

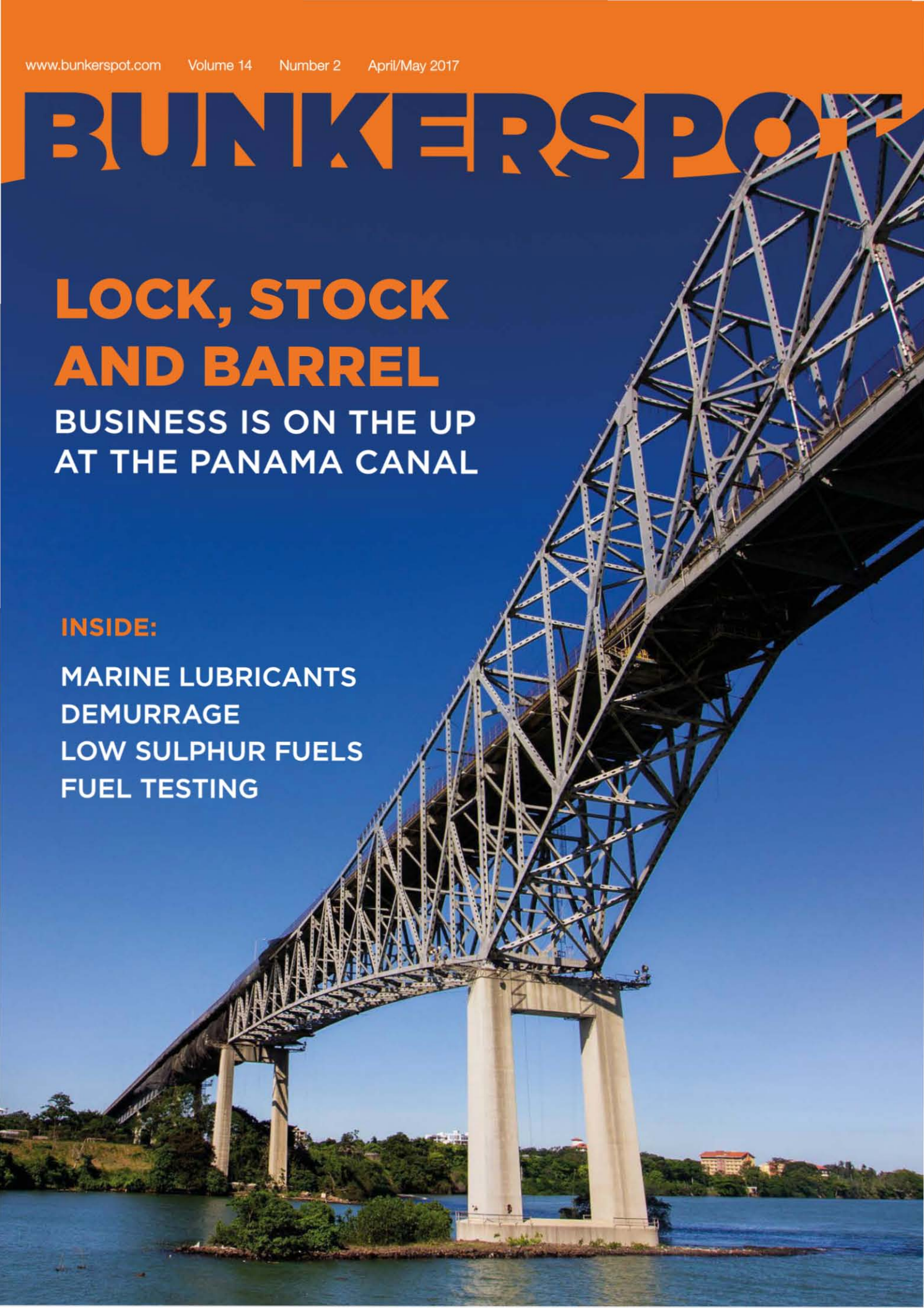
BUNKERSPOT

LOCK, STOCK AND BARREL

BUSINESS IS ON THE UP
AT THE PANAMA CANAL

INSIDE:

MARINE LUBRICANTS
DEMURRAGE
LOW SULPHUR FUELS
FUEL TESTING





Don't demur on demurrage

The purchase or sale of bunker fuel which is delivered by barge or tanker will usually involve the parties concerned with a charter party – and within that charter party there will invariably be reference to demurrage charges. As **Steve Simms** of Simms Showers explains, a buyer or seller should not delay in gaining some familiarity with these often unexpected or unexplained extra costs

Benjamin Franklin (1706-1790) was one of the most brilliant, if not the most brilliant, leaders of the American Revolution. His wisdom animated the debates over the United States Declaration of Independence ('If we do not hang together, we surely will all hang separately.') He experimented with electricity (his famous 'kite and key' experiment in a lightning storm nearly killed him) and spoke a folksy French (wearing a raccoon skin hat) that delighted the court of French King Louis XVI. Franklin even offered health advice ('Early to bed, early to rise, makes a man healthy, wealthy and wise').

Franklin also had something to say about demurrage: 'Fish and visitors smell in three days.'

As a French speaker, Franklin probably

knew that the word 'demurrage' came from the French word 'demeurage'. Its root is 'demeurer', which means to over-stay or out-stay (or in older English, to linger or tarry).

In maritime usage, the term demurrage is part of vessel chartering. When the vessel charterer possesses or controls the vessel after the time the charterer and owner have agreed the charter can load and unload cargo (known as 'laytime'), the charterer owes demurrage. That is, the charterer has overstayed its welcome and begun to smell. The more the smell, the more the vessel owner charges. Sometimes, considering the amount of demurrage, it can be a bad smell for the charterer but a wonderful fragrance for the owner.

What's more, on the face of it there is no direct relationship between demurrage

and the actual owner's cost. Owners say that demurrage is to compensate them for the charter hire they may lose to other opportunities they have to charter, had the barge or tanker been unloaded on time and then available to the next charterer.

As a practical matter, though, it may seem to the trader, supplier or customer receiving the demurrage charge that it is a bald way to make more money for a vessel which is otherwise under-employed. Demurrage might even seem to be calculated to simply make more money on what should be a straightforward fuel sale (with otherwise certain charges).

When you buy or sell bunkers delivered by bunker barge or tanker (and not by truck or landside connection), you are almost always directly or indirectly involved in a char- ►

ter party. Almost always, there is an owner of the barge/tanker who is separate from the physical supplier. If the barge/tanker is separately owned, there will be a charter party running from the physical supplier to the owner. The charter party almost always will provide for demurrage, demurrage calculation, and settlement of demurrage disputes.

The opposite of 'demurrage' is 'despatch'. You don't hear much about 'despatch'; what it refers to is the amount that the charterer can claim back from the owner, if the charterer uses the vessel for less than the agreed 'laytime'. It is almost guaranteed (and the writer offers a free drink to anyone given a 'despatch' credit on their bunker bill) that you will never see a 'despatch' credit on a bunker barge or tanker bill. Somehow, at least, the laytime for bunkering is usually always used, or is exceeded with a demurrage charge.

So, you are a physical supplier buying fuel, a trader buying fuel for a vessel, or a customer buying (directly or through a broker) for your vessel from a trader or physical supplier, you will get a quote, confirm, arrange for delivery, and your customer's vessel, or you or your vessel, receives the fuel.

Then you get the bill. It has the price and quantity of the fuel you confirmed. It even has the barging cost you knew you would have to pay. But then, there's another cost which is demurrage. And not only is the demurrage fee something you never thought you would have to pay, but it is way more than you would have expected.

Not only that, when you ask your supplier about the demurrage, they tell you it is out of their hands, and not negotiable. It's all about the barge or tanker owner's charges, they tell you, which of course you have not known about, until you received the demurrage bill, long after the barge unloaded.

Regardless of where you are in the purchase, the demurrage charges are a problem. They are the one figure in the supply price that you couldn't control. Often it is a figure that makes the overall price of the supply extraordinarily expensive.

You will also have received on your bill what is known as the 'cold shoulder'. Supposedly, in the Middle Ages, if you outstayed your welcome, the host told the servants to serve a cold lamb shoulder for dinner. When you got the 'cold shoulder' it was time to leave. The trouble is that when the vessel owner serves the charterer (who passes on the charter to the trader or customer directly) the 'cold shoulder', that comes with a bill for the shoulder. And the resulting disagreements can quickly get hot.

In a typical trader's terms and conditions, there is a clause similar to this one, that: 'Buyer shall pay any additional expenses or costs such as... demurrage...' In a typical supplier's contract with a physical supplier, there may only be a clause such as this: 'Demurrage, as per charter party.' Sometimes the contract for the physical supply may be more detailed, as follows:

DEMURRAGE RATE SHALL BE:
 LESS THAN 50 MB: USD 700.00/HOUR
 51-70 MB: USD 900.00/HOUR
 71-100 MB: USD 1,050.00/HOUR
 101-150 MB: USD 1,300.00/HOUR
 151-180 MB: USD 1,500.00/HOUR

But, of course, if you are the customer buying from the trader, you probably will not know what the laytime or the demurrage charge is (even though, in the trader's terms and conditions, you have promised to pay the demurrage as a pass through charge).

If you are the trader buying from a physical supplier, most of which in turn charter barges or tankers for delivery, you also probably will not know the laytime or demurrage charges when the laytime is exceeded. The same is true if you are buying from the ultimate supplier of the product, chartering the tanker or barge.

Consequently, when there is a demurrage charge that the trader passes through, if the customer has to contest the charge, first it must get in touch with the physical supplier, and then the barge or tanker owner to determine the real basis of the charge.

Typically, also with the bunker barge or tanker owner, there should be a contract providing the requirements for proof of a demurrage charge, typically something like the following:

Demurrage claims shall be supported by the following documents:

1. Notice of readiness
2. Statement of facts
3. Discharge pressure logs (where applicable)
4. Charter party or fixture recap for spot chartered vessels
5. Invoice presented to the vessel party for demurrage incurred or invoice presented by the lightering company supporting the demurrage charges.

A 'notice of readiness' is the document which marks the beginning of 'laytime'. Most times, the 'notice of readiness' and 'laytime' provisions of a charter party agreement permit the 'laytime' to begin within six hours of the 'notice of readiness.' But, the 'notice of readiness', plus six hours plus the laytime, whatever time has been agreed for loading or discharge, marks the total time allowed before demurrage ('overstay', or, in Franklin's terms, 'stink') charges begin.

The saying for demurrage also is, 'once demurrage, always demurrage', that is, once demurrage begins to run it doesn't stop until the vessel is returned to the owner; again, a sweet fragrance for the owner who might have no other employment for the vessel, or employment at the standard lower charter (within 'laytime') rate.

A 'statement of facts' is the document which simply reports what happened during 'laytime', that is, that the vessel arrived, connected, pumped, and hopefully completed loading or unloading within the laytime, without incident.

With a demurrage claim, however, the 'statement of facts' would describe why the vessel loading or unloading exceeded 'laytime'. That is, was there congestion at the pier? Was there a problem with the vessel crew or equipment? Was weather a problem? Did the vessel being fuelled fail to arrive on time or at the station to which the tanker or barge was ordered? What facts support the claim that the barge/tanker was kept longer than it should have been to load or discharge the bunkers?

'Discharge pressure logs' are obviously that: if somehow the discharge pressure was too low then that may have been the fault of the barge/tanker and prolonged the 'laytime'. But, if the pressure was according to specification (and a carefully drawn charter or contract will specify required discharge pressure), then that will point to another reason (that the 'statement of facts' is to de- ▶

'Regardless of where you are in the purchase, the demurrage charges are a problem. They are the one figure in the supply price that you couldn't control. Often it is a figure that makes the overall price of the supply extraordinarily expensive'

tail) that the vessel overstayed the 'laytime'.

The charter party, of course, specifies the 'laytime', and the 'fixture recap' is simply the statement of 'laytime' for a 'spot charter', which is simply another name for a voyage charter, a rental of a vessel for a specific voyage between specific ports (rather than a more general charter for a series of voyages, between a number of unspecified ports). A voyage charter is the hiring of a vessel and crew for a voyage between a load port and a discharge port. The charterer pays the vessel owner on a per-ton or lump-sum basis. The owner pays the port costs, fuel costs and crew costs. The payment for the use of the vessel is known as freight. 'Laytime', again, under a voyage charter, is the period that the charter specifies for loading and unloading the cargo.

For presenting a demurrage claim, the term invoice is self-explanatory, but the key is that to support a demurrage charge, there must be, ultimately, not only an invoice, but also documentation similar to that detailed immediately above (but again, depending on what the charter of the delivering barge/tanker says).

So, to avoid a 'cold shoulder' or stinking fish (and having to pay for them), what should a customer, physical supplier or trader do?

First, get a copy of the charter or similar agreement, defining 'laytime' and setting the amount of demurrage.

That charter party also should clearly state what the vessel owner must present to support a demurrage claim.

This is true whether you are an ultimate customer to a trader, or a trader who will either have to explain the demurrage charges you have had to pass to a customer (or commercially absorb yourself), or a physical supplier. It is not only about the rate (e.g. per day or per load charge), it is about what is agreed that the barge/tanker owner receives if there is an overstay, and how the barge/tanker owner must prove that overstay. Make sure this isn't a surprise.

Knowing those terms first will help you anticipate the barge/tanker owner's incentive to overstay the laytime. It's a simple truth that the greater the demurrage from a load/discharge outside of laytime, the greater chance that there will be an overstay. On the other hand, the lower the demurrage rate, the more incentive the owner has to complete operations and move on. Remember, it always will be the barge/tanker owner who controls the crew and operations. Commercial considerations may encourage operations within laytime, but then again, apart from commercial considerations, 'ship happens', particularly where the barge/tanker operator may be the only one or few among those available in the fueling port.

Many traders, incidentally, never bother to know about the barge/tanker charter terms. That is a mistake, both for the trader's customer and trader, and always leads either to a misunderstanding with the customer ('Why didn't you tell me about this?') or the trader absorbing the demurrage (which the trader might have been able to limit had the trader known of the charter party demurrage terms – and – chosen, where there was a choice, a vessel owner offering favourable terms).

Related to this, customers choosing traders, or traders choosing physical suppliers, should know the demurrage (and laytime) terms of the charter parties of the barge/tanker owners carrying the product they purchase. If those terms are unfavourable, they either should

'If a term and condition that is a part of your agreement refers to "demurrage", know specifically how that is calculated. There are no "standard" calculations of demurrage and laytime; each is specific to each bunker barge/tanker charter'

be re-negotiated, another owner chosen, or, where there's no option in the port, another port chosen. Again, it is not all about the basic price of the fuel supply. The consideration must include the potential demurrage charge.

For example, the charter party might state that demurrage disputes must be presented to owners in a certain number of days or be waived, or that once presented they can only be arbitrated in a certain place subject to a certain law. London arbitration is a requirement with English law controlling, typical to charter parties. If contesting demurrage requires instructing UK counsel and presenting a London arbitration demand, that, for

example, can significantly raise the cost of contesting demurrage. Requirement for arbitration in a relatively expensive place, which may be removed from your or your customer's location, may mean that it is cheaper simply to pay otherwise questionable demurrage, than to contest it in arbitration.

Suppose also the physical supplier fails to dispute demurrage, or doesn't feel that it is necessary because it simply can pass on the demurrage charge to the trader and then the trader to the customer. By the time that the charge gets passed on to the trader, and then customer, it is too late to contest the charge. So at a minimum there always should be the question when there's a barge/tanker supply: 'Was the supply completed within laytime?' If there's any question, the customer or trader must be ready to step in to timely contest any demurrage. Otherwise, again there may be a commercial dispute over why the customer must pay the demurrage (or the trader absorb it), when the customer or trader never had a chance to challenge the demurrage.

Second, be aware of the conditions of the bunkering port, and the operations of the barge/tankers there.

That is, there may be congestion at the piers where the barge/tankers load and unload. So, despite the notice of readiness (and the barge/tanker in line to connect at the pier) there may always be difficulty getting to the pier and completing operations before laytime expires. So, when you look at the charter party and laytime allowed, you either should in this situation negotiate additional laytime or expect to pay demurrage (at the rate you've already come to know, because you have the charter party).

Third, make sure that you communicate clearly on a current basis with the barge/tanker owner. That is, if the vessel to be bunkered is delayed or directed to a location other than that originally reported to the owner, report that promptly. Make sure that there is a direct relationship to your report and the notice of readiness, that is, when both the vessel is on site to be fuelled or when the barge/tanker is to be at the pier to load or unload. Keep weather and port congestion in mind also. Anticipate when the vessel is going to be delayed, and then make sure that the notice of readiness reflects that. Customers dealing with traders must communicate these facts quickly to the trader, and traders to the physical supplier.

Fourth, whatever place you are in the chain of contracting for a fuel supply, don't just glance by the term, 'demurrage'. If a term and condition that is a part of your agreement refers to 'demurrage', know specifically how that is calculated. There are no 'standard' cal-

culations of demurrage and laytime; each is specific to each bunker barge/tanker charter.

Fifth, be aware of the capabilities of the vessel you are fueling, and the barge/tanker doing the fueling. If there is something about the combination of the vessel and the barge/tanker that may cause the fueling process to run beyond laytime, then anticipate that and either extend the laytime, or know in advance what demurrage you will have to pay (and the likely time of that). If possible, negotiate a more favourable demurrage rate.

Sixth, when you do receive a demurrage claim, insist on seeing the documentation for that (based on the documentation provisions you've learned about – and insisted on – earlier). If the documentation doesn't support the demurrage charge, then contest that.

There might be, for example, a labour disruption, or some other problem, such as failure of the barge/tanker equipment, or even an incident of faulty navigation by the barge/tanker, which has increased the time of loading/discharge. This will disrupt the running of laytime. There also may be specific terms in the charter, such as allowances for weather or holidays, which also stay laytime running.

In addition, despite what the charter party says, local law may ultimately determine what demurrage the owner can charge (and thus what a physical supplier or trader may be able to pass through to the ultimate customer). Generally, under some common law countries' law at least, owners may claim a demurrage charge only where the owner can show that it has suffered actual damage from the charterer's delay. If the demurrage charge is grossly disproportionate to that actual damage, including to the normal charter hire the owner might have earned for another charter, the owner cannot receive the grossly disproportionate charge. Sometimes, a charter party will state no demurrage charge and if so, demurrage may only be charged either at the market

rate, or if there is no market rate, at the normal rate under the charter, less charges saved.

In a typical trader's or supplier's terms and conditions, the term 'demurrage' usually is

ances of that calculation. But, depending on the location of fueling operations, the local demand for and availability of bunkering barges/tankers, local conditions, and the conditions

'When you do receive a demurrage claim, insist on seeing the documentation for that (based on the documentation provisions you've learned about – and insisted on – earlier). If the documentation doesn't support the demurrage charge, then contest that'

only briefly mentioned and often never noticed, because demurrage most times never becomes an issue. The chartered bunker barge/tanker delivers the bunkers in the laytime, departs for its next load and its owner has ample employment so that the owner does not have to turn to demurrage charges for income. Surprisingly, though, despite the usual brief mention of demurrage, and relatively infrequent, significant demurrage charge, there are enough incidents of demurrage charges by the end of a year of bunker purchases to add up to a significant amount. Yes, there may be only a little demurrage added to a particular bill, but it adds up as the bills increase in number. Sometimes, when customers, traders or physical suppliers have failed to be aware of the demurrage charges they are ultimately responsible for, they are surprised and unnecessary disputes arise, long-disrupting commercial relationships.

Surprisingly also, there is a significant amount of arbitration, and court decisions, concerning the calculation of laytime and demurrage, and days-long seminars on the nu-

of the market, demurrage charges can give rise to significant disputes, and significant losses for customers, traders and suppliers.

This, of course, is where the lawyers arrive (unless you've connected with your experienced lawyer beforehand, about how to avoid the problem), and the cold shoulders and stinking fish get very expensive.

So, avoid stinking fish and having to pay for cold shoulders. Know what the laytime, and demurrage terms are in the charters for the bunker barges/tankers used for fueling (or loading fuel for) the vessels you are fueling, or for the facilities you are having fuel delivered to. In that way you will keep the 'fish' fresh and even though the shoulders may be cold, you won't have to pay for them, or have them in a 'reheated' dispute over a demurrage charge.

 Steve Simms is a Principal of Simms Showers LLP.

 Email: jssimms@simmsshowers.com
Tel: +1 410 783 5795

WE NEVER STOP SO YOU CAN KEEP MOVING.

In **Terpel**, we know you need support from a company like ours, that offers you the best marine fuel supply service in South America. We are the best choice you can make arriving at **Colombia and Panama**.



Contact us: www.terpel.com or bunkers@terpel.com

