

KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-98-2012 **(Measures to Minimise the Losses in case of Tanker Cargo Contamination)**

► **Introduction:**

Tanker (liquid) cargo contamination is an almost inevitable element of the tanker trade. Even the slightest pollution may render the cargo off the required or stipulated specification and if the vessel is liable for the contamination, considerable claims are likely to follow.

The following are guidelines concerning decisions which need to be made in the initial phase following discovery of a contamination, and possible available options for restoring the cargo. They are extracted from reliable sources with both legal as well as practical experience pertaining to the issue.

► **Legal Aspects- Mitigation endeavours:**

When contamination occurs; whether the contaminant is seawater or previous cargo, even the slightest pollution on a PPM (parts per million) range may render the cargo off specification. Considering the homogenous nature of liquid cargo, once foreign matter has entered a tank it is likely that all of the tank's contents will be damaged. Adding insult to injury, liquid cargoes are usually expensive cargoes, meaning that if the vessel is liable for the contamination, gross claims may be raised.

The points raised above suggest that efforts minimising the damage are very much necessary. We are all familiar with claimants demanding payment for the entire cargo at sale value, but; is the loss so great?

A fundamental principle in both European and Anglo-American legal systems is that the claimant - in our context usually the cargo receiver - is bound to mitigate his loss.

However, although the claimant has a duty to mitigate, this is not an unrestricted duty. What will be assessed by the court or arbitral panel is whether the decisions taken *at the time they were made* appeared to be reasonable and sensible. Arguments based upon the claimant's failure to mitigate therefore often fail. Judges will usually sympathise with the claimant's position - in the heat of the battle, knowledge and information are quite scarce while time pressure is proportionally high. Accordingly, it is a good idea for club and member to pursue an active role in the mitigation discussions. Cargo receivers tend to be more loyal to their mitigation duties if a certain amount of pressure is applied on them. In addition, the defence of mitigation failure will stand much stronger if it can be shown that suggestions on what to do with the cargo were made *at a time when options were still open*.

Fortunately, a number of alternatives to simply dispose of the cargo are available. In order to take advantage of these alternatives, however, some practical issues need to be solved first. Here we will seek to give advice on both the decisions which need to be made in the initial phase following discovery of a contamination, and on the options available for restoring the cargo.

► **Practical Issues and Feasible Solutions:**

As the expression "time is money" is nowhere as true as in the shipping industry, keeping the vessel moving will generally be the highest priority of vessel interests. In order to achieve this, the first decision to make will often be ***where to store the cargo*** whilst waiting for lab results and evaluating which further actions to take. Options to consider:

1-Transferring the damaged cargo into the vessel's slop tanks:

If slop tanks are available, this provides for a cheap solution as no external storage costs are incurred, and offers the flexibility of moving the cargo to ports where reconditioning facilities are better. However, the cargo receiver should not be given the impression that he has thereby successfully refused to take delivery of the cargo. Also, the vessel should take utmost care to ensure that the cargo lines are thoroughly cleaned before and after the transfer in order to prevent the contamination from spreading and increasing.

2-Transferring the cargo onto a barge:

This releases the vessel from the burden of having the contaminated cargo on board, and at the same time makes it possible to move the cargo to more well-equipped ports. On the down side, however, one more potential contaminator and opponent is introduced, and due care should be taken in this respect.

3-Transferring to empty shore tanks:

Empty shore tanks are usually available in larger ports, and may be convenient to transfer the cargo into as the vessel is then free to sail again. However, if the cargo cannot be reconditioned in the vicinity of the shore tank, the solution is really just a way to postpone the problem. Further, considerable storage costs may incur if the cargo is left in the shore tank for longer periods & like above one more potential contaminator and opponent is introduced, so due care should be taken in this respect.

4-Other ports of call:

Finally, in cases where the vessel has several ports of call on the voyage, it might be sensible to assess whether any of the other ports provide better storage or restoring facilities, and make arrangements for discharging the cargo there instead.

► Mitigation Measures:

The options for minimising the loss will depend on the cargo product, the nature and magnitude of the contamination, the market for the product and the facilities available at the place where the cargo is located. Engaging experts for advice will often be favourable, especially if the case is complicated or potentially very expensive. In the following, some of the available mitigation options are discussed:

1-Selling as is:

The first solution that comes to mind will often be to have the contaminated product sold "as is". The contaminated product may, for instance, still pass as an "industrial grade" product, even if it was originally labelled "food grade". The price difference does not necessarily have to be too big. Therefore, simply selling the cargo in the contaminated state can be a quick and reasonable solution.

2-Blending with sound product:

Another quick and easy fix if the contamination is not too bad, is to blend the product with sound product. This solution depends on the availability of sound product either in other of the vessel's tanks or in shore tanks. Due care should be taken not to run the risk of rendering even more cargo contaminated after blending. Experts should therefore be engaged before proceeding.

3-Reconditioning by distillation:

If none of the above mentioned solutions are at hand, the parties have traditionally turned to reconditioning by distillation performed by different operators within the petrochemical industry. Any mixture of two components with different boiling points can in principle be distilled, thereby separating the contaminant(s) from the sound cargo.

Distillation does, however, come at a price; first of all 0.5-1.0% of the product is usually lost in the process. Furthermore, the minimum quantity of product accepted by the performing plants is typically around 500 MT, but due to the many related costs such as shipping, port & agent fees, pilotage etc. distillation would in any case only be economically attractive when larger quantities are in involved.

4-Reprocessing by filtering:

However, if the contaminant consists of solid particles, the contamination is slight (in terms of PPM) or is a matter of colour and/or odour, reprocessing may be another option of reconditioning available to the claimant. Rather than separating the two components, as would be the case when distilling, this technique will recondition the product by removing the contaminant(s) by running the contaminated product through either a mechanical or chemical filtering unit. In most instances, the process is uncomplicated. Also, due to the relatively small - and therefore mobile - filtering units the reprocessing may even take place on location, whether in the discharge port, by the shore tank or even on board a barge /in transit. Furthermore, the set-up costs are significantly lower than the cost of distillation and no cure/no pay terms are often offered. The downside is the limited list of contaminants that can be successfully removed using this technique as well as the quantity effectively filtered within a reasonable amount of time. Finally, about 0.5% of the product is as a rule of thumb expected to be lost in the process (not including the contaminant(s)).

