

The 'About' Margin in Speed-Consumption Warranty

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The speed-consumption warranty in time charterparties is usually qualified in a few ways. One of that is qualifying it with the word 'about'. The other common qualifications include subjecting the warranty to good weather, Beauford scale wind force not exceeding code 4 (or code 5 in case of tankers), Douglas sea state scale not exceeding code 3, etc. This paper is only on the 'about' qualification.

The 'about' qualification may attach to the speed part of the warranty, or it may attach to the consumption part, or to both. Sometimes, a general 'about' qualification may be attached like 'all details about' (abbreviated as 'ADA') to all the descriptions of the vessel including the speed-consumption warranty. Typically, the 'about' qualification attached to the speed part has been interpreted to give a margin in the shipowner's favour of 0.5 knot, and when attached to the consumption part it has been interpreted to allow 5% margin in the shipowner's favour. So, 'about 14 knots' will mean the warranted minimum speed is 13.5 knots. 'About 30 mt IFO 380' will mean the warranted maximum consumption is 28.5 mt of the fuel. The allowance is always in the shipowner favour when an underperformance claim is made by the charterer (*Luxor Trading Corporation v Geogas Enterprise SA (The "Al Bida")* [1987] 1 Lloyd's Rep 124 CA; London Arbitration 01/07).

However, the margin to be allowed is a matter for the tribunal to decide in each case. A tribunal may allow a different margin taking into account the warranted speed, the vessel's configuration, size, draft, trim, etc. (*The "Al Bida"*). A heavily laden tanker may attract less margin as it will not be affected by the weather in the same way as a container vessel and thus a tribunal can be justified in allowing less margin in such a case.

When the 'about' qualification attaches to both the speed part and the consumption part, this is called 'double about'. The standard NYPE form (referring to the popular 1946 version) has 'double about' qualification (lines 9-10). It is common to similarly find 'double about' qualification in the usual rider clause 29 added to NYPE forms that will describe the vessel including the speed-consumption capability. It is common to find 'ADA' qualification in the rider clause, which will apply the 'about' qualification to both the speed part and the consumption part, thus 'double about' (London Arbitration 2/87). The scheme in the SHELLTIME 4 form (the oft-used form in time charters of tankers) is different, as the speed-consumption is warranted on a yearly average basis and there is no 'about' qualification.

An Issue had been taken on allowing the full standard margin of 0.5 knot on speed and 5% on consumption in the case of 'double about' qualification. In one 1980s case, the arbitral tribunal balanced the 'double about' qualification by allowing 0.5 knot margin on speed and only 4% margin on consumption (London Arbitration 12/85). In another 1980s case, the tribunal did not favour giving double benefit to the shipowner and allowed, in the factual matrix of the case, only 0.25 knot margin on speed and seemingly no margin on consumption (London Arbitration 6/88). However, the trend for more than a decade now has been to allow the full standard margin on both when there is a 'double about' qualification (London Arbitration 15/07).

If the 'about' qualification is not attached, then the obligation of the shipowner will be to strictly comply with the warranty without any margin in its favour (London Arbitration 4/94), subject only to de minimis rule (London Arbitration 4/12). De minimis rule means if the difference complained is trivial then a claim will not be entertained. Suppose the warranted speed is 14 knots and the vessel performed 13.99 knots, likely this will be a de minimis case for 0.01 knot that a tribunal will not entertain. It must also be borne in mind that performance calculations are not by any means a perfect science and a safe margin for inaccuracy in the calculation must be allowed (London Arbitration 21/04; 15/05), which will in any event rule out de minimis claims.

Where a vessel achieves a speed less than that warranted but consumes less fuel than what she would have consumed had the warranty been kept up to, then there is a loss to the charterer by the lower speed and a gain to the charterer by the lower consumption. In such cases, the gain in the consumption must be offset against the charterer's claim for under-speed (London Arbitration 2/87). For the purpose of measuring the gain, the warranted consumption will be taken without allowing any margin for the 'about' qualification (London Arbitration 20/07). An example will best explain this. Suppose the vessel is warranted to achieve 'about 12.5 knots' speed at about 30 mt IFO 380 per day' on a short trip charter that involves 288 nautical miles of sea passage. If the ship performs as warranted, she will complete the sea passage in 24 hours ($288 \text{ nm} \div 12 \text{ knots}$) with a consumption of about 30 mt of the fuel. The ship achieves a speed of 10 knots only, hence the sea passage takes 28.8 hours ($288 \text{ nm} \div 10 \text{ knots}$). However, the total fuel consumed for the entire sea passage of 288 nm is only 29 mt of the fuel. Now the charterer is in a loss of 4.8 hours on hire and a gain of 1 mt on fuel. The charterer will make an under-speed claim for the 4.8 hours hire loss. Against this, the fuel-saving must be offset. The fuel-saving will be measured from the benchmark of 30 mt without allowing any margin for the 'about qualification'. Hence, the fuel-saving to be offset is one mt only.

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