

诺亚之风

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货物被燃油玷污后

案例 1

满载货物的 B 轮在返航途中，发生燃油进入货舱的事故，事故原因为，由于船员的疏忽，驳油过量，导致大量燃油从油舱锈蚀的透气管进入到货舱，该货舱的大部分货物被燃油污染。当该轮抵达卸港卸货时，发现该舱部分货物表面沾染油渍，剩余货物虽然没有沾染油渍，但也受到了燃油气味的影响。由于所运货物价值较高，本案报损金额高达几百万美金，船方及货方都高度关注本案，双方都聘请了有经验的检验师、律师、货物检测公司及相关专家来协助处理案件。

本案船方及货方都委托了检验师对受损货物进行联合检验，但是双方检验师评估的货损结果却相差很大，这直接影响双方在初期沟通担保金额时分歧较大。

另外，由于货方单方面聘请了专家对受损货物进行取样检测，如果船方无此安排，很可能后期与货方谈判中会处于劣势，为了保障自己的利益，船东保赔协会迅速委托律师推荐适任的专家及实验室，并根据律师建议邀请对方参与联合取样，严谨对待每个环节，确保检测结果的公正与效力。

本次事故原因很明显是船方的问题，因为船员驳油过量，导致燃油从锈蚀的透气管流入货舱中，这既有船员的疏忽，也反应了船舶的状况问题。

在此，需要特别提醒各位船东朋友，因自身船况问题导致事故发生时，保险人会依照保险条款及保单规定，需要船东履行修理、检验并确保船舶安全，适航、适货的义务。这里的检验、修理，不仅仅包括直接导致事故发生的船舶缺陷，例如，某保赔协会 Rules 规定：

“The Members’ Committee may reject or reduce any recovery by an Assured where in its sole discretion it determines that the Assured has not at any time (whether before, at the time of, during or after any casualty, event or matter liable to give rise to a claim upon the Association) taken such steps to protect his interests as the Members’ Committee in its sole discretion would have expected an uninsured person acting reasonably in similar circumstances to have taken.” “Any deficiencies noted and/or any recommendations made as to repair or remedy as a result of any inspection undertaken in accordance with Rule 8.5 shall be corrected and/or carried out forthwith or within such period of time as may be specified by the Association. Notwithstanding anything herein, no action, lack of action or omission by the Association with regard to any inspection, noting of deficiency, recommendation, or lack thereof by the



Association or its nominated inspector under this Rule 8 shall constitute an approval, disapproval, warranty,

undertaking, certification, or assumption of responsibility of any kind by the Association regarding the Assured, his Ship(s) or management, nor shall any such action, lack of action or omission by the Association relieve the Assured of any of his responsibilities or obligations under the Rules.”

协会认为对于可能导致发生事故的其他潜在缺陷也可以要求会员进行检验。正如本案，虽然仅一个燃油舱的透气管锈蚀，导致燃油进入货舱，但是通过这次事故，协会不得不担心其他燃油舱的透气管是否也存在同样的锈蚀问题，因此他们提出要求检测所有燃油舱的透气管的状况。

或许，有船东朋友对保赔协会的上述检验要求不理解，在此，我们对这个问题做一个广义的解释：

保赔协会与船东之间的保单通常适用英国法，但是国内船东往往习惯用我们的思维考虑英国法下的合同问题。就拿上述案例来说，协会要求船舶的连系油舱的全部舱室的排气管道都要检查（不仅仅是出事的那个舱室），并如发现问题都要整改。按照一个普通的国内被保险人的思维来说，这种要求有些过分，所以难以接受。我们认为不应该责备船东主观或有意不作为，问题出在我们对合同适用的法律认识不足。大陆商家在处理合同关系时，都希望不要背离法定的几个规则。比如民法总则和将要生效的民法典的总则都规定合同的订立和执行中当事人都要坚持“平等原则”，“自愿原则”，“公平原则”和“诚信原则”。但是英国法下并没有这些法定原则。英国法认为合同的底线是不得欺诈，上限是契约自由。合同双方孰强孰弱完全依靠市场这只无形的手去调节。因此，当国内当事人习惯了用 Chinese Sense 去理解涉外合同关系时，会遇到困惑和不解。但是，航运事业中许多合同不得不仍要适用英国法（其实它也是目前通用的国际商务游戏规则），因此我们的认识是，我们还是需要研究英国法并接受它。

所以，协会们（所有的保赔协会都是这样做的）根据契约自由在保赔合同中放入了一些中国船东不太喜欢的条款，虽然保赔保险是格式合同，从宏观上看待，由于英国法下没有“霸王条款”无效这一说，合同条款中也没有欺诈因素，船东们还是要服从。从微观上看这些条款还是具有防损和建设性的，有利于合同双方共同利益的，很难说船东们可以抗拒或不去听从。

货物被油污染或者被污水污染的案件屡见不鲜，大多数与船员疏忽及船况不佳相关，遇到此类问题，建议立即通知保险经纪人及保赔协会得到专业的处理意见，留存证据；同时，针对事故出现的缺陷或关联缺陷，应立即进行合理合适的检修，确保船况适航、适货。另外，燃油污染货物案件，如果涉案货物数量较多且金额较高，往往会成为一个非常复杂且耗时较长的工作。不过，各位船东朋



友如遇到这个问题，不要过分惊慌或焦急，在保险经纪人和保险人的协助和指导下，有条不紊的推进案件，解决案件。

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如有问题，也欢迎随时与我司联系。

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装卸时间之准备就绪通知书（NOR）

装卸时间是租船人和船东之间经常发生争议的问题，更具体地说就是：装卸时间何时开始以及 NOR 何时有效。

在普通法下船舶需要在第一装货港递交 NOR(或至少将船舶准备好装货通知租船人)，但租约中常常约定在后续的港口也需要递交 NOR。当下列要求被满足时，NOR 被视为有效：

- 船舶到达租约中的约定地点
- 船舶准备好装货（或者卸货）
- 其他并入租约中的要求

总结而言，在泊位租约下船舶靠上租约指定的泊位才算到达约定地点；在港口租约下，船舶到达港界内且在租船人的立即和有效的处置之下。通常而言船舶可以直靠的话就是泊位，或者船舶通常的待泊锚地。如果指定的目的地因拥堵不能到达的话，租约条款常常允许船舶在不同的地点递交 NOR。在这种情况下 WIBON (whether in berth or not) 和 WIPON (whether in port or not) 的条款很常见。

船舶就绪

船舶需要在各方面做好装卸货的准备。这不仅要船舶在物理上准备就绪，还要在比如准许船舶装卸的文书方面就绪。

物理就绪是指：

- 所有装货（或卸货）需要的的货载空间需要为指定货物准备好。
- 舱盖和装载设备（如有）或其他为货物作业所需要的船舶设备需要备好以投入使用。

如果船舶的缺陷或不足没有影响货物作业，且在其对船舶履约有影响之前就可以修复，那么这就不能阻止船长递交 NOR。

法律上就绪是指所有对开始装卸货而言所需的文件都要备妥。如果租船人必须在船舶装货或卸货之前安排某种文件，在满足所有其他要求的情况下才能提交有效的 NOR。如果该单据将妨碍船舶驶往指定目的地，承租人必须采取合理的迅速行动，以便取得该单据，并使船舶能递交有效 NOR。

获得清关或检疫证书是常见的手续（视港口而不同），不会使得船舶不能递交有效的 NOR。然而，如果因船舶不满足要求（比如船上有传



染病导致被实施检疫限制)，该船舶或许就不能视为在租家的处置之下且不能递交有效的 NOR。

租约经常会约定“无论清关与否”和“无论检疫与否”船舶都可以递交 NOR。一般认为，这些条款应该无论随附的手续是否完成都可以递交有效的 NOR，然而如果因为船舶问题导致检疫和清关失败的话这些条款并不能为船东提供保护。这意味着这些条款没有任何附加价值，它们并不改变上述普通法的立场。

租约中的特殊要求

租约可以说明 NOR 的格式。此外，它还可以规定如何递交、递交给谁以及何时递交。

任何未能遵守这些要求并不自动意味着 NOR 是无效的。这将需要清楚和明确的措辞，或经过合理地推断这种 NOR 是无效的。例如，如果租约要求 NOR 应提交给承租人，而该 NOR 已提交给有关港口的船东代理，则 NOR 很可能是无效的。另一方面，如果在这种情况下将 NOR 交给租船人的代理人或托运人，则 NOR 可被视为有效的 NOR。这在很大程度上取决于有关问题的事实。

无效的 NOR

上述内容阐述了船舶递交有效的 NOR 需要满足的要求。简而言之，如果船舶没有备妥或 NOR 递交过早（在到达约定地点之前），那么 NOR 就是无效的。

一份无效的 NOR 不会因滞后的满足条款而变为有效。在船舶真正可以递交有效的 NOR 时尚需递交一份新的 NOR 才行。

然而，如果没有递交新的 NOR 的话（意味着一直没有递交有效的 NOR），普遍认为在装卸货真正开始的时候，租船人对过早的 NOR 做出了弃权，基于此装卸时间可依租约起算。所以在先例“The Happy Day”中，无效的 NOR（递交过早）在开始卸货时生效。

在另一个类似的先例“The Mexico I”中，涉及的货物被其他货物压住，当该货物不能被卸下的时候就递交了 NOR。当这些货物变得可以卸货时，没有新的 NOR 递交。所以也就是说没有递交有效的 NOR。在承租人接受的卸货开始的时间之前，装卸时间未能起算。这是在有效的 NOR 可以递交的大约两周以后。

这是一个相当复杂的课题，为了避免争议，建议船东在有疑虑的时候重新递交 NOR。另一方面，租船人（及其代理人）应该记住在他们怀疑或不了解 NOR 有效性的时候，不要接受 NOR。



与租约不符的 NOR

如果在租约约定的 NOR 递交时间以外递交了一份有效的 NOR（包含船舶位置和就绪状态的真实陈述），情况将会变得不一样。

举例来说，租约可能约定 NOR 要在办公时间递交。首先，有关港口的办公时间必须根据当地的情况和整个租约来确定。

如果在合同约定的时间以外递交了有效的 NOR（举例来说办公时间为 0800 至 1700，但是 NOR 在 0300 递交），这份 NOR 会在 0800 生效且装卸时间可依租约起算。

同样地，有效的 NOR 在船舶 laycan 之前已经提交的话，并不因此而失效。这份 NOR 会根据租约在第一时间生效。

因此，与前几段所述的递交无效 NOR 的情况相反，在此无需递交新的 NOR。

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原文附后

LAYTIME - NOTICE OF READINESS

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Laytime is often an issue which seems to be reason for disputes between Charterers and Owners. And more specific: when does laytime commence and when is a NOR valid.

At common law the vessel has to tender a NOR at her first load-port (or at least notify charterers that the vessel is ready to load) but frequently the C/P requires that a NOR shall be tendered at the following ports of call (load and/or discharge ports) as well. A Notice of Readiness (NOR) is valid when the following requirements have been met:

- The vessel must have arrived at the C/P destination
- The vessel must be ready to load (or discharge as the case might be)
- Any specific requirements which may have been incorporated in the C/P

The specified destination has been discussed in previous articles (see our claims letters 2 and 3). To summarize, under a berth C/P the vessel has arrived at the agreed destination when she is alongside the berth named in or to be nominated under the C/P. Under a Port C/P the vessel has arrived when she is within the port-limits and at the immediate and effective disposal of the charterers. This would be at the berth in case she proceeds there directly or alternatively usually the place where vessels wait for a berth to become available.

As discussed in our service-letter 3, frequently the C/P contains a provision allowing the vessel to tender a NOR at a different place if the specified destination cannot be reached because of congestion. In this respect the WIBON and WIPON provisions are frequently incorporated.

Readiness of the Vessel

The vessel needs to be ready in all respects to load or to discharge. This does not only apply to the physical condition of the vessel but for example also to documents necessary to allow the vessel to load or discharge.

Physical readiness means that:

- All cargo-spaces intended for loading (or discharging) need to be ready for that particular cargo.
- Hatches and loading-gear (if applicable) or other equipment of the

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vessel necessary for the cargo-operations must be ready to put into operation.

If the vessel has a deficiency or shortcoming which will not affect the cargo operations and can be made good before it will affect vessel's performance, this will not prevent the master from tendering a valid NOR.

Legal readiness means that all papers necessary for the commencement of loading or discharging must be in order. If charterers have to arrange for a certain document before the vessel can load or discharge, a valid NOR can be tendered if all other requirements have been met. If such document would prevent the vessel from proceeding to the specified destination charterers have to act with reasonable dispatch in order to obtain that document and to enable the vessel to tender a valid NOR.

Obtaining Custom Clearance or Free Pratique are usually formalities (varying from port to port) which will not prevent the vessel from tendering a valid NOR. However if it is not possible for the vessel to meet (one of) these requirements (f.e. because of an infectious disease on board of the vessel causing that quarantine restrictions have to be imposed on her) the vessel will probably not be at charterers' disposal and no valid NOR can be tendered.

C/P's frequently state that the vessel is allowed to tender her NOR "Whether Customs Cleared Or Not" (WCCON) and "Whether In Free Pratique Or Not" (WIFPON). It is thought that these provisions should mean that a valid NOR can be tendered regardless of whether the accompanying formalities have been fulfilled or not, however no reliance can be placed on these provisions if no Free Pratique or Custom Clearance can be obtained because of a problem onboard of the vessel.

This would imply that these provisions do not have any added value. They do not change the common law position as described here above.

Any Specific C/P Requirements

The C/P may say something about the format of the NOR. Further it may dictate how, to whom and when it should be given.

Any failure to comply with these requirements does not automatically imply that the NOR is invalid. This would require clear and express wording or it should be reasonable to infer that such NOR must be invalid. For example in case the C/P requires that the NOR should be tendered to



charterers whereas it has been given to owners' agent at the relevant port, such NOR could well be invalid. On the other hand if in that case the NOR was given to a charterers' agent or to shippers, the NOR might be considered as a valid one. Much will depend on the facts of the matter in question.

An invalid NOR

Here above it has been set out which requirements have to be met to enable the vessel to tender a valid NOR. In short, the NOR is not validly tendered if the vessel is not ready or in case the NOR has been given premature (before arrival at the C/P destination).

An invalid NOR does not become valid if the preceding requirements have been met as yet. A new NOR should be tendered when the vessel actually is in a position to tender a valid NOR.

However if no such fresh NOR has been tendered (which means that no valid NOR has been tendered at all) it has been held that charterers waived their reliance on a premature NOR at the time loading or discharging actually started, upon which laytime commenced in accordance with the C/P. So in this case ("The Happy Day") the invalid NOR (which was tendered premature) took effect at the commencement of discharge.

A similar result was achieved in a case whereby the subject cargo was overstowed by another cargo and a NOR was given whilst the subject cargo was not accessible ("The Mexico I"). When the cargo became accessible no new NOR was tendered. So also here no valid NOR was tendered at all. Laytime did not start earlier than at the commencement of discharge which was accepted by charterers. This was about two weeks after a valid NOR could have been given.

This is quite a complicated subject and in order to avoid disputes owners are advised that in case of doubt it's safer to tender another NOR. On the other hand charterers (and their agents) should keep in mind not to accept a NOR as a matter of course in case they have doubts or no actual knowledge about its validity.

A Non-Contractual NOR

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A different situation will arise in case a valid NOR(containing a true representation of vessel's position and readiness) has been tendered outside a time-spread within which the NOR should have been tendered in accordance with the C/P.

For example the C/P may state that a NOR should be tendered within office-hours. In the first place the office-hours at the port in question will have to be established on basis of the local situation and the C/P as a whole.

If a valid NOR will be tendered outside these contractual hours (f.e. at 03.00 hrs whereas the office- hours run from 08.00 hrs to 17.00hrs) this NOR will become effective upon opening of the office at 08.00 hrs and laytime will start to run in accordance with the C/P.

Equally a valid NOR which has been tendered before vessel's laycan does not become invalid because of this. Also here the NOR becomes effective at the earliest possibility under the C/P.

So contrary to circumstances under which an invalid NOR has been tendered as described in the previous paragraphs, here it will not be necessary to tender a new NOR.

网站: <https://www.charterama.com/claims/claims-letter-laytime-notice-readiness/>



雇佣武装保安公司的特别提醒

尽管自 2019 年 5 月 1 日起印度洋海盗高风险区域范围缩小，但海盗袭击的危险依然存在，并没有减弱的趋向，所以要执行经过高风险区域的航次，船东/租家丝毫不能有所松懈，按照 BMP5（防范索马里海盗之最佳管理措施）的要求，船上要做好管理措施（在 MSCHOA 注册/ 向 UKMTO 报告/实施船舶保护措施）。

关于船舶保护措施，首先考虑的是从武装保安公司雇佣武装保安上船为船舶护航，现在市面上很多家武装保安公司在执行保安任务，我们了解到有的武装公司是以较低的价格取胜，但是在服务过程中出现各种问题，我们了解到有这样的情况发生，保安人员不能及时到达约定的上船点，因此耽误船期；还有保安人员上船之后，武器没有上船，可想而知，保安人员没有武器，岂能对海盗起到威慑作用。尽管被海盗袭击的概率相对小，但是在选择武装保安公司时不容大意。在雇佣武装保安公司时，我们建议一定要谨慎选择有资质的武装公司，不能贪图便宜，要多打听和了解下，确保武装公司的护航人员有足够专业的素质和技能，并遵守国家的法规和国际法的规定。

另外，我们还要提醒的是，由于目前新冠疫情全球肆虐，武装保安人员的上下船问题同船员换班问题同样存在。我们获悉一条执行从红海至东非航次的船舶，保安人员在三月下旬上船，任务开始时新冠疫情在非洲并没有很严重，港口正常运转，但是仅仅半个航程的时间内，就收到保安人员不能在之前约定地点下船的通知，待船舶到达目的港时都严格禁止人员上下船，最终这些武装保安人员只能随从船舶航行，根据船舶航次计划航行到可下船的地方，最终保安人员在七月中旬才下船。新冠疫情的突发，让船东和租家都措手不及，不得不额外承担超出约定执行任务天数的费用，这无疑给船东/租家增加了负担。因此，我们提醒船东和租家在执行类似的航次计划前，要事先同武装公司谈好遇到这种情况的备选方案，并且船东和租家要在合同中做好约定，避免因为费用或者航期引发争议。疫情之下，如何更好更安全的执行航次计划，对船东和租家提出了更多的要求。

在新冠疫情下，我们特向您推荐以下网址可查询和参考目前全球开放/关闭上下船的港口信息：<https://www.wilhelmsen.com/ships-agency/campaigns/coronavirus/coronavirus-map/>

最后，我们还要提醒，如果船舶进入高风险区域，还需安排海盗赎金险/租金损失险和特战险做更加全面的风险保障。

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