**Bulk Cargoes & Legal Importance of Draught Surveys**

In order to minimize liabilities in regards to bulk cargo shortage claims it is needed to understand the customary trade allowance and its application to bulk cargo trades.

*Understanding the Customary Trade Allowance:*
Bulk cargo shortage claims are brought about when difference between the B/L and discharge figures is greater than the customary trade allowance. This difference or shortage being due to factors such as measurement inaccuracies between the load and discharge ports, physical properties of the cargo (inherent vice) like evaporation through ventilation etc. It is assumed that unless this shortage exceeds a percentage (usually 0.5%) of the total quantity of cargo regarded as ‘customary’ in that trade; claim of cargo shortage will arise and the carrier will most likely be held accountable.

In fact, contrary to above, there is no uniform level of this trade allowance or a binding law confirming that that the carrier will be automatically exonerated from any liability when the shortages are less than the tolerance (0.5%) admitted. In other words there is no guarantee that the receivers will ignore small shortages and can still request a P&I Club LOU for the smallest of shortages.

The phrase 'customary allowance' originally stems from the cargo underwriter's insurance deductible (which was applied as depreciation on goods in transit marine insurance policies). The 0.5% allowance could be better described as 'measurement allowance' since measurement of any bulk commodity as mariners would know is more than an art than a science!

Also to rely on this exemption, the carrier will often be required to prove that the cargo shortage is due to inherent vice or measurement inaccuracies. It is almost impossible for the carrier to establish that the quantity of moisture loss during a voyage is equal to the quantity of cargo shortage or in case of coal cargoes the quantity of water pumped out from the bilges is equal to the cargo shortage (having said that it would be prudent for the carrier to maintain records for the quantity of bilge water being pumped out; ventilation timings/duration and temperatures)

In many grain loading ports around the world like Vancouver, the quantity of cargo loaded into the ship’s holds are always those determined by the shore scales and subsequently the same reflected on the bill of lading. This creates an impression for the ship that no matter what, the shore scale figures will be final and accepted at the discharge port - despite the fact that the quantity obtained in way of draught survey would differ substantially. Also neither any LOP would be issued nor B/L clausued reflecting this shortage – perhaps due to commercial obligations which is discussed further.

In some countries where the grain is regulated by the government and any shortage over and above the customary allowance will result in a claim and security demanded from the Club to release the vessel.
This is especially true for the ports in Saudi Arabia and even there have been cases such as these in China and other parts of the world.
Some common causes for cargo shortages:

- Physical phenomena (inherent vice) - loss in weight resulting from natural shrinkage and moisture evaporation.
- Loss due to dispersal of cargo during the load, storage and discharge operations
- Measurement inaccuracies – both shore and ship measurements.

So how can the carrier minimize cargo shortage claims?

It is practically impossible to measure the declared quantity exactly to the last grain in any bulk cargo operations; however, some of the steps the carrier could take to minimize shortage claims are:

1. Measuring/recording the moisture content of the cargo at load / discharge port
2. Joint draught surveys at load and discharge ports, preferably involving a Club surveyor
3. Measurements of hold volume and stowage factor (least preferred method) as stowage factor may not be correctly declared or can change
4. Joint sealing / unsealing of holds at departure and arrival
5. Inclusion of a trading/measurement allowance into the contract.
6. Correctly claus ing the B/L if the declared weight is not accurate
7. Maintaining accurate records for the quantity of bilge water being pumped out; ventilation timings / duration and temperatures
8. Using the same measuring methods at load / discharge port for weighing cargo.

It is therefore very important to understand when and how the customary trade allowance applies. The law in this area is very complex and the consequences are serious. Sometimes the charterer will rely on the clause stating the B/Ls must be signed “as presented” and “clean” without any clause or remarks. The carrier should be aware that signing B/L or accepting LOI where the B/L figures are factually incorrect could lead to criminal penalties, be unenforceable in a court of law on the grounds of fraudulent misrepresentation and may also jeopardize the P&I Club cover.

(Note: A Member’s P&I insurance is subject to the warranties, conditions exceptions, limitations and other terms set out in the rules and the Certificate of Entry)

It is prudent for the carrier to involve a P & I Club correspondent / lawyer should there be any signs of commercial pressure by the shipper/charterer to negotiate the shortage or accepting the risk of signing incorrect B/Ls or whether to accept an LOI.

The legal position in respect of shortage claims depends entirely on the contract of carriage and the evidence available. For example if the B/L incorporates the C/P terms such as “charterers shall perform all loading, stowing, trimming, discharging etc at their risk and expense; then this may prove useful during a court arbitration and go in favour of the carrier. However, on the other hand if the contract gives the carrier no protection, the chances are high that the courts will hold the carrier responsible for shortages. This will in turn require the Club to issue security in the form of a Club LOU in order to satisfy the receivers and to secure their claim for the value of the short-landed cargo - otherwise the vessel could be arrested or departure delayed till this condition is met.

In conclusion even though the shore scale figures may be relied upon but this does not reduce the responsibility of ships' officers to conduct its own draught surveys, tallies or involve a Club surveyor to conduct independent draught surveys – as after all this evidence is vital in trying to show that there is no real shortage and can prove invaluable in avoiding costly claims.