the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it”

³ *Hadley v Baxendale* (1854) 9 Exch 341

The Appellant charterers submitted before this Court that the rule for damages for late redelivery had often been stated in terms of the overrun period and that, save only in special circumstances falling within the second limb of *Hadley v Baxendale*, that rule should be the law.

Issue: The main issue before the Court of Appeal was as follows: if a charterer was liable to pay damages to an owner for late redelivery of the chartered vessel, were those damages limited by the principles of remoteness to the difference between the charter rate and the market rate at the time of redelivery over the length of the overrun period, alternatively could the owner claim damages based on the loss of his next fixture.

Held: The Court considered *Koufos v C Czarnikow Ltd (The Heron II)*⁴ and held that the majority arbitrators had not misapplied the doctrine of remoteness in *Hadley v Baxendale*. The Court further considered *Torvald Klaveness A/S v Arni Maritime Corp (The Gregos)*⁵ and took the view that a charterer of a time chartered vessel knew that a new fixture was very likely to be entered into by the owner of his chartered vessel so as to follow as closely as possible the redelivery of the vessel. The Court considered various authorities and found that the cases made no distinction between damages in respect of the overrun period, which the Appellant charterers described as loss of use damages, and damages in respect of loss of the fixture, described by the Appellant charterers as loss of profits. The Court stated that the chartering market was the Appellant charterers' own business, in which they were experienced. Therefore, the Court observed that the Appellant charterers should have been cautious about the danger of late delivery given their background knowledge which arose out of the ordinary nature of things.

The Appellant charterers submitted that the Respondent shipowner's third party transactions were irrelevant. The Court observed that the submissions of the Appellant charterers were erroneous because the issue was one of remoteness not of causation. The Court further took the view that the fact that a claim for loss of fixture damages had not previously been made meant that it had not previously needed to be considered.

According to the Court, the line of cases stating damages for late delivery in terms of the loss of any higher market rate for the period of the overrun was not concerned with any claim to recover damages for loss of a fixture. The Court stated that there was no fixed rule and no binding authority that damages for late redelivery of a time chartered vessel were limited to the overrun period measure. The Court further stated that in order to accommodate the damages for loss of a fixture awarded by the majority arbitrators in this case, the law would not have to change but merely to develop and that development would be entirely in accordance with principle. The Court considered *Promet Engineering (Singapore) Pte Ltd v Sturge (The Nukila)*⁶ and took the view that the instant case was not one in which the argument in favour of certainty militated against the claim.

Therefore, the Respondent shipowner could claim damages based on the loss of its next fixture as the damages were not too remote to be recoverable. Accordingly, the Court dismissed the appeal.

The content of this paper does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances. © B.J. Macfarlane & Co.

⁴ *Koufos v C Czarnikow Ltd (The Heron II)* [1969] 1 A.C. 350

⁵ *Torvald Klaveness A/S v Arni Maritime Corp (The Gregos)* [1994] 1 W.L.R. 1465

⁶ *Promet Engineering (Singapore) Pte Ltd v Sturge (The Nukila)* [1997] 2 Lloyd's Rep. 146