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Hull cleaning and prolonged stays



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Hull cleaning clauses produce a variety of disputes between owners and charterers, which often involve disagreements over the construction of the agreed clause. In a recent London arbitration, a tribunal was required to look at such a clause. The clause agreed between the parties was as follows:

“If the vessel is encountering a prolong stay, minimum twenty-five (25) days in port and/or at anchorage, and there is strong reason to believe the vessel’s hull has acquired excessive marine growth affecting vessel’s speeds/consumption due to the stay at the specific port and/or anchorage, owners are to arrange for a diver inspection. Should the result of this diver inspection indicate that there is excessive marine growth on the hull, which is directly related to the specific port/anchorage stay, owners, to arrange underwater scrubbing of the hull in charterers’ time and at charterers’ expense, prior to vessel’s departure from the port or anchorage, is saying can be done without reasonable delay. If the underwater scrubbing is not available or cannot be carried out at the port in question, same to be carried out in charterers’ time/expense in the next convenient port.”

The vessel was ordered to Hazira, India and remained in port between 22 June and 22 July, i.e. in excess of 30 days. The charterers had sub-chartered the vessel, so they asked the master to let them have evidence of any marine growth that was above the waterline, so they could inform their sub-charterers. In addition, they wanted a quotation from a local hull cleaning company for an underwater inspection, hull cleaning and propeller polishing. The owners obtained an estimate of cleaning costs, but the local agents advised them that it would not be possible to carry out a hull inspection and any cleaning at Hazira, either at anchorage or in berth. It would be possible to tell the owners whether there had actually been any fouling. In response, the charterers proposed a lump sum cleaning figure of \$8,000 USD in lieu of any additional time being spent on the issue. It is not clear what response the owners gave the charterers.

On 27 July, after the vessel had departed from Hazira, the owners sent the charterers’ photographs of the marine growth on the hull and propeller blade. The vessel was then redelivered. Following redelivery, the vessel deviated to Port Louis, Mauritius for an underwater inspection cleaning. The owners claimed the costs of the deviation and the underwater cleaning from the charterers.

- The owners claimed those costs based on an implied indemnity into the charterparty, that the charterers would indemnify them, for the loss, damage and expense suffered by them, as a result complying with the charterers’ orders and directions.

- The charterers claimed that the hull-cleaning clause had set out what would happen in the event of a hull being fouled.
- The tribunal decided that it was clear from the clause that the parties had agreed that the charterers would be liable for the time and expense in cleaning the vessel's hull if it became fouled because of a port stay of 25 days or more. The clause was sufficient in its own right; there was no need for any implied clause.
- There was a dispute over what the words "excessive marine growth" meant. The tribunal was not prepared to criticise the owners for failing to carry out underwater inspection and cleaning at Hazira.
- They concluded that not every requirement for cleaning would be for the charterers' account. The requirement to show excessive marine growth was needed before an owner could claim under the clause.
- The vessel's speed and consumption had been affected by the vessel's stay at Hazira. Because of that evidence, the owners were able to show that excessive marine growth had occurred at Hazira. The time and expense of the deviation to Port Louis fell to the charterers' account.