



July 2018

Defence class cover

Hold cleaning and off-hire

Cleanliness of holds on delivery

Time charters invariably provide for a ship's holds to be 'clean-swept' on arrival. However, an owner's warranty to deliver the ship with 'clean-swept' holds relates only to the cleanliness of the holds upon delivery at the first load port and does not ordinarily extend to subsequent cargoes and intermediate hold cleaning.

The NYPE 1993 form, at clause 2, provides: '...The ship on her delivery shall be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for ordinary cargo service...'

In turn, charterers need to be particularly aware that, unless otherwise agreed, acceptance of the ship (on delivery) with other than 'clean-swept' holds can result in loss of the right to subsequently claim damages for the cost and time taken to clean the hold(s).

The case of the *The Bunga Saga Lima*¹ is a well-known example of this. The charter was on an amended NYPE 1993 form and required the ship's hold to be grain clean on delivery. If the ship's hold were not grain clean on delivery, the charterer had the option to put the ship off-hire until the holds were made so clean.

On delivery, the ship's holds were found to be dirty with traces of coal residue. The first cargo to be loaded was iron ore, so the charterer did not protest and proceeded to load the cargo. The second cargo to be loaded was rapeseed, however, for which the holds required cleaning to grain standard. The holds were so cleaned and the charterer thereafter attempted to claim the cost and time taken as damages from the owner, claiming a breach in failing to deliver the ship with clean holds.

The English court decided that, by accepting the ship on delivery without reservation (in circumstances where the charterer was fully

aware of the condition of the holds) the charterer had represented to the owner that there was no need to comply with the grain standard on delivery. Accordingly, the charterer's claim failed.

When contracting on similar terms, a charterer should, therefore, insist that the ship's holds are cleaned to the agreed charterparty standard upon delivery at the first load port or, alternatively, expressly agree with the owner that charterer's rights are fully reserved (and deferred) to the next load port.

Intermediate hold cleaning

Under a time charter, an owner's warranty to deliver the ship with clean holds does not ordinarily (absent express wording to the contrary) extend to subsequent load ports. Instead, intermediate hold cleaning is generally a matter for the charterer, but the terms of the charter will often require the owner and its crew to assist in the cleaning operation.

The NYPE 1993 form, clause 36, provides: '...The Charterers shall provide and pay for extra sweeping and/or washing and/or cleaning of holds between voyages and/or between cargoes provided such work can be undertaken by the crew and is permitted by local regulations at the rate of [••] per hold...'

In performing these duties, the crew are under a general duty to clean the ship with reasonable care, skill and speed. However, depending on the previous cargoes carried, it will often be necessary to employ outside contractors or obtain specialist equipment to clean the holds sufficiently. The question of what the crew can reasonably be expected to achieve on their own is a question of fact, to be judged on the circumstances of each case.

Generally, hold cleaning and customary assistance does not include chipping rust, the removal of hard-adhering rust or scaling



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operations requiring specialist equipment such as pneumatic chipping hammers and sandblasting equipment.

In *The Bela Krajina*² the ship had carried cargoes of phosphate and potash, followed by a second cargo of manganese. The crew noticed loose rust in the holds but managed to clean the holds sufficiently to carry these cargoes. The ship's holds were, however, subsequently rejected at the next load port when trying to load a cargo of grain. It took the crew seven days to clean the holds to grain standard and the charterer sought to put the ship off-hire for this period. In this case, the crew had needed to erect staging and use specialist mechanical de-rusting equipment to remove the rust. The English court held that this type of cleaning operation could not be expected to be performed by the crew during a ballast voyage and the charterer's off-hire claim failed accordingly. It held that this cleaning operation was outside what could be considered as 'customary assistance' under the charter. Removal of rust patches in accessible locations would, however, be regarded as 'customary assistance'.

Off-hire

Off-hire disputes commonly arise in circumstances where the charterer believes the hold cleaning operation has taken too long and, accordingly, it has been deprived of the use of the ship for this additional period of cleaning. Off-hire and equitable set-off is discussed in more detail in the club's publication '*Legitimate deductions from charter hire*', but it is important to remember that under English law hire continues to run and be payable unless the requirements of the particular off-hire clause are triggered. The burden is strictly on the charterer to bring itself within the off-hire clause³.

The English court in *The Berge Sund*⁴ considered the issue of off-hire in the context of hold cleaning. Having discharged a cargo of butane, the ship's crew had cleaned the ship's tanks during the ballast voyage to the next load port. Despite this cleaning, the tanks were rejected. There was no evidence of negligence on the crew's behalf, but a significant amount of further cleaning had to be carried out before the tanks were passed as sufficiently clean. The charterer sought to put the ship off-hire for the time lost by reason of the additional cleaning.

The English courts held that the 'efficient working of the ship' had not been prevented – the service required of the ship was to clean the tanks and this is what the ship had been doing. The court said that '*the question is not what the charterers hoped or expected their orders would be, but what service they actually required*'. The service required was cleaning and not the loading of the next cargo. The ship was therefore held to be on hire throughout the cleaning period.

In the event that the cleaning period does not fall within the provisions of the off-hire clause, a charterer may still be able to claim the additional cleaning time (and expense) in damages, by reason of a breach by the owner of another charterparty term. This generally requires the charterer to be able to identify that specific aspects of the tank cleaning process had not been performed sufficiently by the crew and that the Master and crew were not sufficiently experienced⁵. A case based on a mere inference, based on the fact that the cleaning took longer than the charterer had expected, is unlikely to succeed on its own⁶.

Redelivery

A charterer is usually under an obligation to redeliver the ship in '*like good order and condition*' as on delivery. This means the charterer needs to employ the ship in such a way that, at the time of redelivery, the ship will be fully discharged, clean and free of previous cargoes.

Defence cover is, by its very nature, discretionary in that the club must be satisfied as to the merits and quantum of the claim in question and the likelihood of achieving a successful outcome, if it is to lend support.

The club has a good level of experience in hold cleaning and off-hire disputes, and members requiring further information on this topic should direct their enquiries to their usual contact at the club.

- 1 [2005] 2 LLR 1
- 2 [1975] 1 LLR 139
- 3 For example – see *The Doric Pride* [2006] 2 LLR 175
- 4 [1993] 2 LLR 453
- 5 Such as in the case of *The Leipaya* [1999] 1 LLR 649
- 6 See *The Aditya Vaibhav* [1993] 1 LLR 63

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