

ICMA XX - COPENHAGEN

CARRIAGE OF GRAIN CARGO AND FUMIGATION –

TECHNICAL AND LEGAL ISSUES IN ARBITRATION



NAUTICAL SURVEYORS & CONSULTANTS

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INTRODUCTION

- **Grain is the collective name for the Edible Seeds of various plants.**
- **A pest is an organism in any stage which affects adversely intended use of the commodity.**
- **Presence of Pests is infestation in egg, pupae, larval or adult stage is infestation.**
- **Understanding shelf life, which is an irreversible change.**
- **Infestation reversible, can be controlled and killed for better commercial value.**

FUMIGANTS, FUMIGATION AND METHODS

- **Fumigation is the action of releasing a toxic chemical in the gaseous state to control a targeted pest.**
- **Fumigant Formulation is the chemical or mixture of chemicals comprised of active and inert (if any) ingredients which releases a fumigant.**
- **Fumigant formulations may exist in any of the three physical states: liquid, gas, or solid.**
- **Desirable properties in a Fumigant.**
- **Selection of Fumigants.**
- **Maintaining prescribed safety limits of residual pesticide as per FAO/WHO standards.**

CHARTER PARTIES AND FUMIGATION CLAUSE

- **Prior Sept. 2015, Fumigation Clauses were different for Voyage Charter and Time Charter and not comprehensive.**
- **A one all encompassing clause has been developed for the use in both voyage and time Charter Parties under BIMCO Cargo Fumigation Clause .**
- **‘Grain Con’ Charter Party Clauses:**
The following clauses play a vital role when crucial decisions are to be made viz Vessel Inspection, Bills of Lading, Fumigation, Time Counting and Dispute Resolution.

CHARTER PARTIES AND FUMIGATION CLAUSE

- Graincon Charter Party on Fumigation:
- 'If after loading has commenced, and at any time thereafter until completion of discharge, the cargo is required to be fumigated in the Vessel's holds, the Owners are to permit same to take place at the Charterers risk and expense. If local authorities require the crew to be accommodated ashore as a result of fumigation, all associated expenses shall be for the Charterers account.
- The Charterers warrant that the fumigants used will not expose the Vessels personnel to any known health hazards, and will comply with current IMO regulations.
- Time lost to the Vessel shall count as laytime or time on demurrage'.

CHARTER PARTIES AND FUMIGATION CLAUSE

- **NYPE-93 Time Charter Party on Fumigation:**

'Charterers to provide,Fumigations ordered because of illness of the crew shall be for the Owners account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers account. All other fumigations shall be for the Charterers' account.'

BIMCO Cargo Fumigation Clause for Charter Parties

- The Charterers shall have the option to fumigate the cargo in the Vessels holds in Port and/or at anchorage and/or in transit.
- Fumigation shall be at the Charterers risk and responsibility.
- Crew to be accommodated ashore – Charterers account.
- At the discharge Port or place, all fumigant remains, residues and fumigation equipment shall be removed from the Vessel and disposed in accordance with MARPOL ANNEX V- Charterers A/c.
- Time Charter Party : Vessel not be off-hire due to fumigation.
- Voyage Charter Party :
 - 1. Time lost to the Owners shall be Charterers Account, No Off Hire.
 - 2. Time lost to Owners prior to commencement of lay time etc. considered as detention and to be compensated.
- Bills of Lading not to be claused due to fumigation options.
- This clause shall prevail in case of conflict with Charter Party.

COMPLEXITIES, INFESTATION WITH CASE STUDIES

- **Complexities.**
- **Case Study 1 : Rodents in the Hold**
- **Case Study 2 : Correcting Infestation with part Cargo aboard using (MSC1/Circ 1264).**
- **Case Study 3 : Turning a Blind Eye. Owners Prejudicing P&I Club cover by not clausing Bill of Lading when infestation found.**
- **Case Study 4 : Fumigation Poisoning of crew, resulting in 4 casualties and hospitalization of 15.**

INFESTED GRAIN CARGOES - RISK & LOSSES

- **Delays**
- **Cargo related losses**
- **Casualties**
 - **Casualties to fumigation agency staff**
 - **Casualties to ship staff**
- **Structural damages to Vessel**
- **The Way Ahead.**

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