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Home: Hold On! Common cargo hold issues and how to avoid them

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The preparation and maintenance of cargo holds is a crucial aspect of the bulk cargo trade. When holds are not ready for their intended cargo, a number of different types of claim may arise, such as cargo contamination and shortage, as well as charterparty disputes.

We look at some of the topics we frequently see, which should assist our Members in avoiding and dealing with these types of dispute.

First things first: the cargo and destination

Before we can start to consider the actual condition and suitability of the cargo holds, think about:

- What is the cargo?
- What is its intended use?
- Where is the cargo coming from and going to?
- What standard of hold cleanliness is required?
- What was the previous cargo transported in the holds?
- Have you been advised of any particular requirements at the load or discharge port?

The required standard of cargo hold condition can vary from port to port. It is sensible to consider not only whether the cleanliness requirements for a particular port may be more stringent than another, but also whether the level of cleaning required between cargoes may lead to issues regarding the disposal of cargo residue and/or wash water or may limit the use of certain cleaning materials.

Standards of Hold Cleanliness

Although not standardised across jurisdictions, the standards are broadly as follows:

Hospital Clean	<ul style="list-style-type: none"> • This is the most stringent. This requires all hold surfaces to have 100% intact coatings.
Grain Clean	<ul style="list-style-type: none"> • The holds must be clean from previous cargo residue, odours, insects, loose rust scale and paint flakes. • Atmospheric rusting of exposed steel is generally accepted. • Prior to loading, holds must be clean-swept, washed down with fresh water, dried and well-ventilated.
Normal Clean	<ul style="list-style-type: none"> • The holds must be swept to remove residues of the previous cargo, washed down and ready to receive a similar cargo.
Shovel Clean	<ul style="list-style-type: none"> • The holds do not require washing but should be swept down.

Charterparty considerations

A commonly asked question is “who is responsible for ensuring the holds are in a suitable condition for loading the next cargo?”

The answer depends on the charterparty terms.

As a starting point, absent a charterparty clause to the contrary, it is likely the responsibility for both cleanliness and maintenance would fall to Owners. Under an unamended standard form NYPE charter, Owners are likely to be responsible (i) under the maintenance clause, (ii) their obligation to ensure the vessel is fit for her charter service, and (iii) their obligation to prosecute the voyage with the utmost despatch.

However, the charterparty terms are usually amended and the following types of provision are common:

- A clause providing at the first load port only, owners are responsible for ensuring the holds are in the required condition for the first cargo to be loaded. If the holds are not ready, the potential consequences may be charterers having the option to (a) place the vessel off-hire (or pro-rata off-hire proportionate to the number of holds not ready for loading) until the vessel passes inspection; and/or (b) cancel the charterparty in the event the vessel is not in the required state by the cancelling date.

- Owners remain responsible for the maintenance of the vessel. However, there is often a bespoke clause providing charterers are responsible for the cleanliness of the holds for subsequent cargoes whilst the vessel remains on charter.
- A clause setting out the condition the holds should be in on redelivery. Parties may opt to allow charterers to make a payment in lieu of cleaning the holds (commonly referred to as an “in lieu of hold cleaning” or ILOHC clause).

Common disputes

Below we set out two examples of disputes: (1) the distinction between “cleanliness” and “maintenance” when determining liability for an unready hold and (2) whether on delivery, any cargo remaining in the hold is a residue or whether it amounts to excess cargo under an ILOHC.

1) Cleanliness vs maintenance

Absent any charterparty clause to the contrary, issues of maintenance generally fall to Owners’ account. However, it is common for charterparties to contain additional clauses which expressly provide any cleaning between cargoes is charterers’ responsibility.

As such, we regularly see disputes on whether the cause of the hold condition failure relates to “cleanliness” or “maintenance”. If it is a question of insufficient maintenance, then it is arguably a matter for Owners’ account. Where there is an express cleaning term, issues of cleanliness are for charterers’ account.

There is surprisingly little authority on the distinction between the two. But consider the following points from the *Bela Krajina* [1975] 1 Lloyd’s Rep 139:

- Each case should be considered on its own merits
- Guidance included: *“cleaning of holds does not include chipping steel. It does include removal of large rust patches in accessible locations. Customary assistance does not extend to scaling operations requiring the use of sophisticated tools like pneumatic chipping hammers, high pressure water jets or sandblasting equipment.”*
- Can the crew achieve the required standard unaided? For example, is there soft non-adhering rust that can be removed (albeit with some difficulty)? If the crew cannot achieve the cleaning without assistance, this is indicative that it may go beyond cleaning.

Another consideration is whether the amount of work to rectify the holds due to the charterers’ choice of cargo? If there is an extraordinary cleaning operation required because of the cargo, there is a possibility additional costs may be recoverable from charterers under the implied indemnity.

2) **Hold Condition on redelivery (ILOHC clauses)**

We also see disputes about the condition of the cargo holds on redelivery. These often involve cargoes that are difficult to fully discharge using grabs, such as cement.

The charterparty may contain provisions setting out the expected condition of the vessel on redelivery. If charterers breach these provisions, they may be liable to Owners in damages (usually the cost and time of rectifying the holds).

As an alternative, we may see an ILOHC provision which provides charterers may pay a lump sum on redelivery in lieu of cleaning the holds. Some ILOHC clauses expressly refer to dunnage and the extent of cargo residues that fall within the permissible limits of the ILOHC provision.

One of the more common disputes is whether the cargo remaining in the hold(s) amounts to "cargo residue" (i.e. likely within the limits of the agreed ILOHC) or "excess cargo" (i.e. outside the ILOHC with charterers being liable in damages in addition to any ILOHC lumpsum).

Again, this is a matter to be assessed on a case-by-case basis, with reference to the particular contractual clause(s). However, factors we take into account include:

- Does the clause indicate what quantities may be acceptable as residues?
- What percentage of the cargo remained on board compared to the quantity loaded?
- Was there a shortage claim?
- How was the quantity of cargo remaining on board estimated? (i.e. how accurate is the estimate?)
- How long did it take to remove the cargo?
- Are there any photographs of the holds and/or remaining cargoes?

Particularly with cargoes such as cement, it is difficult to remove all residues as the cargo at the bottom of the hold needs to be shovelled out manually.

At the outset, where possible, it is helpful for parties to be realistic about the likely cost and time of cleaning the holds and the level of work involved and to try to reflect this in any lump sum sought under an ILOHC clause.

Surveyor's evidence

In practice, we see disputes focussing on the level of rusting in the holds, the extent to which it is flaking and the extent to which this can be tackled/rectified by the crew. In this regard, the evidence of the attending surveyor can be crucial to establishing the case.

The charterparty will often set out the requirements for whom can be considered a competent surveyor. It is not uncommon to see a requirement for an "independent surveyor". In broad terms, this is generally accepted to mean a surveyor jointly appointed by the parties (*The Protank Orinoco* [1997] 2 Lloyd's Rep 42).

Practically speaking it is helpful when the hold condition report covers the following:

- What condition the holds should be in.
- If the holds are not in the required condition, the reasons why not. A brief explanation can be very helpful, as can accompanying photographs of the hold and any issues.
- What steps are needed to bring the holds to the required standard.
- Whether the steps needed are, in the surveyor's view, cleaning or maintenance. Although this is not definitive, it may be a helpful indication.

Disposal of cargo residues and excess cargo

Any excess cargo, cargo residues, washwater and cleaning products must be disposed of in accordance with MARPOL and local regulations. A practical consideration is how these are disposed. Although the technical considerations are outside the scope of this article, factors to consider are:

- Is there a cargo residue clause in the charterparty?
- Who is responsible for disposal?
- Is there any indication on the cargo declaration that the cargo is harmful?
- Are any of the cleaning agents used in the hold harmful?
- Are there any disposal restrictions in port (such as whether the vessel in a MARPOL Special Area)?
- Does any wash water need to be disposed of in a reception facility?
- Does the vessel require a garbage/residue management plan?

Top tips on avoiding disputes

We have had a “whistle-stop tour” of some of the key areas where disputes may arise. But how can disputes be avoided?

It is impossible to foresee and account for every eventuality but, broadly, factors to consider at the outset of a charter include:

- Is the vessel suitable for the cargo(es) in question? (has it previously carried similar cargoes or will significant cleaning be needed?)
- If cleaning is needed, is it clear in the charterparty who will be responsible?
- Are the expected standards clear to all parties and set out in correspondence and/or the charterparty?
- Is there a provision as to whom will be considered an appropriate surveyor?
- Are the consequences of hold failure (e.g. off-hire) clearly set out in the charterparty?
- If cleaning will be required, does the vessel have the equipment and cleaning supplies it requires for the task? Who is to provide and pay for these?

By considering some of these factors in advance, it may be the parties have a clear framework in which to determine responsibility in the event the holds do not pass inspection, as well as the means to address any issues promptly, to avoid further delays.

If a dispute arises...

Even with the best-laid plans, some disputes are unavoidable. In the event a dispute arises – or is contemplated – contemporaneous evidence is usually key. This is likely to include:

- Attendance of a local correspondent/surveyor and their photographic and written reports
- Exchanges between parties: pre, during and post fixture
- Notes of any telephone calls/records of exchanges
- Recap and charterparty terms
- Any instructions given to the crew and/or contractor
- Notices or protests given
- Cleaning logs or cleaning records

- Photographs

Find out more

If you have any further questions or issues to discuss arising from this article, please contact your usual contact at North.

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