Dispute Resolution

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TALES OF OFFSHORE CONTRACT TERMINATIONS

The state of the global oil and gas market is such that owners of rigs or offshore support vessels face the realistic prospect of terminations by their charterer. The industry is well aware of a number of recent terminations, which are an unfortunate reality arising from the drive to save costs. Many of these termination disputes are confidential, either being subject to arbitration or negotiated by way of commercial settlement. We discuss below a recent and well publicised case which provides a useful and timely insight into the legal hurdles that these terminations raise. We also briefly address key issues, from an English law perspective, detailing how the validity of a typical termination is likely to be assessed during a dispute.

The *OCEAN VANGUARD*

Statoil ASA (Statoil) entered into a drilling contract with Diamond Offshore Netherlands BV (Diamond) for the charter of the *OCEAN VANGUARD*, a semi-submersible drilling rig.

Statoil issued a notice of termination to Diamond, which was ahead of the contractual expiration date. Statoil reportedly cited technical deficiencies as the basis for termination.

Diamond issued proceedings against Statoil at Stavanger District Court in September 2014. Diamond argued that Statoil's termination had no basis. The condition of the rig was well known to both parties and the facts relied on by Statoil to terminate were not justifiable.

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On 23 December 2015 the Stavanger District Court found, amongst other things, that Diamond knew all along that the alleged technical failings of the rig did not meet the contractual specification and held that Statoil were not in breach of the contract by terminating early.

The reports are that Diamond intend to appeal the decision.

Navigating the legal and factual issues

The case of the *OCEAN VANGUARD* is just one example of what is a typical tale in the market today. The key question that each party will want answered as a matter of urgency is whether the termination was valid. Based on this, certainly the party facing a termination can decide whether to challenge the termination, look to achieve a commercial settlement or both.

Offshore charter contracts usually have a range of express termination rights. What are often called 'cancellation for convenience' clauses allow a charterer to do just that. There is typically however an agreed sum that has to be paid to the owner on the exercise of such a provision. This is never the preferred approach, particularly when there is an acute need to save costs. A party will instead focus on the other express rights of termination which typically relate either to the performance of the rig or offshore support vessel or insolvency. A party may also take legal advice to consider whether they have a general right to terminate the contract in addition to the express terms.

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The review of the contract is only part of the story. The facts will also require close scrutiny. The reality of offshore charter contracts, performed over extended periods, is that any rights of termination that a party may have prima facie, may well have been modified or waived through subsequent conduct. A lot will depend on what is said and done during the critical time. Another typical problem we regularly see is where parties enter into addenda to their existing offshore charter to deal with matters which may have nothing to do with rights of termination, but the addenda has the effect of unintentionally modifying, or at least making less certain, what was otherwise clear rights of termination in the original contract.

Concluding comments

There is a lot for a party to consider and assess in respect of a termination (whether you are terminating or faced with one). This needs to be done, as a matter of urgency, with the close involvement of your legal advisor. If you terminate wrongfully it could potentially expose you to significant claims. On the other hand, when faced with a termination, you will need to promptly challenge the termination and ensure all your rights are protected. Swift action will not only protect you in any court or arbitration proceedings – but also put you in a better position to achieve a commercial settlement.



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