



Ship Type: All Trade Area: Worldwide

Bulletin 307 - 06/03 - Cargo Shortage Claims - Who is Responsible?

1. Requirement to state quantity of cargo in the Bill of Lading

Under the Hague and Hague-Visby Rules Article III Rule 3, the carrier must state the quantity of cargo in the bill in accordance with the information provided in writing by the shipper. The statement is *prima facie* evidence that the ship received that quantity. Under the Hague Visby Rules the carrier is bound by this statement of quantity where the bill has been transferred to a third party.

2. Proviso under the Hague and Hague-Visby Rules

However, there is a proviso at the end of Article III Rule 3 that the carrier is not bound to state the quantity of cargo where he has grounds for suspecting that the shipper's figure is not accurate or he has no way of checking it.

3. Reservations in the Bill of Lading

It is common to see reservations made to the statement of quantity in the bill, e.g. "*Weight ... quantity ... unknown*". Under English law this has been held to be effective where the master has no means of knowing the quantity shipped, so that other evidence will have to be produced to prove any shortage (**New Chinese Antimony Company Ltd. -v- Ocean Steamship Company Ltd. [1917] 2 KB 644** approved in the "**MATA K**" [1998] 2 LLR 614). There are however many jurisdictions which will not give effect to such reservations e.g. USA.

4. Knowledge that the shippers' figure is inaccurate

The master may not be able to rely on the reservation where he knows the shippers' figure is inaccurate. The safer course then is for the master to write the ship's figures alongside the shippers' figures in the bill of lading. Where the discrepancy is so great the bill of lading figure is obviously wrong, it may not be safe even under English law to rely on the reservation (**see the "SIRINA" [1988] 2 LLR 613 at 615**).

5. Where the master is pressured to sign an inaccurate Bill of lading

- (i) Where physical threats or coercion are used, the master may be forced to sign the bill of lading stating an inaccurate quantity. Once the master reaches a place of safety, he should consider issuing a protest.
- (ii) Where the charterer relies on a clause stating that bills must be signed by the master "as presented", the master is not required to sign bills which are factually incorrect (**see the "BOUKADOURA" [1989] 1 LLR page 393**).
- (iii) If commercial pressure is applied by the shipper, the owner may have to consider whether to try to negotiate, accept the commercial risk of signing the incorrect bills of lading or accept a letter of indemnity.
 - (a) If a letter of indemnity is issued where the bill of lading figure is clearly wrong it will be unenforceable under English law on the grounds of fraudulent misrepresentation. (**Brown Jenkinson -v- Percy Dalton [1957] 2QB 621, 639**).
 - (b) It is also dangerous to sign bills of lading containing inaccurate information as P&I Club cover may be lost.

The law in this area is complex and the consequences serious. It is essential that the Member discuss the position with his P&I Club and lawyers.

6. Owners' or Charterers' Bills of Lading

If a party is identified " on the front of the bill of lading as the "carrier" on whose behalf the bill has been signed, this is likely under English law to prevail over printed clauses on the reverse e.g. a Himalaya Clause (the House of Lords in **the "STARSIN" LMLN 611** overturning the Court of Appeal).

Where it is a charterers' bill, owners may still be sued in tort or bailment.

7. The NYPE Inter-Club Agreement (ICA)

Where there is an ICA clause in the charterparty, owners are normally entitled to recover a 50% contribution from charterers for shortage claims. If the shortage was due to cargo handling and Clause 8 has not been amended with "and responsibility", charterers' contribution is increased to 100%.

8. Shortage resulting from stevedore pilferage or negligence

If the stevedores are responsible for shortage, this may operate as a defence to a cargo claim or the basis of a recovery against charterers, depending on who is contractually responsible for those stevedores.

(i) Under the Bill of Lading

If the bill incorporates the charterparty terms under which charterers are responsible for loading and discharge, under English law this arguably absolves owners from responsibility for losses resulting from stevedore operations, (**see the "CORAL" [1993] 1 LLR 1**).

(ii) Under the Charterparty

Where charterers are responsible for loading, stowage and discharge, owners may recover cargo shortage claims from charterers on the basis of breach of contract.

9. Period of Responsibility

Under the Hague and Hague-Visby Rules the carrier's responsibility ceases when the cargo is discharged over the ship's rail. Any shortage after discharge should not be the ship's responsibility (although in practice this depends on having the appropriate evidence in a jurisdiction which applies the Rules properly).

10. Evidence

Obviously, evidence is vital in trying to show that there is no real shortage. The ship's draft survey, tallies and independent surveys can prove invaluable. However, the weight they are given depends on the particular legal regime where the claim is brought.

A more detailed paper on the above subject is available to Members on the [Encyclopaedia](http://www.epandi.com) on www.epandi.com

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