

UK P&I CLUB



LP Bulletin

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Bulletin 1107 - 07/16 - Bulk Cargo Shortages - Vietnam

The Association has been recently advised, by our local correspondents, of bulk cargo shortages in Vietnam.

It is accepted in Vietnam that bulk cargo discharge weights are determined by draft survey. Only in exceptional circumstances do they rely on shoreside weigh bridge scales.

While all ports in Vietnam are hot spots for shortages and subsequent arrest of vessels, there are ports worse than others. The two prominent ports that stand out are Phu My (Cai Mep) in the South and Cai Lan in the North, the latter being synonymous with cargo shortages. This is because Cai Lan is generally the 2nd or final discharge port in a voyage. If shortages are found at the preceding port (s) then this information is relayed to the cargo underwriters and receivers (interested parties) at the port of Cai Lan. Receivers rarely arrest at the 1st disport as this can affect the schedule of the receivers at the final discharge port.

There is poor infrastructure at some ports but, more so Cai Lan in the North can compound an already difficult situation. This is usually down to limited or no storage for cargo and hence it is immediately trucked or barged to its final destination, some distance from the port facility, leading to further damage or an increase in shortages if draft surveys are conducted and reliance is placed on grab scales or shore weigh-bridge.

Surveyors experienced in draft survey anomalies and or the interpretation of results, when large discrepancies are found, are scarce. The more experienced surveyors are based in HCMC or more recently Haiphong. The latter port is still some 3.5 hours travel time from Cai Lan, excluding any boat transit to the vessel that might be required. Time constraints can play a part in timely attendance.

It is customary for receivers surveyors to manipulate draft readings and/or soundings to calculate larger shortages than would otherwise be the case. They are generally intransigent when trying to resolve such discrepancies and usually leave the vessel and do not return. They also insist the master signs any draft survey records that they produce without remark or, if the master insists, then they threaten to delay discharge.

While appointing a surveyor to protect ship's interests, is not a guarantee of avoiding a discrepancy, complaint or an arrest, such preventative measures go some way in minimising the Owners' exposure. Without counter arguments the vessels interests have little room to negotiate. This extends to the involvement of a local lawyer. They would also be in need of a defence to minimise such an impact to an owner/charterer. The laws are too vague and ambiguous to be solely relied upon to protect a foreign entity.

When an arrest order is requested, the courts are only too eager to comply. They have the authority to act and issue such an arrest as an action in rem, irrespective of the governing jurisdiction. The courts are also quite flexible in demanding and agreeing on the appropriate documents proving a claim, i.e., scanned copies of bills of lading, not always including reverse endorsed backsides where appropriate, are generally accepted.

While any arrest can be appealed, this usually has to be done within 48 hours of it having been received by the master. It is therefore difficult to have such an appeal heard within this time frame but it can be done, if correspondents and lawyers are alerted early enough. This doesn't mean the claim goes away but gives a more level playing field during negotiations.

A claimant wishing to secure a vessel arrest usually means that the courts freeze monetary assets in their bank accounts for the sum claimed. However, this is sometimes overlooked and courts will accept other means of security such as, but not limited to, real estate ownership documents, more so over a weekend when banks are closed. While LOU's are accepted by approved local insurers, acceptance of such security is at the discretion of the claimant. If this is refused and one applies to the courts to have them accept security, this can only be accepted by the courts if the claimants advise they themselves are in agreement, otherwise such security is rejected. LOUs issued by the International Group of P and I Clubs are still not acceptable security. While bank guarantees are an alternative, claimants still have to agree. There are additional problems ensue over wording. Banks demand closed wording, i.e., a time limit of 1 year - renewable. Claimants and the courts insist on no such time limit or open ended guarantees. There is still the problem in the time taken in having any bank guarantee agreed and then issued, i.e., minimum 7 working days.

Bulk cargoes generally have an international trade allowance applicable to do away with the obvious shortages that do occur when loading and discharging such cargoes. This is generally agreed at 0.5% of 1% (half of one percent). Vietnam does not recognise this as it is a custom rather than law.

Source of Information

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