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Bunker contamination: the importance of timely intervention

The shipping industry has previously faced problems with bunker contamination due to the presence of catalytic fines and is again experiencing similar issues. The culprit this time has been identified as phenols and fatty acids.

One theory is that these contaminants originate from refineries in the US Gulf. Irrespective of the origin, the contaminants have now been found in bunkers supplied as far as Singapore. The issues are compounded by the unavailability of competent testing facilities, the high cost of bunker analysis and long waiting times.

Generally, the contractual framework for the supply of bunkers addresses liabilities and obligations between various parties involved in the voyage. These contracts, however, do not address all the practical issues that shipowners, charterers and bunker suppliers may face when contaminants are discovered and the legal environment in which these parties operate will come into play.

Time is of essence

It is worth highlighting that timely identification of any issues with the bunkers is of prime importance, not only because of very short time bar provisions in the bunker supply contracts, but also to preserve evidence.

Shipowners may find themselves facing issues, such as disposal of the contaminated bunkers, as well as cleaning of bunker tanks and pipelines. If contaminated bunkers have been consumed, owners will need to identify any damage caused to the machinery and whether it relates to the bunkers. If there is any doubt as to the quality of bunkers supplied, shipowners should contact charterers and bunker suppliers as soon as possible and retain the samples collected during bunkering for further analysis. Our members and assureds should also notify Skuld immediately if any issues with the bunkers arise to ensure that the dedicated claims teams can intervene in a timely fashion.

When collecting samples, the parties should ensure that a sufficient quantity is collected from the delivery line during bunkering. A complete log of events (including but not limited to bunkering procedures, tanks, in which bunkers were received, pipeline layout etc.) and machinery records must be preserved.

Contractual framework

It is often the time charterer who arranges for bunkers to be supplied to the vessel and enters into a supply contract with the bunker supplier. The charterer’s relationship with the shipowner is governed by the terms of the charterparty, which may include specific provisions concerning bunker quality. Usually reference is made to ISO 8217 standards (2005, 2010, 2012 or 2017 edition).

The physical supplier presents a Bunker Delivery Note to the vessel, which, amongst other things, confirms the quantity and quality of the bunkers supplied. This document usually incorporates the physical supplier's terms, which are likely to be in their favour.

Charterers' dilemma

Although the charterer is the contracting party ordering and usually also paying for bunkers, they have little control on the actual supply process. It is highly unlikely that they will be able to collect and retain representative samples, as this is done by the supplying barge and/or the receiving vessel. Additionally, by the time a problem with the bunkers is identified, the contractual time bar in the supply contract may have already passed.

Charterers may face claims related to costs of deviation and disposal of contaminated bunkers from the shipowners. If contaminated bunkers have been consumed, claims for damage to the machinery may follow.

All this means loss of time for the charterer and potentially loss of reputation. In extreme cases, and depending on the circumstances, the charterer may be faced with a termination of the charterparty or withdrawal of the vessel. Whether the charterer can make deductions from hire for the downtime or indeed seek other remedies will depend on the terms of the charterparty.

If the charterer is the Carrier under the bills of lading, they may face considerable cargo claims arising from the delay, especially if the cargo is of a perishable nature. They may also be exposed to commercial pressure from other contractual parties to complete the voyage as early as possible and face claims for breach of contract should they fail to do so.

Further, if the vessel suffers machinery failure and the owner decides to declare General Average, the charterer may be required to provide security for their portion of the adjustment.

As can be seen from the above, there are numerous risks charterers may be exposed to, should the bunkers supplied to the vessel turn out to be contaminated. Moreover, the issues are not limited to treating or removal of contaminated bunkers and are exacerbated by the practical difficulties of positively identifying the presence of phenols and fatty acids.

Owners' concerns

Although the owner will have more control over the supply, sampling and testing of the bunkers, they may find it difficult to enforce rights under their charterparty due to competing jurisdictional issues. It is therefore important that owners involve experts and preserve as much evidence as possible. This will ensure that contamination issues are identified quickly and accurately. It is crucial that correct and representative samples are clearly identified and analysed.

The owner's obligations under the bills of lading will continue whilst the parties look for a solution to handle the contaminated bunkers. At the same time, owners may face claims for unseaworthiness, as the vessel may not have sufficient bunkers to execute the intended voyage.

It is in the common interest of the parties involved that a solution to the contaminated bunkers is executed as soon as possible - whether it be onboard treatment with additives, offloading or any other solution agreed between the owner, charterer and supplier. Co-operation between all parties is crucial to mitigate damages and avoid disputes about title to the bunkers and associated costs.

Source of Information: Skuld P&I Club