

BIMCO – Hull Fouling Clause for Time Charter Parties

Remarks

With ships spending an increasing amount of time lying idle in ports and at anchor, the consequences of hull fouling on the performance of the vessel and the responsibility for cleaning under a time charter party has become a contentious issue. At common law and under most standard forms of time charter party an owner is responsible for maintaining the vessel in a thoroughly efficient state throughout the charter period. This includes a requirement to keep the vessel's hull and other underwater parts free from fouling. If the owners fail to maintain the vessel and, as a result, the vessel's performance is affected, they may be exposed to claims by the charterers for underperformance. While this position is acceptable under normal trading conditions, many owners feel that they should not bear the burden of hull cleaning if their vessel has become fouled as a result of lying idle for an extended period on the orders of a time charterer.

BIMCO has tackled this issue with a new Hull Fouling Clause which comprehensively sets out the physical circumstances and the point in time when the responsibility for hull fouling passes from the owners to the charterers. The clause distinguishes between idling in Tropical Zone waters, where the rate of growth is generally highest, and idling outside this zone. The parties are free to agree the number of days idling to apply in each area before the clause takes effect. If they cannot agree then 15 days applies by default.

Once the agreed number of days has lapsed, the vessel's performance warranties are suspended until such time as the hull can be inspected and, if necessary, cleaned. It may well be that inspection and cleaning is not possible or permitted at the vessel's current port of call - and the clause deals with this situation. If the hull is fouled then it is to be cleaned by the charterers at their cost and in their time - but in accordance with the paint manufacturers' recommendations and under the supervision of the Master. This recognises that hull coatings are very expensive, easily damaged and become less effective the more often they are cleaned.

If it is not possible to carry out inspection and cleaning at the vessel's current port of call the warranties will remain suspended until cleaning has been completed.

In the event that the owners should refuse to give their permission for cleaning to be carried out then the speed and consumption warranties will be reinstated from the time of the owners' refusal.

If it is not possible to get the hull cleaned before redelivery of the clause provides for the owners to be compensated for the costs they will incur when eventually cleaning the hull.

Finally, the charterers may avoid responsibility for hull cleaning if they can show that the vessel is performing in accordance with charter party speed and consumption warranties.

The BIMCO Hull Fouling Clause has been drafted by a team of owners and charterers to ensure that the provision is appropriately balanced. Valuable technical input was provided by a representative from a major paint manufacturer. The Clause was adopted by the Documentary Committee at its meeting held on 27 May in Paris. The Clause, along with a short explanatory note, has now been issued through Special Circular No. 3 of 24 June 2013 and is available to download free of charge from the BIMCO website.

Clause

(a) If, in accordance with Charterers' orders, the Vessel remains at or shifts within a place, anchorage and/or berth for an aggregated period exceeding:

(i) a period as the parties may agree in writing in a Tropical Zone or Seasonal Tropical Zone*; or

(ii) a period as the parties may agree in writing outside such Zones*

any warranties concerning speed and consumption shall be suspended pending inspection of the Vessel's underwater parts including, but not limited to, the hull, sea chests, rudder and propeller.

**If no such periods are agreed the default periods shall be 15 days.*

(b) In accordance with sub-clause (a), either party may call for inspection which shall be arranged jointly by Owners and Charterers and undertaken at Charterers' risk, cost, expense and time.

(c) If, as a result of the inspection either party calls for cleaning of any of the underwater parts, such cleaning shall be undertaken by the Charterers at their risk, cost, expense and time in consultation with the Owners.

(i) Cleaning shall always be under the supervision of the Master and, in respect of the underwater hull coating, in accordance with the paint manufacturers' recommended guidelines on cleaning, if any. Such cleaning shall be carried out without damage to the Vessel's underwater parts or coating.

(ii) If, at the port or place of inspection, cleaning as required under this Sub-clause (c) is not permitted or possible, or if Charterers choose to postpone cleaning, speed and consumption warranties shall remain suspended until such cleaning has been completed.

(iii) If, despite the availability of suitable facilities and equipment, Owners nevertheless refuse to permit cleaning, the speed and consumption warranties shall be reinstated from the time of such refusal.

(d) Cleaning in accordance with this clause shall always be carried out prior to redelivery. If, nevertheless, Charterers are prevented from carrying out such cleaning, the parties shall, prior to but latest on redelivery, agree a lump sum payment in full and final settlement of Owners' costs and expenses arising as a result of or in connection with the need for cleaning pursuant to this clause.

(e) If the time limits set out in Sub-clause (a) have been exceeded but the Charterers thereafter demonstrate that the Vessel's performance remains within the limits of this Charter Party the vessel's speed and consumption warranties will be subsequently reinstated and the charterers' obligations in respect of inspection and/or cleaning shall no longer be applicable.