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### United Kingdom: Cat Fines: A New Issue For Hull Insurers?

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In recent years, environmental regulatory requirements have dictated that marine fuels should be low in sulphur, a major pollutant, largely responsible for "acid rain". For example, in 2006 the US Environmental Protection Agency (EPA) promulgated its final rule implementing requirements for sulphur, cetane, and aromatics for highway, non road, locomotive, and marine diesel fuel produced in, imported into, and distributed or used in the rural areas of Alaska. Beginning June 1, 2010, diesel fuel used in these applications must meet the 15 ppm (maximum) sulphur content standard. Similar requirements exist in California and in the European Union. While this is good news for the environment, low-sulphur fuels present a twofold challenge to the shipping and insurance industries. Not only are they more expensive since they are the product of a more thorough refining process, but low-sulphur fuels often contain higher levels of catalyst fines ("cat fines"), the scouring action of which can cause extremely rapid wear on an engine's moving parts with potentially catastrophic consequences.

Cat fines are hard, extremely abrasive particles of aluminium and silicon oxides, a by-product of the cracking process used in fuel distillation. The current International Standard for an acceptable level of cat fines is set at a maximum of 80 mg/kg, or parts per million (ppm). Most engine manufacturers would expect "cat fine" levels to be around 15 mg/kg or ppm for their machinery to operate without unusual wear and tear. The ISO standard is likely to remain unchanged for several years and for the moment there is a substantial mismatch between ISO standards and engine manufacturers' recommendations. Other issues include the fact that the best bunkered ships may not be adequately crewed or the crew may have insufficient time to carry out this time consuming task or their standard purification systems may not be adequately maintained or the purification units may not have adequate throughput. Mixing fuel can corrupt an ISO compliant stem, or poor engine performance monitoring may result in problems going unresolved until engine failure occurs. The testing of fuel itself is no exact science as the cat fines will not necessarily be evenly distributed.

Claims against insurers derived from cat fines are on the up. Most of these will be paid as the Assured will rely on crew negligence or latent defect – both standard insured perils in hull insurance. However if challenged, the Assured or its agents will have to demonstrate that its duty of due diligence was properly discharged. Each case will turn on its facts, but lack of supervision in bunkering, poor record-keeping or a lack of procedure in documenting systems management – if causative – can all lead to a finding that due diligence was not exercised, or that a defect was not properly latent.

There are other defences available to hull insurers, including unseaworthiness. It is well established that if a ship sets sail in no condition to meet the ordinary perils of the sea – the well-known insured perils of a hull policy – an insurer is not liable for any loss attributable to unseaworthiness of which the assured is aware. So if a poorly maintained vessel, bunkered with various fuels and lacking in on-board purification should suffer a sudden engine breakdown due to an accumulation of cat fines, is an insurer liable? And will that insurer be able to establish any breach of due diligence if the policy did not require the use of ISO compliant fuel, or if the insurer has never asked about maintenance and record-keeping? Acceptable standards will vary around the world. While the defences available to insurers may seem straightforward, proving them may not be.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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