Bunker Problems

Practical and Legal issues

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What have bunker problems got to do with me?
Today’s talk

- History
- Charterparty and supply contract terms
- Physical supply
- What next?
- What do these problems involve for the Owners?
- What do these problems involve for Charterers?
- Dealing with the problem
- Claims
- Preventative Measures/minimizing the risk
- Conclusion
The bunkering Industry has changed over the years

- History
  - Quality
  - Price
  - Suppliers
Charterparty and Supply Contract Terms

- Contract chain; Owners, Charterers, Suppliers

- Charterparty
  - Main engine details
  - Bunker specifications
  - Sampling
(b) The Charterers shall supply bunkers of a quality suitable for burning in the Vessel's engines and auxiliaries and which conform to the specification(s) as set out in Appendix A. The Owners reserve their right to make a claim against the Charterers for any damage to the main engines or the auxiliaries caused by the use of unsuitable fuels or fuels not complying with the agreed specification(s). Additionally, if bunker fuels supplied do not conform with the mutually agreed specification(s) or otherwise prove unsuitable for burning in the Vessel's engines or auxiliaries, the Owners shall not be held responsible for any reduction in the Vessel's speed performance and/or increased bunker consumption, nor for any time lost and any other consequences.
Charterparty Clauses – Owners’ clauses

“Subject Ship is a member of the Det Norske Veritas or similar fuel quality programme. Sampling and testing of bunkers will be carried out as per Det Norske Veritas or similar Fuel Quality Programme procedures.”

“Vessel’s bunker specifications IFO 380 RMG ISO 8217 2005. No bunkering at South Africa during this charter”

“Failure by the vessel to perform in accordance with its warranted levels following supply by Charterers, not falling within the above specifications, shall not be actionable by Charterers and shall not constitute an off hire event or a breach of any provision of this charterparty by Owners”
Charterparty and Supply Contract Terms

- **Contract chain; Owners, Charterers, Suppliers**

- **Charterparty**
  - Main engine details
  - Bunker specifications
  - Sampling
  - Jurisdiction including time bars
  - Lien clause

- **Supply Terms & Conditions**
  - Time bars
  - Law/Jurisdiction
  - Payment and Ownership
  - Sampling
Supply Contract time bars

- Quantity disputes - “on delivery” “at the time of delivery”
- Quality disputes - from 10-30 days. 15 days is the most common
- Commencement of proceedings - often Silent. Sometimes reference to 1 year from delivery
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<thead>
<tr>
<th>Name</th>
<th>Law</th>
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<tr>
<td>Universal</td>
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<td>Chemoil</td>
<td>US Law</td>
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Law/Jurisdiction Clauses in supply contracts
Sampling Provisions under supply contracts

“The seller shall take a minimum of four representative samples”

“Samples for each product of bunkers supplied will be taken from Installation and or barge manifold by the drip method”

“Seller shall be entitled to draw or cause to be drawn samples of each delivery from suppliers designated facilities”

“Three representative sample-bottles of each grade fully sealed and stamped, shall be taken throughout the delivery operations prior to the products leaving either shore tanks, tank truck, or barge”
Physical Supply

- Safety
- What is being delivered?
- To which tanks
- Attending the bunker barge (lorry/shore tank)
- Samples
  - Where are the bunkers coming from
Physical Supply

- Safety
- What is being delivered?
- To which tanks
- Attending the bunker barge (lorry/shore tank)
- Samples
  - Where are the bunkers coming from
  - Whose samples and from where
  - Know your samples
Physical Supply

- Safety
- What is being delivered?
- To which tanks
- Attending the bunker barge (lorry/shore tank)
- Samples
  - Where are the bunkers coming from
  - Whose samples and from where
  - Know your samples
  - Know where your samples are, and who has them
  - Marpol Samples
- The delivery receipt / lien notices
Lien Wording / clauses

- Stamp on bunker receipt

“goods and/or services being ordered for and/or supplied to the vessel … are ordered and/or accepted solely for the account of the charterers of M/V … and not for the account of the said vessel, her owners, and/or their servants or agents. Accordingly, no lien, charge, encumbrance, debt or other claim against said vessel can therefore arise ”
Lien Wording / clauses

- Clauses in c/p

- Standard wording NYPE Clause 18:

  “Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel”
Additional wording

“In no event shall Charterers procure, or permit to be procured, for the vessel, any supplies, necessaries or services without previously obtaining a statement signed by an authorized representative of the furnisher, acknowledging that such supplies, necessaries or services are being furnished on the credit of Charterers and not on the credit of the Vessel or of her Owners, and that the furnisher claims no maritime lien on the Vessel therefor ”
Lien Wording / clauses

- Notice to suppliers

  - Notice of Prohibition of Lien

We have recently chartered the [flag], vessel [name] to Messrs. [name of charterers] of [place] as charterers. It has come to our attention that in your capacity of [type of supplier] at the port(s) of [name of port] where the above vessel may be trading, you may be called upon by the above charterers to furnish [type of supplies or services] for their use in connection with the above vessel…
Lien Wording / clauses

- Notice to suppliers

You are hereby notified that, under the terms of the charter between us, as owners of the above vessel, and the above charterers, neither the charterers nor the Master nor any other person has power or authority to pledge either our credit or the credit of the above vessel, or to create, or permit to be created, any liens on the above vessel. You are further notified that any such [type of supplies or services] furnished by you to the above vessel will be so furnished solely upon the credit of Messrs. [name of charterers] as charterers, and not on the credit of the above vessel or our credit.
Contra-prohibition of lien clauses

- Supply contract:

“‘No-lien stamps or remarks in any form or wording on Bunker Delivery Receipt(s) shall be invalid and of no effect, and shall in no way impair the sellers lien or discharge the vessel’s responsibility for debts under this agreement

“The receipt will remain “clean” in all cases and thus it shall not include any kind of protest or remarks of whatever kind”
Contra-prohibition of lien clauses

- Delivery Receipts:

“*No disclaimer stamp of any type or form will be accepted on this receipt, nor should any such stamp be applied, will alter, change or waive seller’s/supplier’s lien against the vessel or waive the vessel’s ultimate responsibility and/or liability for the debt incurred through this transaction.*”
What next?

- Send one of your samples for analysis
- On-board analysis
- A problem arises
  - Alerted by sample analysis – take preventive action
What next?

- Send one of your samples for analysis
- On-board analysis
- A problem arises
  - Alerted by sample analysis – take preventive action
  - Alerted by the C/E – take remedial action.
What do these problems involve for the owners?

- **Delay;**
  - Stoppages at sea or slow steaming
  - Deviation to repair or de-bunker
  - Repair time
  - Security issues/port investigations for pollution

- **Costs**
  - Off hires
  - Deviation costs
  - Spares/replacements/technicians
  - Fines
What do these problems involve for the owners?

- **Disruption**
  - Office dealing with charterers/suppliers/crew
  - Litigation if ends up in court/arbitration

- **Unseaworthiness**
What do these problems involve for Charterers?

- Claims from Owners for; Delays/costs/expenses
- Can these be passed on to suppliers?
Dealing with the problem

- Notification
- Documentation

- Can I/should I continue sailing?
  - Where is the ship/what bunkers remain/will further damage be caused? Decision based on:
    1. Take expert advice
    2. On board treatment
    3. Consult with the Charterers

- Chain of causation
Dealing with the problem

- Call for the removal of bunkers
  - What if Charterers/suppliers refuse?
  - Difficulties of doing so

- Effect repairs
  - Deviate to nearest port
  - Undertake at sea
  - Next port of call
Claims

- Charter party claim against Charterers
- Contract claim against supplier
- What if time charterers do not pay/go bust?
Preventive Measures/Minimising the risk

- Pollution/Safety
- Charterparty clauses
- Supply contract terms
- Crew/office conduct
- Sampling/Evidence
- Non-payment by Charterers
Conclusion / if you do have a problem:

- Notification
- Take expert advice early on
- Know your samples
- In the event of damages, preserve evidence, keep detailed records.
Thank you