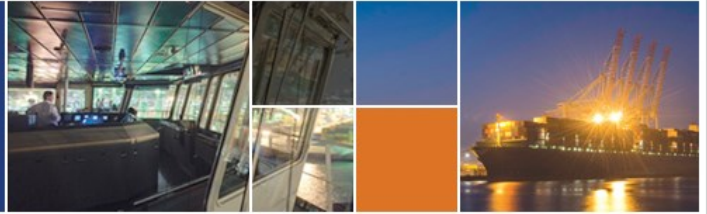




STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



## Option for Continuation - When Does it Commence?

December 2007

In a recent arbitration the tribunal had to consider whether the exercise of an option of a *"further 6 months in direct continuation"* had been validly made and from when the 6 month period ran.

The vessel was chartered for *"about 3 to 5 months in charterers' option"* with an option to charterers for a further 6 months in direct continuation at an increased rate of hire. The option clause provided: *"Charterers option further 6 (six) months in direct continuation to be declared after 3 months..."*

The vessel was delivered into charter and just under 3 months later, charterers sought to exercise the option given to them. Owners contended that the 6 months ran from the end of the third month whilst charterers contended it commenced at the end of the fifth month. Owners refused to allow charterers to have the vessel on hire after a 9 month period (3 + 6 months). Charterers alleged owners were in repudiatory breach and accepted this by redelivering the vessel just short of the 9 month period.

Charterers claimed overpayment of hire for the period from the end of the third month until end of the fifth month and damages for their market losses from redelivery until the date they contended the vessel could have been redelivered.

The tribunal found for charterers; Owners' interpretation of how the option would work was not how one would normally expect an option to work and clear words would have been needed to have the effect owners contended. The initial charter period gave charterers the right to use the vessel for a minimum period of 3 months to a maximum period of 5 months at the original rate of hire. The tribunal's view was that on exercising the option properly the charter period was extended from *"about 9 to about 11 months."*

Owners had submitted that the wording of the option clause itself supported their position as the word *"after"* made no commercial sense. Options were normally to be declared before a fixed date and not after. Owners argued that the clause had to be read as follows: *"Charterers option further 6 (six) months in direct continuation (to be declared) after 3 months..."*

The tribunal rejected owners' construction of the clause and posed the rhetorical question; why was it necessary to state that the exercise of an option had to be declared, since that was self-evident, and yet not state what was important - by when the option had to be declared. The tribunal held that the word *"after"* was to be read as meaning *"not later than"* or *"at the end of"* and a precise date was not necessary.

The charterers' approach was correct as a matter of law and *"of commercial common sense"*. Owners were in repudiatory breach, which charterers accepted and charterers were entitled to proven losses flowing from owners' breach, including the hire overpaid from the end of the third month.

*London Arbitration 4/07 (2007) 715 LMLN 2*