Bunker Claims – Resolving Disputes

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Introduction
How an engine works
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Introduction

- The problem:
  - Huge structures
  - Complicated structures
  - Bunkers – the leftovers
The parties / claims

Owner

Bill of Lading

Receiver

Charterparty

Charterer

Sub-Charterparty

Sub-Charterer
The parties / claims

- Owner
- Charterer
- Sub-Charterer
- Sub-Charteree
- Charterparty
- Fuel
- Bill of Lading
- Receiver
- Supplier

A --> Owner
Owner --> B

Charterparty
Charterer
Sub-Charterparty
Sub-Charterer
The parties / claims

- **Owner**
  - Bill of Lading
  - Receiver

- **Charterparty**
  - Charterer
  - Sub-Charterparty
  - Sub-Charterer

- **Supply Contract**
  - Supplier
  - Supply Contract
  - Bunker trader

A → Owner → B
The parties / claims
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The parties / claims
The stages

- Pre-incident Stage
  - Contractual negotiation
  - Onboard practices
  - Training
  - Contingency planning

- Incident Stage
  - Bunkering procedures
  - Documentary procedures
  - Decisions taken on how to proceed
  - Investigation / Collection

- Post-incident Stage
  - Assessment
  - Dispute Resolution process(es)
    - Negotiation
    - Mediation
    - Arbitration
    - Court
• Contracts
  • Supplier
  • Charterparties
  • Bills of Lading

• Tort
  • Privity of contract
  • Economic loss – the limiting factor

• Time limits
  • Reporting
  • Claiming

• Exclusion / limitation of liability

• Charterparties – types of clause
Contracts – the supply contract

Owner

Bill of Lading

Receiver

A

Charterparty

Charterer

Sub-Charterparty

Sub-Charterer

Supplier

Fuel

Supply Contract

Bunker trader

B

Supply Contract
Contracts – the supply contract

- The supply contract
  - Law and jurisdiction

- The terms?
  - Set ‘term’ contracts
  - The Battle of the Forms
  - The Bimco standard contract
Contracts – the supply contract

• Examples of express terms:

  • Time limits
    - "the Buyer waives any claim against the Seller with respect to the quantity or quality of the Products supplied unless the Buyer's claim is submitted to the Seller in writing within 7 (seven) days after the date of delivery of the Products."

  • Limitation of liability
    - “...in any event, sellers liability hereunder for any claims, whether arising from quality, quantity, accident, delay, spill or other cause, shall not exceed the price of that portion of the product sold hereunder on which liability is asserted. further more, no liability will be borne by seller for (1) any demurrage or other vessel delay or for indirect, special, incidental or consequential damages. including but not limited to. damages arising from
Contracts – the supply contract

- Relevant statutes include:
  - Sale of Goods Act 1979
  - Sale and Supply of Goods Act 1994
  - The Misrepresentation Act 1967
  - Unfair Contract Terms Act
Contracts – the supply contract

- Sec 14 and 15 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994), if the relevant conditions are satisfied will imply the following conditions:
  - The bunkers correspond with the description in the contract;
  - The bunkers are of “satisfactory quality”;
    - the “quality” of the goods is stated to include “fitness for all the purposes for which goods of the kind in question are commonly supplied”
  - If the Buyer makes known any particular purpose for which the Goods are being purchased – implied condition that fit for that purpose, except where the circumstances show the buyer does not rely on the skill or judgement of the Seller.
Contracts – the supply contract

• The interaction between express and implied terms

• Section 55:
  - “(i) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may (subject to the Unfair Contract Terms Act 1977), be negatived or varied by express agreement, or by a course of dealing...
  - (ii) A express term does not negative a term implied by this Act unless inconsistent with it”

• Mr Justice Saville FAL Bunkering Co Ltd v. Gerrard Chartering AS

• Re the specification of specifications
  - “…an express condition or warranty does not negative a condition or warranty implied by the Act unless inconsistent with it. To my mind there is nothing in the express specification which is inconsistent with the implied condition of merchantable quality. The fact that the express specification contains many, if not most of the attributes required of a merchantable fuel oil does not begin to suggest either that the seller is thereby free to deliver unmerchantable fuel oil or that fuel oil complying with the specification but which for other reasons is
Contract – charterparties

Owner

Bill of Lading

Receiver

Charterparty

Charterer

Sub-Charterparty

Sub-Charterer

Supplier

Fuel

Supply Contract

Supply Contract

Bunker trader

A

B
Charterparties – provision of bunkers

- Absolute duty
  - Due diligence
  - Reasonable care
  - Provision / quality

- The duty to maintain
  - Example clauses

- The interaction
  - Causation
  - Mitigation
The duty to provide bunkers:

- E.g. Clause 2 NYPE:
  - "That the Charterers shall provide and pay for all the fuel except as otherwise agreed…"

- Clause 4 Baltime:
  - "That the Charterers shall provide and pay for all the fuel oil…"

Absolute duty?
- In general the obligation imposed by Clause 2 NYPE and Clause 4 of the Baltime form is ‘absolute’,
- Must actually provide the stipulated items, rather than merely exercise due diligence towards that end
- May be a duty upon the owners to give information to the charterers
Charterparties – provision of bunkers

- Anastassia v. Ugle-Export (1934) 49 Ll.L.Rep. 1. Lord Wright in that case said:

  “the charterers have contracted to supply the assistance, and that, in my opinion, means either by themselves or by others, so that they cannot justify a failure to do so on the pretext that they had not the icebreakers under their control and could not get them supplied by those who controlled them. In that sense the obligation is absolute. The charterers assumed the obligation and the risk. It follows equally that the charterers’ obligation is not limited to an obligation to do their best to supply.”
Charterparties – quality of bunkers

- Quality
- Absolute obligation?
- Wilford:

  “…is submitted that there is an ‘**absolute**’ duty on the charterers to provide bunkers that are **of reasonable general quality** and **suitable for the type of engines** fitted to the **particular ship**.”

- Not obliged to meet any unusual requirements of the engines, beyond those to be expected of their type, **unless** drawn to their attention by the owners in advance
Charterparties – quality of bunkers

- *Nippon Yusen Kaisha v. Alltrans* (20 February 1984, unreported)
  - Arbitrators held:
    - Was an absolute duty on charterers under Clause 2 NYPE to provide proper bunkers.
    - Charterers were given leave to appeal:
      - Re whether the duty was absolute or was a duty to exercise reasonable care or due diligence only.
      - In the event unnecessary - further finding, that the charterers had failed to exercise due diligence in the provision of bunkers.
Charterparties – quality of bunkers

- Express stipulation
  - ISO 8217

- Interaction with duty to provide bunkers that are of reasonable general quality and suitable for the type of engines fitted to the particular ship

  - Fuel had an unacceptably high level of chlor compounds
  - The relevant British Standard - no mention of the applicable level of chlor compounds.
  - "Nobody expects to find more than a trace of chlor in marine fuel, hence nobody has considered setting a limit. However, everyone would agree that anything more than a trace of Chlor is highly undesirable. In the words of the Owners' petroleum
Charterparties

- 'Old Sock'
Charterparties – duty to maintain

- Duty of seaworthiness
  - Before and at the beginning

- Duty to maintain
  - "...maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service".

- Interaction
  - Causation
Tort
· Project management

· Immediate matters
  · Evidence
  · Samples – pre / post
  · Preserving damaged parts
  · Documentary considerations
  · Get the best people / experts on board
  · Containing the situation – duty to maintain / causation / mitigation

· Next steps
  · Legal / contractual position
  · Assess likely outcome
Dispute management - the stages

The Stages

Pre-incident Stage
- Contractual negotiation
- Onboard practices
- Training
- Contingency planning

Incident Stage
- Bunkering procedures
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Post-incident Stage
- Assessment
- Dispute Resolution process(es)
  - Negotiation
  - Mediation
  - Arbitration
  - Court

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The options
- Court
- ADR
  - Arbitration
  - Mediation
  - Expert determination
- Negotiation
Dispute management - court

- Court
  - Jurisdiction
  - Brussels Regulation 44/2001

- General Approach
  - Commence Proceedings - issue a Claim Form
  - Exchange of pleadings
    - Points of Claim
    - Points of Defence
    - Reply

- Case Management Conference
  - Time table:
    - Disclosure
    - Inspection
    - Witness Statements
    - Expert Reports
    - Expert Meeting
Dispute management - arbitration

- Arbitrators
  - Can be commercial people

- Advantages
  - Supposed to be quicker & cheaper
    - Can chose your own procedure
  - Reality
    - Very similar to court process
  - Confidential
  - Can obtain a ‘commercial’ as opposed to ‘legal’ decision

- Appeals
  - Only on points of law or procedure
  - Not ‘fact’
Dispute management - ADR

- Includes:
  - Mediation / conciliation
  - Judicial appraisal
  - Expert determination

- Advantages
  - Purely consensual
  - Nobody is bound
  - Preserve the commercial relationship
  - Quicker and cheaper
  - Flexibility
Settlement offers

- **Court**
  - Pt 36
  - Fails to beat – costs implications – even if correct

- **Arbitration**
  - Sealed offer
Dispute management - the stages

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