Notice of Readiness - Voyage Charter

"Laytime" is the term used to refer to the time allowed to the charterers to load/discharge cargo in return for payment of freight to the owners. If the charterers are unable to load/discharge cargo within this allowed period, they will be obliged to pay demurrage (liquidated damages for break of contract) or detention (liquidated damages for breach of contract) to compensate the owners for their loss of use of the vessel. Naturally, most charterparties contain provisions which suspend the running of laytime and/or demurrage in certain circumstances as may have been agreed between the parties. In addition, neither laytime nor demurrage will run if the loss of time is due to a breach on the owners' part.

It is clearly important to determine when laytime commences since this is the key to the division of responsibility for the time spent at the load and/or discharge port. Most charterparties require the owners to serve a notice of readiness at load or discharge port stating that the vessel is ready in all respects for cargo operations. Whilst the owners are also usually required to serve various approximate and definite notices of expected arrival at load or discharge port to enable the charterers to make all necessary arrangement in time, the notice of readiness constitutes the contractual step which is required to trigger the commencement of laytime. Due to this, charterparties usually contain provisions which stipulate:

a) when notice of readiness may be contractually served and
b) when laytime commences once notice of readiness has been validly served (often a set period after tender of the notice of readiness, although commencement of laytime may be further suspended to make allowance for weekends and other periods when the port is not operative).

Requirements for a valid notice of readiness to be served:

1. The vessel is an arrived vessel.
2. The vessel is ready to receive or discharge the cargo.
3. The notice of readiness is tendered to and received by the proper person according to the charterparty.
4. The notice of readiness is tendered in a contractual way.
5. The notice of readiness is tendered at a time that is allowed by the charterparty.

a) "Arrived Ship"

Notice of readiness cannot be validly served before the vessel qualifies as an "arrived ship". To be an "arrived ship", the vessel must have reached the place within the port where notice of readiness may be served. This place is specified, expressly or impliedly, by the charterparty. Under a port charterparty, the vessel must reach the place where vessels usually wait within the port unless, of course, she is able to proceed directly to the load/discharge berth in which case notice of readiness may be tendered as soon as she enters the port. Under a berth charterparty, the vessel must reach the nominated load/discharge berth. These basic propositions may be varied by the inclusion of specific provisions such as "whether in berth or not" ("WIBON") or "whether in port or not" ("WIPON"), although the meaning of the latter phrase has not yet been determined by the Courts.

b) "WIBON"/"WIPON" provisions

The effect of a "WIBON" provision on the tender of notice of readiness under a berth charterparty was considered by the House of Lords in the "Kyziros". The Kyziros had been fixed to carry a cargo of steel and/steel products from Italy to Houston. The charter was on the Gencon form and provided, inter alia, as follows: "Discharging port or place - 1/2 safe always afloat, always accessible berth(s) each port... Time lost in waiting for berth to count as laytime... Wipon/Wibon/Wipon/ Wcon." The vessel arrived at Houston to discharge. When notice of readiness was tendered, and at all material times thereafter, the berth was available. However, the vessel could not proceed to the berth for three days because fog had closed the pilot station. The owners argued that, by virtue of the "WIBON" provision in the charterparty, a valid notice of readiness could be tendered as soon as the vessel arrived at the customary waiting place within the port of Houston and that the "WIBON" provision effectively converted the charterparty into a port charterparty. The charterers argued that, at most, the phrase had the effect of allowing a valid notice of readiness to be tendered at the customary waiting place regardless of whether the nominated berth was unavailable due to congestion and not if it was available but could not be reached for some other reason.

The House of Lords conducted an extensive review of the relevant authorities and observed that the argument that a "WIBON" provision converted a port charterparty into a berth charterparty was based upon the following passage from the judgement of Roskill L.J. in the "Joanna Oldendorff":

"The phrase "whether in berth or not" was designed to convert a berth charterparty into a port charterparty and to ensure that under a berth charterparty, Notice of Readiness could be given as soon as the ship had arrived within the commercial area of the port concerned so that laytime would start on its expiry. It has no proper place in a port charterparty."

The House of Lords held, however, that these observations applied only if no berth was available for the vessel on her arrival at the port and not if a berth was available but the vessel was prevented from proceeding to it by bad weather. The long line of authority on the use of the phrase "WIBON" in berth charterparties dealt exclusively with the problem of congestion in ports, and not with bad weather preventing the vessel from proceeding to a vacant berth.

On this basis, The House of Lords held that the phrase had for a long time been treated as shorthand for "whether in berth (a berth being available) or not in berth (a berth not being available).

As indicated above, the "WIPON" provision does not appear to have been tested in the Courts. It seems reasonable to suppose, nevertheless, that this will be interpreted in a similar fashion so as to allow notice of readiness to be tendered as soon as the vessel reaches the customary waiting place for the port in the case of congestion within the port even if this is outside port limits.

c) "Ready in all respects"

Even if the vessel has reached the place within the port which is required by the charterparty, notice of readiness cannot be served unless she is...
also physically and legally ready in all respects to load or discharge the cargo. It is possible to accelerate the tender of a valid notice of readiness by the inclusion of a "Whether customs cleared or not" ("WCCON") or a "Whether in free pratique or not" ("WIFPON") provision.

Tender of notice of readiness before the vessel is an arrived ship and/or ready in all respects.

In the "Mexico I" case, the English Court of Appeal reaffirmed the proposition that a notice of readiness, which is invalid when tendered because the vessel is not an arrived ship and/or ready to load or discharge, does not automatically become valid when these requirements are subsequently satisfied.

The "Mexico I" was chartered to carry a part cargo of 5,000 tonnes of bagged maize to Angola with the owners retaining the right to complete with other cargo. The maize cargo was partially overstowed by the owners' own cargo and 500 tonnes of auibia beans which they had agreed to carry for the charterers under a separate contract. The ship arrived at the discharge port on 20th January and tendered notice of readiness the following day by telex, although the maize cargo was not totally freed from overstowed cargo until 1025 hours on 6th February. Discharge of the maize cargo did not begin until 1432 hours on 19th February. The owners conceded that the notice of readiness was defective when tendered, but argued that it automatically triggered laytime when the ship subsequently became ready to discharge the maize cargo at 1025 hours on 6th February. The Court of Appeal disagreed, holding that the master should have tendered a fresh, valid notice at that time to start laytime running, and that an invalid notice of readiness could not operate as a delayed-action device to trigger laytime.

The owners also argued that the charterers were bound to acknowledge that the invalid notice of readiness triggered laytime as soon as the ship became ready to discharge, because they had accepted the invalid notice. This argument was based upon the following alternative propositions:
a) the charterers had expressly or impliedly surrendered their right to enforce the strict terms of the contract (waiver); or
b) the charterers could not rely on the strict terms of the contract because these terms had been varied by agreement of the parties, as evidenced by a mutual course of dealing (variation of contract); or
c) the charterers were estopped from enforcing the strict terms of the contract because both parties had acted in reliance upon a mutually shared assumption that their legal relationship operated in a different manner (estoppel by convention).

The Court found that the charterers had initially accepted the invalid notice of readiness only because they had relied upon the master's implied assurance that the ship was ready to discharge the maize cargo. The Court also found that the charterers had not expressly or impliedly accepted that laytime began once the ship was ready to discharge the maize cargo. Thus, none of the grounds put forward by the owners was established. The Court did not, however, have to decide when laytime commenced because the charterers conceded that it had commenced as soon as discharge commenced. If the charterers had not made this concession, the Court might have decided that, in the absence of a fresh valid notice of readiness being tendered by the owners, laytime had never commenced.

The decision in "The Mexico I" was applied by the English Commercial Court in the "Agamemnon I" case. The "Agamemnon I" was chartered on the Goncon form for a voyage from one good and safe berth Baton Rouge to one good and safe berth Brisbane. The relevant terms of the charterparty were as follows:

"Time lost in waiting for berth to count as loading or discharging time ..." (clause 8);

"If the loading/discharing berth is not available on vessel's arrival at or off the port of loading/discharging or so near thereto as she may be permitted to approach, the vessel shall be entitled to give notice of readiness on arrival there with the effect that laytime counts as if she were in berth and in all respects ready for loading/discharing ...." (clause 32) and

"Time to count whether in berth or not, whether notice accepted or not ...." (clause 33)

The master gave notice of readiness at the South West Pass, which was a customary waiting area for vessels wishing to enter the Mississippi river to proceed to one of the up river ports. Baton Rouge has its own anchor age is about 170 miles from the South West Pass. The Court of Appeal held that a notice of readiness given before the vessel arrived at the Baton Rouge anchorage was not a valid notice and the subsequent arrival of the vessel at the Baton Rouge anchorage could not validate it.

Tender of notice of readiness at a non-contractual time when the vessel is an arrived ship and ready in all respects

As indicated above, voyage charter parties frequently provide that notice of readiness must be tendered within office hours or some other specified period. It is also common for masters to tender notice of readiness on arrival even if this means that the notice of readiness is tendered outside the period specified in the governing charterparty. In the "Petri Schmidt I" the English Court of Appeal had an opportunity to consider the validity of a notice of readiness tendered outside the hours stipulated by the charter at a time when the vessel was ready in all respects and in the place provided for by the charterparty. The "Petri Schmidt I" was chartered on an amended Ashatankovoy form charterparty. Clause 30 provided that "notice of readiness at loading and discharging port is to be tendered within 08.00 and 17.00 hrs. local time". Clause 6 of the charterparty provided, inter alia, that "laytime ... shall commence upon the expiration of six (6) hours after receipt of such notice or upon the vessel's arrival in berth ... whichever first occurs". The master tendered notice of readiness at the load port and both discharge ports outside the period specified in clause 30. On each occasion, the vessel was an arrived ship and was physically and legally ready to load or discharge.

The Court of Appeal held that a notice of readiness which is tendered at a non-contractual time in respect of a vessel which is an arrived ship and is in all respects ready to load or discharge is valid. However, the Court also ruled that, although valid, such a notice of readiness could only become effective to trigger the commencement of laytime under clause 6 at the earliest moment it could have been contractually tendered under clause 30.

Conflict between notice of readiness provisions and "reachable on arrival" clauses in berth charter parties

In the "Laura Primia" case, the House of Lords considered the meaning of the words "reachable on arrival" in the context of a charterparty on the Exxonvoy 1989 form. The vessel was chartered for a voyage from one safe berth in Libya to two safe ports in Italy. The charterparty provided, inter alia, as follows:

"6. Notice of readiness. Upon arrival at customary anchorage at each port of loading .... the master .... shall give the charterer .... notice .... that the vessel is ready to load .... cargo, berth or no berth, and laytime .... shall commence upon the expiration of 6 hours after receipt of such notice or upon the vessel's arrival in berth whichever first occurs. However, where delay is caused to vessel getting into berth and after giving notice of readiness for any reason over which charterer has no control, such delay shall not count as used laytime."

and

"9. Safe berthing – Shiftinh. The vessel shall load .... any safe place or wharf, or along side vessels .... reachable on her arrival, which shall be designated and procured by the Charterer ....".

The vessel arrived at her loading place in Libya and tendered notice of readiness but was unable to proceed to a loading berth since all possible berths were occupied by other vessels. This remained the situation for almost two weeks. The charterers sought to rely on clause 6 to prevent the
running of laytime on the grounds that the delay in berthing was beyond their control. The owners countered this argument by pointing out that the charterers were in breach of clause 9 as they had not procured a berth which was reachable on arrival of the vessel. The House of Lords held that clause 9 did prevail over clause 6 and that clause 9 therefore required the charterers to nominate a berth which was reachable on the vessel's arrival. If the vessel was unable to proceed to the berth on arrival charterers were in breach of their obligations under the charterparty and could not rely on the exception to laytime contained in clause 6. In delivering his judgment, Lord Brandon said:

"Reachable on arrival" is a well-known phrase and means precisely what it says. If a berth cannot be reached on arrival, the warranty is broken unless there is some relevant protecting exception ... The berth is required to have two characteristics: it has to be safe and it has also to be reachable on arrival."

"The Laura Prima" was later applied in the "Sea Queen" (berth not reachable due to unavailability of tugs) and the "Fjøraas" (berth unavailable due to bad weather). The fact that the principle established by the Laura Prima applies when a berth is not reachable on arrival for any reason and not just congestion was thus affirmed by these two judgments. This was clearly demonstrated by London arbitration No. 16/99 (LMLN). In this case, the vessel was chartered on an amended Aspawanvoy form charterparty which contained clauses 6 and 9 which were identical to those quoted above from the Laura Prima charterparty. Additional clause 13 also provided as follows:

"Suspension of Running Time Clause: Time shall not count as laytime, or if on demurrage as demurrage, when spent or lost: (a) for and on an inward passage moving from anchorage to first berth, including awaiting tugs, pilot ... until the vessel is securely moored at the berth ...."

When the vessel arrived at the discharge port on 31st December, the berth to which she had been consigned was vacant. On the previous day, another vessel chartered by the same charterers had arrived at the port and they wished her to berth first for commercial reasons. Bad weather initially prevented the other vessel from berthing on 31st December and she was unable to berth as no tugs were available due to holidays until 2nd January. The other vessel berthed on 2nd January and sailed on 3rd January. The first vessel then berthed. The Tribunal was asked to consider if time ran from 31st December or from 2nd January. The charterers contended that a berth had been available upon arrival and that the proximate cause preventing berthing was not congestion (as in the "Laura Prima") but adverse weather and the unavailability of tugs. The Tribunal held that the "Laura Prima" applied not only when congestion meant that the berth was not reachable on arrival but also when the berth was not reachable on arrival for any other reason (as in the "Sea Queen" and the "Fjøraas"). Accordingly, the owners' claim succeeded in full.

1 [1969] 1 Lloyd's Rep 1
2 [1973] 2 Lloyd's Rep 265
3 [1990] 1 Lloyd's Rep 507
4 [1998] 1 Lloyd's Rep 676
5 [1998] 2 Lloyd's Rep 1
6 [1982] 1 Lloyd's Rep 1
7 [1988] 1 Lloyd's Rep 500
8 [1988] 1 Lloyd's Rep 336