



Ship Type: All Trade Area: All

Bulletin 383 - 10/04 - Bunker Quality Disputes - More onus on Charterers

In a recent dispute concerning damage caused to main engines by bunkers, the key defence raised was that the bunkers were on spec. In a finding with important implications for future bunker disputes, the tribunal held that under English law a term would be implied to the effect that **any bunkers supplied would have to be of a reasonable general and merchantable quality, reasonably suitable for the particular vessel's engines and reasonably fit for the purpose intended.**

Significantly, this is in addition to any obligation to provide bunkers which comply with the express terms of the specification set out in the relevant charter or bunker supply contract.

In this particular case, the tribunal found on the balance of probabilities that the bunkers supplied exhibited poor ignition and combustion qualities and that it was these qualities which caused (or were the principal cause of) the damage to the main engine, thereby constituting a breach of the implied term. The tribunal found that the damage sustained by the vessel's main engine was more likely than not to have been caused by the poor ignition qualities of the fuel supplied. The charterers were therefore found liable not only for extensive engine damage, but also for consequential loss, including loss of time.

The application of this approach will certainly considerably increase the exposure to liability of charterers who are responsible for supplying bunkers to a vessel, particularly in the light of the ignition quality aspect discussed below. **They can no longer simply rely on the fact that the bunkers supplied complied with their technical specification: there is a further and more onerous duty to ensure that the on spec bunkers supplied will not cause damage to the particular engine on board the particular vessel.**

Charterers' potential liability will remain substantial, even though they are often many times removed in the contractual chain from the ultimate supplier (whose sale contract may, in any event, be subject to a different law and jurisdiction). In addition, charterers' exposure may also be affected by the fact that it is now very tempting for owners to blame any damage to their vessel's main engine on unfit bunkers, knowing that the fact that the bunkers supplied were on spec may not be a sufficient defence.

An aspect of this case of particular interest is that it centred on ignition quality, a property of fuel which is of major importance in diesel engines, affecting the time between injection and the start of the combustion phase.

If the ignition process is delayed for too long a period by virtue of some chemical quality of the fuel, too large a quantity of fuel will be injected into the engine cylinders and will ignite at once, producing a rapid pressure and heat rise and causing associated damage to the piston rings and cylinder liners of the engine.

In many vessels the effects of poor ignition quality are negligible, but in this case the particular engine was nearing its overhaul period and was less resilient than would perhaps otherwise have been the case. It would seem that charterers have to have regard to the susceptibility of the particular engine.

The problem for charterers is that there is at present no standard test for poor ignition quality. Charterers will increasingly find themselves between a rock and a hard place: on the one hand, marine fuel oils may be technically on specification, although actually not fit, and on the other hand owners now have the basis for a legal remedy. Charterers will be squeezed and

they may not have the necessary insurance coverage in place, nor be able to seek legal redress down the contractual chain.

So what is the answer for charterers? It would clearly be desirable to have a standardised form of bunker supply contract which places on bunker suppliers the same contractual requirements as those on the parties immediately above them in the contractual chain, but that seems unlikely.

An obvious solution for charterers is to ensure that their contracts down the contractual chain (be it with a bunker broker or the actual supplier), are also subject to English law and jurisdiction, which will afford them the remedy of seeking an indemnity. Furthermore, it will now be essential for charterers to ensure that they inform their immediate contractual counterparts not only of the exact specification of bunkers to be supplied, but also the particular vessel and the particular engine to be supplied (and its overhaul record), expressly placing the contractual obligation on the supplier to ensure that the bunkers supplied are not only within the specification ordered, but also fit for the purpose of the vessel and the engine to be supplied.

Charterers will also have to insist on a widening of the scope of the analysis performed by the bunker analysis agencies employed by owners to include analysis of ignition quality, and such a specification should become a standard specification tested for in any analysis results.

Such analysis can be performed by the Fuel Ignition Analyser currently supplied by Fueltech AS. To achieve this, it is obviously an absolute necessity for charterers to ensure that the relevant charterparties impose such an obligation upon owners, including an obligation that owners properly satisfy themselves through their engine manufacturer that the ignition quality exhibited is fit for the purpose of the particular engine on board, both in relation to its specification and in relation to its particular condition. Such a clause will help charterers to divest themselves of some of the responsibility for ensuring fitness for purpose. Only then will charterers be able to identify, contain and minimise their exposure, an exposure which has the potential to put them out of business. Finally, charterers should also investigate what products are available in the insurance market to properly protect them against this sort of liability.

Source of information : Mark O'Neil, (Partner)
Stephenson Harwood
Tel: + 44 207 452 4224
Email: mark.o'neil@shlegal.com

: