

Contaminated Bunker Issues Within Scope of Marine Insurances

Marine insurances, which are indispensable for marine industry as much as bunker does, are frequently applied by ship-owners and compensations are claimed due to problems arising from the bunkers.



Bunker-related problems can lead to individual incidents, and depending on how high the level in the supply chain where this problem originates, there may be problems that may reach to epidemics on a regional or even global scale.

The most recent examples of large-scale bunker-related incidents are the problems that bunker fuel from Houston had caused worldwide last year. Even in Singapore, which is an important base of global trade in the Far East, the negative effects of Houston off-spec bunker were felt. Based on this supply chain alone, it is estimated that approximately 200 ships had suffered financial losses and/or commercial losses in Singapore and around the world.

The source of the problem cannot always be determined with certainty as the chain from the production of bunker fuel to supplying to the final consumer, which is the vessel, passes through a number of chemical processing and storage processes. However, if the bunker acquires chemical and physical properties, which are not compatible with the vessel, as the result of changes, which take place at any stage of the supply chain and can be identified as "contamination", this may lead to problems with different natures and severities.

Some problems caused by a basic need for the ship, such as bunker, in the functioning of the ship, can cause problems that can be solved relatively easier, such as the necessity of replacement of fuel filters or the temporary deactivation of fuel injection systems. In more serious cases, it is possible that the ship will collapse and consequently the shipowner's ship will suffer serious physical damage and even very serious claims of liability may be made for the damages that may be given to the third parties by the uncontrolled ship.

Compliance with the ISO 8217 standard, which is a reference source for bunker fuel trade worldwide, is an important milestone to ensure that the ship does not encounter bunker-related problems. However, the tests performed in accordance with ISO 8217 are not always sufficient to ensure that the bunker is not contaminated. Especially non-carbon



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based contaminants cannot be detected during ISO 8217 compliance tests. The tests which take longer to complete and cannot be conducted in most places due to lack of infrastructure may be far from being practical.

Even if the defect in the bunker can be detected before the it is delivered to the ship, the steps taken by the ship-owner at this point are of great importance for the ship's seaworthiness and the continuity of trade. Although elimination of some defects in the bunker by using additives is considered as the practical implementation in some incidents, it is often not possible to remove the contamination in the bunker and risks and physical damages to the ship may be increased.

Furthermore, when these interventions to be made on the bunker without obtaining approval from the bunker supplier, this may lead to the accusation by the "supplier that the bunker supplied had been deteriorated by the ship-owner" and prejudices primarily the right of recourse of the ship-owner that can be used against the bunker supplier.

In cases where the charterer is responsible for the bunker supply, the right of the ship-owner to assign the responsibility to the charterer may be possible on a contractual basis and in accordance with the legal regulations binding the contract. In this case, defueling the vessel, supplying new bunker and compensating the commercial and financial losses that the shipowner will suffer in this process by the charterer are among the most frequently communicated requests. At this point, the most important step that the shipowner needs to take in order to form its own defense is to take multiple samples from the pipe where the bunker is supplied to the ship before the fuel enters the tanks and to keep these samples in a secure manner that they constitute evidence in the future within the framework of the agreement between the charterer.

In cases where the charterer does not assume responsibility in the supply of bunker, some notations in the content of the shipowner's contract with the bunker supplier are critical in solving the problem. In such incidents where the shipowner is left alone with the bunker supplier, the most important issues are whether the contract includes any financial compensation limit that falls below the shipowner's loss, and whether damages arising from the loss of rent and freight of

the ship can be claimed from the bunker supplier. In addition, the notification period, which is an important basis for the exercise of almost any legal right, is a factor to be observed both when submitting the protest of the shipowner to the bunker supplier regarding the incident and starting to seek his remedies within the legal order.

Again, if the ship-owner puts provision that will limit the right of recourse of the insurers against the bunker supplier, in the contracts to be signed with the bunker suppliers, this will prejudice the rights of the ship-owner under the insurance.

It is important that the shipowner discusses the matter with their insurers if he is aware of any uncertainty in the contracts to be signed with the bunker suppliers.

