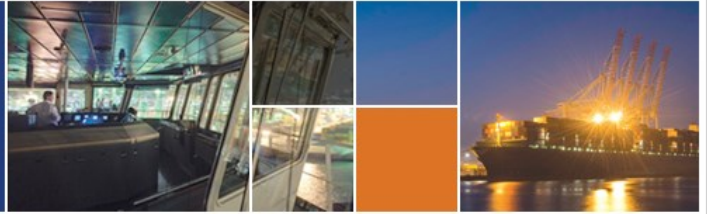




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The Arundel Castle - Definition of 'Within Port Limits'

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The recent case of *Navalmar UK Ltd v Kale Maden Hammaddeler Sanayi Ve Ticart As (The Arundel Castle)* [2017] EWHC 116 (Comm) discussed the meaning of "within port limits" in an amended Gencon 94 charterparty form in relation to laytime and tendering notice of readiness.

Facts

The "Arundel Castle" found the port of Krishnapatnam congested upon her arrival and could not proceed straight to berth. Instead, the port authority directed the ship to an anchoring area. Owners tendered notice of readiness from the anchorage and the matter ended up in a demurrage dispute.

The fixture recap provided:

Clause 15: "[Notice of readiness] to be tendered at both ends even by cable/telex/telefax on vessels arrival at load/disch ports within port limits. The [notice of readiness] not to be tendered before commencement of laydays".

Clause 35: "Otherwise Gencon 94 printed form charterparty with logical amendments on [basis] the terms as per fixture recap."

Clause 6(c) of Gencon 94: "If the loading/ discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there ..."

[underlining added]

Award

Charterers alleged that the notice of readiness was invalidly tendered because the vessel was outside "port limits".

The parties did not suggest there was a law, local or national, that defined the port limits at Krishnapatnam. The parties did not address the area of exercise by the port authority of its powers to regulate the movements and conduct of ships.

The Tribunal held that the notice of readiness was not validly tendered as it was given while the vessel was, by reference to the relevant Admiralty chart that described as "Limit of Port of Krishnapatnam, outside "port limits".

Appeal

Owners brought an appeal under section 69 of the Arbitration Act on the following point of law:

"On a proper interpretation of the fixture recap entered into between the parties dated 27 October 2014, if the [owners] had no right to tender notice of readiness outside port limits, what is the meaning of port limits?"

The Owners' position was that "port limits":

- i) include "any area within which vessels are customarily asked to wait by the port authorities and over which the port authorities exercise authority or control over the movement of shipping"; alternatively
- ii) meant "any area where vessels load or discharge cargo including berths, wharves, anchorages, buoys and offshore facilities as well as places outside the legal, fiscal or administrative area where vessels are ordered to wait for their turn no matter the distance from that area", as described in BIMCO's Laytime Definitions for Charterparties 2013.

The test to determine when a vessel has arrived under a port charterparty was addressed in *The Johanna Oldendorff*. In brief the test is:

- A ship is an arrived ship under a port charterparty when, if she cannot proceed immediately to a berth, she is "within the port and at the immediate and effective disposition of the charterer".
- The ship can generally be presumed to be at Charterers' disposal when she is at a usual waiting place within the port.
- If the ship is waiting at some other place in the port then it will be for Owners to prove that she is as fully at the disposition of Charterers as she would have been if in the vicinity of the berth for loading or discharge.
- The area where the port authority exercises its powers to regulate the movement and conduct of ships would indicate the limits of the port where no particular law determines them.

Given the limited information before them the judge concluded that the Tribunal was entitled to reach a conclusion of fact that the vessel was not within port limits, or at least that Owners had not proved that she was. However, Knowles J went on to say this "did not mean that in another case, on more complete or additional material, the same conclusion would be reached even as regards the port of Krishnapatnam".

With respect to Owners' alternative argument - the definition of "port" in the Laytime Definitions for Charterparties 2013 - was not expressly incorporated in the underlying charterparty and, therefore, was not relevant for the interpretation of the meaning of "port limits" in this case.

Accordingly the appeal was dismissed.

However, Knowles J did caution that the definition of "port" in the Laytime Definitions could extend the test for an arrived ship to places outside the non-exhaustive port limit 'boundaries' described in *The Johanna Oldendorff* and questioned if this was the intention of those drafting the Laytime Definitions. BIMCO's commentary provides that the definition of "port" is intended "to reflect the wider concept of port area explained in *The Johanna Oldendorff (1973)* with reference now made to places outside the legal, fiscal or administrative area". The judge though said he did not "believe that the definition does reflect what was explained in *The Johanna Oldendorff*".

Comment

The *Johanna Oldendorff* remains relevant today when determining whether a vessel is "within port limits" if the charterparty does not otherwise extend the place from which a vessel can be arrived and serve Notice of Readiness. In *The Arundel Castle* the Laytime Definitions were not



incorporated and, therefore, the definition of "port limits" set out therein did not apply. If they had been greater weight could perhaps have been given to the words "at or off the port" in clause 6(c) of Gencon 94 as opposed to the words "within port limits" in clause 15 of the fixture recap. Further, if the material before the Tribunal had not been limited to an Admiralty chart Knowles J may have reached a different conclusion.

¹ *Oldendorff (EL) & Co GmbH v Tradax Export S.A.* [1973] 2 Lloyd's Rep 285



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