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No one-size-fits-all solution to double payment woes: shipping experts

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By: Esther Ng, S&P Global Platts

The shipping industry is no closer to finding a solution to how shipowners can protect themselves from having to pay twice for the same order of bunker fuel even as several solutions were mooted during a recent bunkering forum in Fujairah, UAE, Tuesday.

The panelists at the 10th International Fujairah Bunkering & Fuel Oil Forum suggested physical suppliers revoke their right to maritime lien, which sparked a lively debate in the room.

Richard Briggs, executive partner of Hadeef & Partners and board member of Emirates Maritime Arbitration Centre, based in the UAE, posed a question to physical suppliers whether it was better for them to have the right to arrest a vessel and go through a lengthy legal process, or for the bunker industry to have a contract that spelled out terms and conditions clearly.

However, Bomin Oil DMCC's managing director, Andy Laven, responded that it is unlikely anyone with two to three recourses to claim monies back would want to give any up, because if one option failed, the supplier or trader would try another avenue.

"It's a global issue that is fundamentally driven by different legislation in different environments," Laven said. "Bunker suppliers and charterers and owners always want to take whatever suits them best."

"Where one can have recourse to a local jurisdiction to protect themselves, why would they want to give that up?" Laven added.

One solution is a bunker non-lien clause that states that the time charterer is the one buying the bunkers and not the shipowner, and that whichever bunker suppliers the charterer uses during the time charter period, suppliers acknowledge the shipowner is not the one buying the bunkers, but the charterer, said Grant Hunter, head of contracts and clauses for shipowner association BIMCO.

"Personally, I would be surprised how successfully many owners will get this clause accepted but I understand this clause has been accepted on a number of occasions," said Hunter.

Getting the maritime lien waived would give more protection to the shipowner, but for clauses and contracts have to be fair and balanced to be accepted by the industry, he said.

"When we find solutions we have to find one that works for everyone and not try to be overly protective to just one party," said Hunter, adding that harmonization of terms and conditions in the contract would give clarity to all parties involved in the bunker transaction.

The problem is that there is no law across jurisdictions that clearly says who has priority for the claim, and traders or suppliers will use whichever jurisdiction that will enable them to enforce a claim, said bunker trading house Praxis Energy Agents' general manager Dimitris Mertikas.

Mertikas called for more financial transparency in the market, or the other solution is to "keep it simple," in which shipowners buy directly from physical suppliers.

"We need more transparency in the market. Millions of dollars in sales are transacted daily, but almost of all them are unsecured; there are no guarantees, but a big bulk of shipowners are not willing to disclose financials," said Mertikas.

"Shipowners shouldn't have the fear that the bank is asking for payment because of an invoice from a trader, and in another jurisdiction a supplier is enforcing a maritime lien on the shipowner, we need all the parties to sit and work out a solution," he said.

Mertikas added that letters of credit would go some way to making a shipowner "feel safe" when a supplier defaults, and the trader will not likely go after the ship.

A member from the audience said shipowners should do their due diligence on their charterers. "Why do you want to charter your vessel to them if you know they cannot pay you? Why go that far?" he said.

Grant said that was one of the reasons a bunker non-lien clause was developed.

"If a charterer is on shaky financial grounds, the [non-lien clause] is not going to happen and that should send a warning to the shipowner that that charterer is maybe not good to do business with," said Grant. A bunker non-lien clause states that the time charterer is the one buying the bunkers and not the shipowner during the time charter period, and that suppliers acknowledge that the shipowner is not the one buying the bunkers, but the charterer.

Briggs, wearing his hat as a board member of the Emirates Maritime Arbitration Center (EMAC), said parties could consider arbitration to resolve their disputes.

"In the UAE, it is possible to have arbitration under \$270,000 -- most bunker disputes are \$200,000 - \$300,000 -- and fall very well into the confines of EMAC or [London Maritime Arbitrators Association]," said Briggs.

While arbitrators cannot change the law, they do have a chance to pick a maritime expert or someone who understands issues in the maritime industry as opposed to a judge that did not, he said.