



In this edition:

[Captain, we have "Latrodectus Mactans" on board !!!!???](#)

[De-bunkered fuel oil: waste, or no waste, that is the question](#)



Newsletter

#2, June 2014

pr@dupi.nl | dupi.com

Captain, we have "Latrodectus Mactans" on board !!!!???

In October 2013 we were contacted in connection with a container vessel, underway from Cape Town, South Africa, to Rotterdam, on which reportedly a number of live spiders were found. The vessel was loaded with 1,630 containers, of which 1,029 were reefer containers. The reefer containers were mostly loaded with South African citrus fruits for the European market.



The crew examined the type of spider and found that it could not be excluded that it concerned the dangerous "Black Widow" (*Latrodectus Mactans*) because of the typical "hourglass" mark on the bodies of some of the spiders.



Meanwhile, the Dutch Authorities had become involved in this matter and stated that the vessel was not allowed to enter the Port of Rotterdam before an inspection had been carried out by spider experts and representatives of the authorities. The vessel was scheduled to discharge at a container terminal located in close vicinity of a village.

The hypothesis brought forward by the authorities was that spider nests could be present on board and that small spiders from cocoons could spread out over the vessel's compartments (cargo holds). It is known that one nest can contain 20 cocoons and each cocoon can hold an estimated number of 200 to 900 juvenile spiders; and as they have the size of a grain of sand, one can imagine that small spiders are much harder to find than adult ones.

It was expected that with the decreasing temperature in the holds, due to moving into a colder climate, the spiders would start to search for warmer areas near the compressors of reefer containers.

The vessel was ordered to anchor just outside the Dutch territorial waters and at that location the inspection team came on board. During the search on board, various types of spiders were indeed found, including a substantial number of juvenile spiders of unknown types. Samples were taken by the experts to find out at a later time which species were present on board.

As far as could be ascertained, the spiders were only found in the underdeck areas and not on the containers stowed on deck. Several of the spiders caught during the search, as well as the ones shown by the Captain, showed the reddish sandglass symbol on the side of the belly which is characteristic of the Black Widow spiders. Besides live spiders, cocoons (egg packages) of various other spider species were found.



After the inspection party had returned ashore, the matter was discussed with the competent authorities who demanded that the vessel must discharge her containers at a container terminal far away from local villages or inhabited areas. The parties representing the vessel brought forward that the cargo stowed on deck did not have any infestation of spiders. In the end, however, the authorities adjusted their plans and the parties representing the vessel were ordered to search for a terminal where the containers stowed in the hold could be discharged and where the vessel could be treated against spiders.

On the day after this meeting, possible locations were investigated and relevant terminals were contacted. It turned out that none of the terminals had sufficient space available for the containers. The main problem was the large number of reefer containers which, after having been discharged, needed to be plugged-in.

The outcome of the investigation had been reported to the authorities. During this very meeting we were updated by the spider experts that, on the basis of the samples taken on board, the spiders were not of the "Black Widow" but of the "Brown Widow" type which is also a member of the "Latrodectus" spider family. This "Brown Widow" is reported to be less dangerous.

As a result of this new information, the vessel was allowed to heave up anchor and enter the port of Rotterdam and discharge at the planned terminal near the village. This meant a severe reduction of costs in comparison with the discharge at other terminals, because additional shifting of the vessel and re-routing of the containers was not necessary now.

The authorities stated that the following procedures should be adhered to:

- The containers stowed on deck were allowed to be discharged as planned, as no spiders were found on them.
- All containers stowed in the hold, including the ones destined for other ports of discharge, were to be lifted from the cargo hold and lowered just above the quay, where a pest control company using

- vacuum cleaners could remove any spiders.
- The vessel's holds were to be made completely empty, after which the pest control company could apply insecticides. After ventilating the holds, the containers destined for the remaining ports could be re-loaded and the vessel could be brought back in service.

The spider specialists later informed us that the famous "Black Widow" belongs to the *Latrodectus* species that counts about 30 sorts. All *Latrodectus* sorts are seriously poisonous and must be approached with great caution. The northern Black Widow (*Latrodectus mactans*), the western Black Widow (*Latrodectus hesperus*) and the Australian Redback spider (*Latrodectus hasseltii*) belong to the most dangerous sorts of this species. A great number of people become seriously ill after a bite and in case of an untreated bite, the lethality ranges from 1 to 3%.

Other *Latrodectus* sorts than the ones mentioned above are less lethal but can nevertheless cause violent allergic reactions (anaphylactic shock) which can also be fatal. The Black Widow is native to North-America.



The conclusion, prematurely assumed by some, that a vessel from South Africa cannot have American or Australian widow spiders on board, is wrong. Containers migrate all over the world and the presence of a "real" Black Widow spider can and may never be conclusively excluded.

Even though the vessel was sailing from South-Africa and the *Latrodectus* sorts found on board were somewhat less venomous than the American Black Widow and the Australian Redback spiders, it has been, in view of the above-mentioned remark, a good decision to submit the vessel to a close inspection.

The "*Latrodectus geometricus*" is also a "*Latrodectus*" type of spider, which is not native to the Netherlands. It has managed to settle and survive both in tropical and sub-tropical regions throughout the world. The shipping business is "helping" this globetrotter among the spiders to becoming a true cosmopolitan.

The chances that these species will settle in the Netherlands and the surrounding countries are realistic. The Dutch outdoors climate is far from ideal for the "*Latrodectus* species", but indoors these spiders will be able to survive and it has already become known that the "*Latrodectus Hesperus*" has managed to breed in these types of areas. Micro climates sufficient for the spiders are created by humans by heating equipment and by compressors used in refrigerators.

The risk that the *Latrodectus* species will develop into an undesirable and dangerous invasive exotic species in the Netherlands is, therefore, realistic. This will certainly be the case when in a relatively small area large concentrations of spiders enter our country - as was the case with the container vessel in question.

Note: The Netherlands have kept to the Brussels requirement to master and/or restrain undesirable invasions of exotic species in national and international context.

Summarising the above-mentioned particulars and the investigation reports of the inspection team, we have learned that the "*Latrodectus*" species do arrive in the Netherlands on a regular basis but mostly in the form of single specimens and sometimes as pregnant females. The question is whether the number of spiders and the species found on the vessel mentioned above can be considered as incidental or whether this happens on a structural basis. There are hardly any reliable data available with which to illustrate this.

Due to the terminal operations and the pest control, the poisonous spiders incident has been quite cost-consuming, not in the last place because of the vessel's delay and interruption of her tight sailing schedule.

The spider issue was picked up by local newspapers and television stations and the authorities arranged for press releases.

No rights or remedies can be derived from this publication. For more information please contact Frans van Dalen via frans.van.dalen@dupi.nl or tel. +31.10.4405591.



De-bunkered fuel oil

Waste, or no waste, that is the question

The past few years have seen an increase of problems with the environmental authorities in the Netherlands as well as in other EU countries when vessels had to be de-bunkered. In those cases it had to be decided whether or not the de-bunkered fuel oil was to be considered as waste or not.

The fact is that the definition in article 3 sub 1 of the EC Directive on waste (2008/98/EC), which states that "waste means any substance or object which the holder discards or intends or is required to discard", is rather vague. The question whether a holder of an object or substance has the intention to discard it has to be answered on the basis of all relevant facts and circumstances and can lead to extensive debates about the interpretation of his/her intention. The Dutch environmental authorities chose to adopt a strict policy. They were of the opinion that if a consignment of fuel oil could not be used for its immediate intended purpose, i.e. the burning on board of the vessel in question, the de-bunkering was to be interpreted as an act of discarding and, as a consequence, the consignment of fuel oil to be de-bunkered was to be deemed a waste product. Consequently, the waste-labelled fuel oil could only be handed over to a licenced waste collector with the intention of a controlled recycling, recovery or disposal of the fuel oil pursuant to the waste regulations. The Dutch environmental authorities immediately brought any infringement of the waste regulations to the attention of the public prosecutor who commenced a number of criminal cases against the holders of the de-bunkered fuel oil. The fines which can be imposed for such offences can be quite high, whereas an offence – if committed wilfully – can even be punished by imprisonment. Needless to say, any waste label attached to a consignment of fuel oil will rapidly decrease its value from USD 500/600 per MT to a salvage sale value or even to a negative value. The European Court of Justice and the Dutch Council of State have recently rendered two judgments which have shed a more than welcome light on the essential question whether a substance is to be deemed waste or not.

The judgment of 12 December 2013 of the European Court of Justice C-241/12 (www.curia.europa.eu) concerned a preliminary ruling on a question of the Rotterdam court in criminal proceedings against two Shell companies. The question was if an off-spec cargo of fuel oil, which had been returned by the buyer from Belgium to the seller (Shell) in the Netherlands against a refund of the purchase price and which Shell could subsequently bring back on the market, was to be considered as waste or not. With regard to the question whether the buyer intended to discard the contaminated consignment of fuel oil by returning it to the seller (Shell), the European Court placed considerable emphasis on the fact that the buyer did so with a view to obtaining a refund of the purchase price under the sale contract. The intention of the seller (Shell) was to blend the contaminated consignment of fuel oil and bring it back on the market. Point 53 of the decision of the European Court of Justice is the crucial one and reads as follows: "It would not be justified at all to make goods, substances or products which the holder intends to exploit or market on economically advantageous terms in a subsequent recovery process subject to the provisions of Directive 2006/12, which seek to ensure that recovery and disposal operations will be carried out without endangering human health and without using processes or methods which could harm the environment. However, having regard to the requirement to interpret the concept of "waste" widely, the reasoning should be confined to situations in which the reuse of the goods or substance in question is not a mere possibility but a certainty, without the necessity of using any of the waste recovery processes referred to in the Directive on waste prior to reuse." Based on that answer, the Rotterdam court will have to decide whether the cargo of fuel oil in the case at hand concerned waste or not.



More or less simultaneously with the above preliminary ruling proceedings before the European Court of Justice, the Dutch Council of State, in its decision of 2 April 2014 (201301179/1/A41), decided on the question “waste, or no waste?” in a case concerning the de-bunkering of the “Freja Crux” in Amsterdam in November 2012. A few days earlier the “Freja Crux” had bunkered HSFO in Rotterdam. Analysis of the bunkered HSFO showed that it had a content of 1115 mg/kg of DCPD and a content of 163 mg/kg of Styrene. DCPD and Styrene are so-called ‘cutter stocks’; they have been present in nearly all consignments of HSFO bunkered in the ARA range during the last 30 years. The trading norms ISO8217:2010 and 2005 do not provide for specs in respect of

the presence of DCPD and Styrene. The owner of the vessel was nevertheless of the opinion that the HSFO did not meet their quality standards for the ship. The owner therefore informed the time charterer that the consignment of HSFO was unsuitable for the planned transatlantic trip and had to be removed from the ship. In order not to lose time, the time charterer discussed and agreed with the bunker supplier that the bunker supplier would take back the HSFO for the sound market price and agreed with the de-bunkering requested by the owner. In response to the planned de-bunkering, the Dutch environmental authorities stepped in and advised the time charterer and the owner that the consignment of HSFO was to be deemed waste and threatened with criminal charges if the time charterer would redeliver the HSFO to the bunker supplier or if the vessel would depart with the fuel oil on board (to be de-bunkered elsewhere) without an EVOA permit. Because the “Freja Crux” had to sail with its cargo to its destination Chile, the time charterer decided to de-bunker the consignment of HSFO and to hand it over to a licenced waste collector who stored the waste-labelled consignment of HSFO as bailee for the time charterer. The time charterer could then await the outcome of the discussions with the Dutch environmental authorities about the question whether the on-spec consignment of HSFO, which was de-bunkered only because the owner did not want to use the HSFO on board the vessel, was waste or not. Because the environmental authorities could not be persuaded to change their decision, the waste-labelled HSFO was sold at best possible terms resulting in a substantial financial loss for the time charterer.



In line with the above quoted decision of the European Court of Justice of 12 December 2013, the Dutch Council of State ruled that that the time charterer could not be considered to have had the intention to discard the HSFO within the meaning of the definition of waste. After all, the time charterer had intended to return the HSFO to the bunker supplier against repayment of the purchase price because the levels of DCPD and Styrene in the HSFO had been such that the owner had not agreed to use the HSFO on board of the vessel; which in effect had made the HSFO unsuitable as fuel for the m.v. “Freja Crux”. In addition to the above-quoted decision of the European Court of Justice, the Dutch Council of State also made it clear that, with regard to the question whether or not the HSFO was to be considered as waste, the facts whether the HSFO did or did not meet the standards set in ISO8271 (“on-spec/off-spec”) or was or was not suited to be placed back on the market without prior processing were not relevant. The Dutch Council of State therefore decided that the Dutch environmental authorities had wrongly qualified the HSFO on board the “Freja Crux” as waste. As a consequence, the State of the Netherlands was in principle liable for all damages of the time charterer resulting from the wrongful decision of the Dutch environmental authorities. Any claim for damages must be decided in subsequent civil court proceedings that are now being prepared by the time charterer against the State of the Netherlands.

A crucial aspect of the “Freja Crux” case was that the consignment of fuel oil was to be returned to the original bunker supplier against repayment of the full purchase price. Such returning is not deemed to be an act of discarding. It remains to be seen, however, if this principle formulated by the Dutch Council of State can also be relied upon if such a return to the supplier is not made against the repayment of the full purchase price. We would say that there are compelling arguments in favour of that view. In our opinion, the criterion should be whether the return of the fuel oil to the supplier concerns a redelivery pursuant to a warranty under the purchase contract.

No rights or remedies can be derived from this publication. For more information please contact Niels van der Noll via niels.van.der.noll@dupi.nl or tel.+31.20.6814692.

COLOPHON

With this quarterly newsletter we'd like to inform you on interesting topics relevant to the shipping industry and Dutch P&I.

Editors: Niels van der Noll, Monique Lardot and Frank Mathiesen.

Contributors: We'd like to thank Rik van Waasbergen and Walter van Kempen for their contribution to this edition.

We'd like to hear from you. Please send your news and feedback to pr@dupi.nl.

DUPI Rotterdam (head office) | Phone: +31 10 440 55 55 | info@dupi.nl

DUPI Antwerp | Phone: +32 3 2060050 | antwerp@dupi.com

DUPI Amsterdam | Phone: +31 20 681 46 92 | amsterdam@dupi.nl

DUPI Copenhagen | Phone: +45 3315 4778 | copenhagen@dupi.com