



The American Club

Transport Guidance for the Prevention of Shortages for Dry Bulk Cargoes



FOREWORD

Dry cargoes, particularly those carried in bulk and bagged, are particularly subject to disputes arising related to the volume of cargo having been declared at the load port and that having been delivered at the disport. These disputes can arise due to a number of contributing factors, some of which are more controllable than others to prevent. Such disputes are also more likely more frequent in certain jurisdictions despite efforts by shipowners and their crews that are made to prevent them.

The primary objective of this guidance is to bring awareness to the challenges and risks associated with dry cargo shortage claims and propose prevention and mitigation recommendations based upon our experiences. As always, we also encourage Members to reach out to us directly with any questions or concerns they have whereby we may further assist in the prevention and mitigation of such claims.

The American Club is committed to claims prevention through dissemination of loss prevention information; providing training tools and guidance to our Members; ship survey compliance; and ensuring the good health of personnel employed aboard Members vessels. We encourage Members to visit our loss prevention page at <https://www.american-club.com/page/loss-prevention> where a broad range of loss and claims prevention materials are available.

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1.0 Introduction

1.1 Objectives

To define and specify the hazards, causes and contributing factors and damages associated with cargo shortage incidents.

1.2 Hazards and types of damages and claims for dry cargo shortages

1.2.1 The primary focus of attention of this guidance is from when a cargo's weight or volume is determined by the vessel owner's interests at the loading port, until discharge into the hands of cargo receivers at the discharge port. Depending upon the applicable law or contract involved, the period of responsibility for a vessel owner may commence anywhere from "tackle to tackle" (as per the Hague Rules or U.S. Carriage of Goods By Sea Act (COGSA)) to periods before the loading and after the discharge (as per certain bill of lading clauses). During these time periods, the shipowner and/or charterer is exposed to various hazards and hazard 'contributing mechanisms' (e.g., lack of crew training) that can lead to short-landed cargo claims (i.e., shortage claims) as seen in **Figure 1.1**. This guidance provides loss and claims prevention recommendations that have been applied based on best practices from many years of industry experience.

1.2.2 **Table 1.1** provides an inventory of significant hazards, causal factors/mechanisms and consequential damages related to cargo shortages from cargoes transported in ships by sea that are addressed by this guidance.

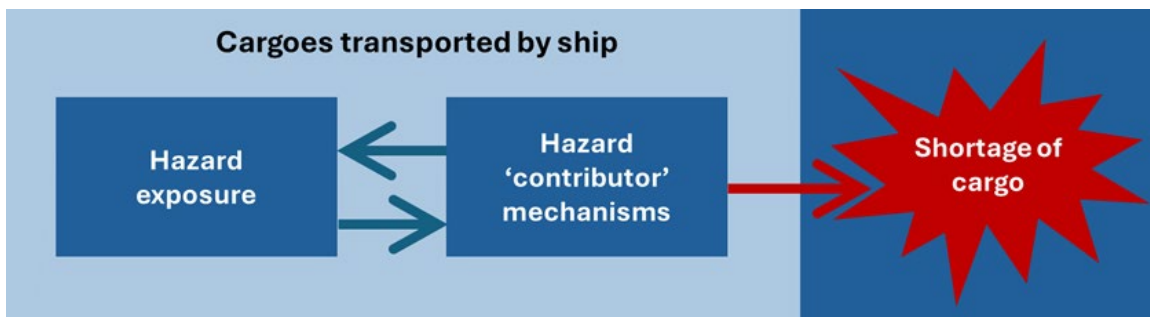


Figure 1.1 | Exposure of cargoes to hazards and hazardous contributing mechanisms that lead to claims of short landing of cargoes.

Table 1.1 | Exposure of cargoes to hazards and hazardous contributing mechanisms leads to cargo shortage claims

Hazards	Contributing factors/mechanisms to cargo shortages	Consequential events
<i>Incorrect tally, ballast and/or draft calculations (paper errors)</i>	<ul style="list-style-type: none"> • Lack of crew training • Insufficient or lack of vessel procedures 	<ul style="list-style-type: none"> • Errors in declarations on Bs/L leading to shortage dispute
<i>Incorrect draft measurements and/or calculations (paper errors)</i>	<ul style="list-style-type: none"> • Lack of crew training • Insufficient or lack of vessel procedures • Standard procedures not followed by crew • Poor weather conditions • Poor vessel condition hampering ballast, bilge, etc. water levels 	<ul style="list-style-type: none"> • Errors in declarations on Bs/L leading to shortage dispute • Delay of vessel's departure from load port
<p><i>Improper and insufficient documentation clausing, dating and/or for the cargo quantity and/or condition</i></p> <ul style="list-style-type: none"> • Bills of Lading (Bs/L) • Mate's Receipt (M/R) 	<p><i>Insufficient cargo operation monitoring by crew or third-party surveyor</i></p> <ul style="list-style-type: none"> • Cargo condition including water content (pre-loading) • Reviewing the stowage plan, monitoring cargo loading and/or discharge, lashing and securing • Incorrect tally report • Improper or incomplete wording on the Bs/L or M/R clause <p><i>Pressure from charterers to carry excessive cargo due to market/commercial reasons</i></p>	<ul style="list-style-type: none"> • Delay of vessel's departure from load or discharge port • Potential arrest of vessel • Alleged cargo shortage claims • Exposure to claims that may or may not be covered by P&I or other insurance cover
<i>Theft & pilferage (primarily at disport)</i>	<ul style="list-style-type: none"> • Inadequate monitoring of discharge operation by crew • Not retaining cargo surveyor at disport to monitor discharge operations 	Significant difference in what was loaded versus discharged at disport leading to shortage claims
<i>Water along with cargo (especially coal) when used to avoid dust from flying during loading and storage at load port</i>	Inadequate monitoring when water from cargo hold bilges is pumped out during the voyage	Significant difference in cargo quantity upon arrival at discharge port

1.3 P&I risk profile for dry cargo shortage claims

1.3.1 From February 2013 through June 2024, the Club experienced 2,596 cargo related incidents. Six hundred and fifty-seven (657) of those incidents have resulted in claims incurred and are estimated to cost more than US\$ 10,000. The average cost of cargo shortage claims of more than US\$10,000 was US\$60,548 including deductibles. Furthermore, 308 of those cargo incidents of more than US\$10,000 are reported as cargo shortages. As seen in **Table 1.2**, bagged and bulk foods represent a combined 67% of the frequency of cargo shortage claims and 71% of the costs of cargo shortage claims of more than US\$10,000. Majority of these shortage claims take place in areas, other than Europe, USA, Canada, Australia.

Table 1.1 | Exposure of cargoes to hazards and hazardous contributing mechanisms leads to cargo shortage claims

Cargo shortages	No. of incidents	Freq. of incidents (%)	Total cost of incidents (US\$ m)	Avg. cost per incident (US\$)
incidents	308	47%*	\$18.65	\$60,548
bagged food (rice, sugar, corn, etc.)	110	36%	\$8.46	\$78,883
bulk foods (grains)	95	31%	\$4.76	\$50,060
bulk non-food	28	9%	\$2.21	\$79,045
oils & chemicals	25	8%	\$1.15	\$45,935
unspecified	40	13%	\$1.41	\$35,295

* is specific to %age of total cargo incidents >US\$ 10,000

1.3.2 Most incidents include bagged and bulk cereal grains that were discharged at African, Middle Eastern and Asian ports. Geographically, 53% of these incidents occurred in Africa and 14% of these incidents have occurred in the Middle East and Asia, respectively. Members have experienced the highest number of incidents in Côte d'Ivoire (23), Tunisia (22), Algeria (18) and Senegal (18). For countries with five or more incidents over US\$10,000, the highest average cost per incident were observed in India (US\$187,657), Guinea (US\$157,779) and Turkey (US\$117,202).

1.4 What, in general, are the grounds for dry cargo shortage claims?

1.4.1 Discrepancies in the volume, weight, or count of cargo loaded aboard ship at the load port as stated on the bill of lading (B/L) in comparison to that unloaded at the discharge port commonly result from:

- (a) discrepancies in tallied cargo units brought aboard the vessel;
- (b) discrepancies in a vessel's draft measurements while and after completion of loading;
- (c) discrepancies in the calculation of remaining ballast and bilge water onboard leading to overcalculating cargo loaded;
- (d) excessive water loaded with cargo and discharged/evaporated during transit;
- (e) incorrect temperature and/or density calculations of liquid cargoes;
- (f) discrepancies in the calculation of the vessel's constant;
- (g) loss of cargo during discharge because of mishandling, theft, or pilferage and
- (h) shore scales manipulated or not calibrated.

1.4.2 Shortage claims arise out of discrepancies that fall outside of an acceptable range of error between the amount of cargo recorded as loaded and recorded on the B/L and the amount of cargo having been discharged. There are 'trade allowances' that reflect the differences in measurements. However, if the discrepancy is found to exceed a particular threshold, then a cargo claim can result. For bulk and liquid cargoes, unless otherwise specified in the charter party, the trade allowance is generally between 0.5% and 1% of the amount of cargo as specified on the B/L.



Figure 1 | Bulk grain falling off of truck and spread along quayside during discharge (c/o Budd Algiers)



Figure 2 | Cargo being re-bagged, shoveled from torn polypropylene bag on vessel deck (c/o Budd Algiers)



Figure 3 | Cargo being re-bagged, shoveled from torn polypropylene bag on vessel deck (c/o Budd Algiers)

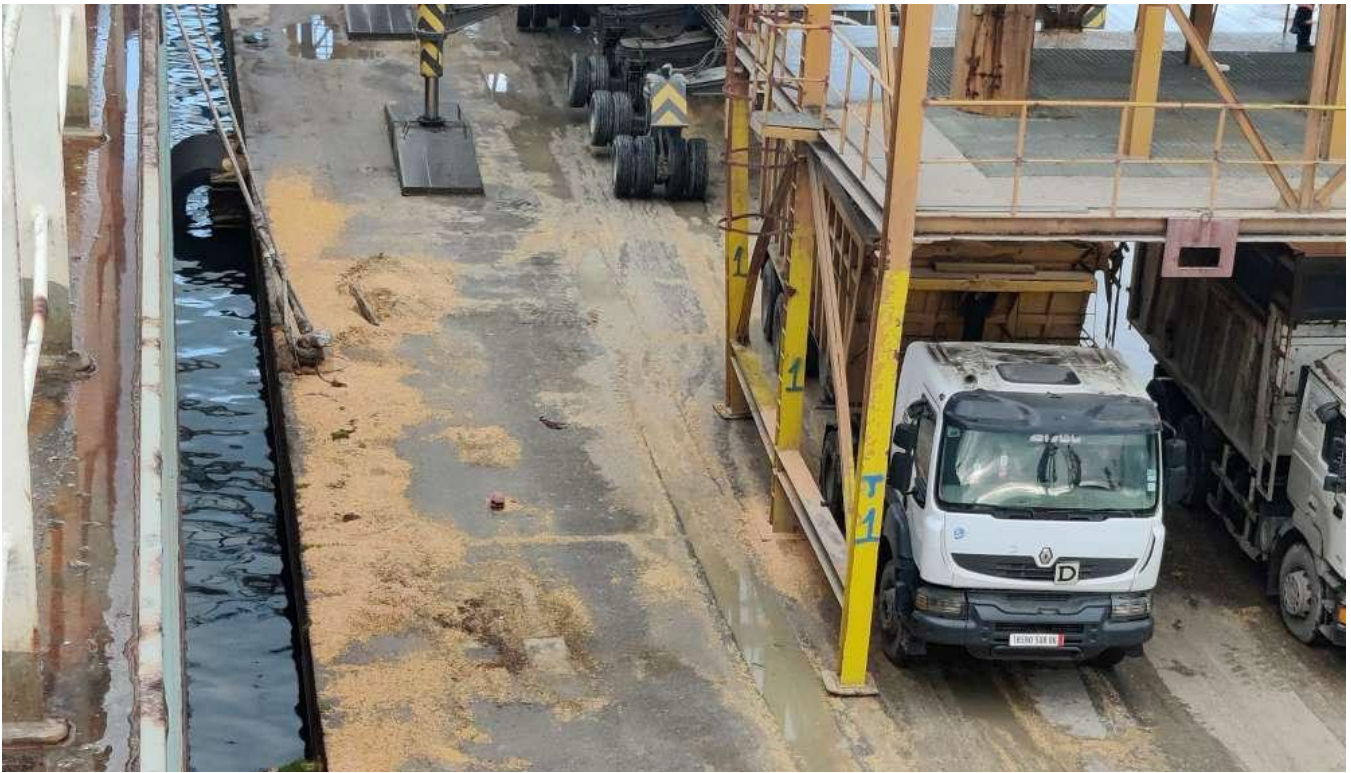


Figure 4 | Bulk grain cargo spread quayside during vessel discharge (c/o Budd Algiers)

2.0 Best practices by the crew

2.1 Objectives

To specify the best practices to be considered for the vessel's crew to prevent cargo shortage incidents taking into account the various means of measuring cargoes.

2.2 General precautions

- 2.2.1** The Master and crew should ensure that they maintain detailed and accurate cargo records and documentation for each stage of cargo voyages that include, but are not limited to, cargo record book entries, photographs, videos, and any other relevant documentation relevant to the condition and quantity of cargoes loaded, carried and discharged.
- 2.2.2** Copies or relevant originals of all records and documentation should be stored aboard the vessel for a period that is no less than one (1) year from the date that cargo has been delivered or should have been delivered to consignees at the discharge port.
- 2.2.3** The Master should consider stationing crew members at key locations during cargo loading and discharge operations to visually monitor stevedore activities. Crew members on cargo operation duties should be stationed at the following areas:
- (a) embarkation and disembarkation points for stevedores and surveyors to prevent theft and pilferage of cargo;
 - (b) above each and every cargo hold where cargo load and discharge operations are underway to visually scan and observe the activities of all stevedores and surveyors working in the cargo holds; and
 - (c) any other locations where cargo may be loaded onto or discharged from the vessel, where stevedores are engaged in cargo operations, or where any other visiting non-crew personnel are allowed access.

2.3 Tally and draft surveys

- 2.3.1** *Tallying surveying.* This is a means of measuring the cargo while it is being loaded onboard and/or being discharged from the vessel by counting the number of cargo units.
- 2.3.1.1** Tallying cargo being loaded and discharged is normally the responsibility of tally surveyors. The vessel's Master, Chief Officer and any other crew responsible for monitoring cargo operations should be aware of the specific tasks to be performed by the individual surveyors

(e.g., tally, stowage, etc.). The scope of work to be performed by the surveyors should be communicated in writing and discussed and agreed with the vessel's Master and/or officer on watch prior to taking on their duties.

- 2.3.1.2** The crew should regularly monitor and ensure that surveyors are performing their assigned survey tasks that include, but may not be limited to:
- (1) a proper tallying of the cargo being loaded or discharged depending upon the various means of loading or discharging that may include the use of slings or pallets; and
 - (2) a visual survey of all bundled or bagged cargo to ensure that they are correctly counted (tallied) and undamaged when being loaded or discharged.
- 2.3.1.3** The crew should take photographs, videos and make written records of any observations, as appropriate, that make that fall outside of the vessel's tallying procedures.

2.3.2 *Draft surveying.* This is a means of measuring the displacement of a vessel once cargo has been loaded or discharged.

2.3.2.1 Important items for performing a draft survey include: (1) a hydrometer, (2) sounding tape, water & oil paste, (3), a notepad, (4) computer or calculator, (5) flashlight, (6) a lifejacket and (7) a wave damping tube should sea conditions persist as noted in **Section 2.3.2.4(1)**.

2.3.2.2 The Master should ensure that the vessel's draft measurements have been properly read and recorded prior to and at the completion of loading of cargo. Performance of the draft survey includes recording the draft markings at six (6) standard points along the vessel's outer hull at both the port and starboard sides forward, midship and aft.

2.3.2.3 Draft surveying relies on the basics of Archimedes Principle whereby the weight of displaced water in the water is equal to the weight of the displaced object. Therefore:

- (1) the vessel's displacement without cargo (Δ_p) will include the weight of the ship when constructed excluding the crew, cargo, fuel, lubes, ballast, stores, freshwater, accumulated layers of paint, weights of accumulated mud in ballast tanks, additional machinery and equipment added after initial instruction. The difference between the weight of the lightship condition and condition of the vessel without cargo is referred to as the vessel's 'constant'. The constant is calculated at every loading

and discharge port. The constant is also impacted by the vessel's area of operation. For example, a vessel that regularly loads and/or discharges in river ports, is likely to have greater mud accumulation in the ballast tanks and thus, a higher constant and resulting reduced cargo capacity;

- (2) the vessel's displacement when the vessel is fully loaded (Δ_L) with cargo; and
- (3) the weight of cargo loaded is then:

$(\Delta_L) - (\Delta_E)$ - weight of ballast H₂O discharged during loading

2.3.2.4 All draft marks are set for a vessel that is at an even keel, i.e., no trim or list. At the time of the vessel's construction, a trim and stability booklet – otherwise known as a vessel displacement booklet – is issued by the shipyard and certified by the vessel's classification society after construction that stipulate displacement measurements at various drafts and include some displacement measurements considering trim and list conditions. There are several factors that may impact on a draft survey that include:

- (1) Vessel list. There may be discrepancies found in measuring the volume of ballast water due to vessel's sounding tables measurements that are generated for vessels at even keel. Sounding pipes are usually in the extremities of the vessel thus a list would result in improper measurement of ballast, although there is allowance for list in the vessel's trim and stability booklet. Inaccuracies due to list are more pronounced in comparison to trim, therefore it is always desired that the vessel has zero or minimal list during draft survey.
- (2) Vessel trim. The variations in vessel hull design fore and aft of midship may also present challenges in accurately measuring the displacement of a vessel that may be trimmed when loading cargo. However, sounding tables also have provisions for quantity of ballast water at different trim values.
- (3) Adverse sea conditions around the vessel experienced during a draft survey. Sea conditions should not exceed 3.3 feet (1 meter) in height for performing draft measurement readings. Take and record 10 draft readings over a short period (e.g., 1-2 minutes). Delete maximum and minimum reading and calculate the average of remaining 8 readings. If draft survey measurements are taken under such conditions, a Letter of Protest (LoP) should be issued given the potential for errors in the draft calculations. See **Section 3.5, Letter of Protest**.

2.3.2.5 The displacement figures as presented in the trim and stability booklet are based on the density of seawater displaced where the density of seawater is known to be 1,025 kg/m³. A hydrometer is used for measurement of the actual water density around a vessel. Whether the vessel is in port, in river or outer anchorage, it is always used to measure density, for the purpose of working out displacement/cargo onboard the vessel. So, the crew should ensure to take measurement and record water density prior to loading to convert the value obtained from the displacement tables to correspond to actual density. It is important to note that water density can be affected by factors including recent rains, tides, nearby runoffs, so:

- (1) ensure the hydrometer is properly calibrated;
- (2) buckets can be used to obtain water samples. The bucket should be clean and there should be no residue sticking to the inside of the bucket;
- (3) water samples should be taken from beneath the water's surface at least 10 feet (3 meters) deep. Ensure that the samples are taken away from any areas of deck run off or overboard discharges;
- (4) upon inserting the hydrometer into the water sample, read and record the water density reading; and
- (5) repeat the test from multiple water samples taken at different locations around the vessel's hull and calculate the average water density reading.

2.3.3 Monitoring activities of tally and draft surveyors.

2.3.3.1 *Tally surveys.* During loading the tally surveyor should be properly positioned at each cargo hold whereby they can accurately record the quantity of bags loaded and liaise with tally clerks representing the shipper's interests to agree on the quantity that will ultimately be recorded on the Mate's Receipt (M/R).

2.3.3.2 *Draft surveys.* Ideally draft surveyors representing shipowner's, charterer's and shipper's interests should jointly perform draft surveys prior to and after loading to agree on the quantity of cargo loaded, however in most cases the charterers usually do not appoint a draft surveyor and choose to rely on shipper's surveyor. It is important to note that the weight at the load port can vary significantly during a voyage for certain cargoes caused by continuous ventilation (evaporation) or settling (water collected in bilges and discharged during transit). For example, coal is one such cargo where a significant amount of water is loaded along with cargo and is constantly pumped out during the voyage.

2.3.4 Record keeping relating to cargo loaded and discharged.

2.3.4.1 The Master and crew should have procedures for record keeping of cargoes that are loaded, discharged and documentation of any incidents that may lead to cargo claims (e.g., wet/moisture damage, damaged bags, mishandling of cargo by stevedores, pilferage, etc.). In the event of any incidents:

- (1) the crew should notify the Master and/or officer on watch of any and all observed activities of concern by third parties aboard ship;
- (2) the Master or officer on watch should log the details of the incidents in the vessel's cargo record book and/or in some other contemporaneous written record;
- (3) the Master and/or officer on watch should collect all relevant evidence (i.e., film, pictures, statements from witnesses and physical evidence of the incident, as applicable) as practicable to be kept as a record of the incident;
- (4) the Master should ensure that the Mate's Receipt (M/R) clearly states the details of the exact condition of the cargo, weight of cargo, receiving of damaged cargo upon loading, etc.;
- (5) the Master should issue a relevant LoP to the charterers and/or cargo receivers if stevedores do not load, stow or discharge the cargo as instructed; and
- (6) during the vessel's transit, the Master must maintain a detailed record of the volume of water discharged from the bilge tanks between load and discharge ports.

2.3.5 Mate's Receipts and Bills of Lading.

2.3.5.1 Vessel Masters should be fully familiar with their duties in properly completing Mate's Receipts and Bills of Lading.

2.3.5.2 Mate's Receipt (M/R)

2.3.5.2.1 The M/R is the document signed by the vessel's Master, acknowledging the weight and condition and receipt of cargo by the vessel. Typically, the M/R are provided to the shipper of the cargo who is then entitled to request the issuance of Bills of Lading in exchange for that M/R.

2.3.5.2.2 The M/R that is issued should always reflect the exact quantity and condition of the loaded cargo that has been ascertained by the vessel's crew and/or its surveyor. Details of any damaged cargo arriving onboard ship, found damaged should be documented. This information should

be retained and submitted as supporting documentation for the M/R. Many charter parties have a clause stating that Master should allow only clean cargo to be loaded, and under such circumstances the Master should reject any cargo that is not in sound condition as he cannot mention the damaged condition on the M/R because of this specific clause on charter parties.

2.3.5.3 Bills of Lading (Bs/L)

- 2.3.5.3.1** Delegation of the Master’s duty to issue Bs/L. Such provisions may be a pitfall for shipowners because when such duties are assigned to the charterer, a clean B/L may be issued by the charterer despite the existence of remarks on in the M/R which are inconsistent either with respect to the conditions, quantity or quality of the cargo. Master, when delegating responsibility to third party to sign Bs/L on Master’s behalf should state in the letter of authorization: “Bs/L to be signed in conformity with exceptions on M/Rs”.
- 2.3.5.3.2** Whenever possible, the shipowners should not delegate this duty to best protect their interests and avoid unnecessary exposure to the paper cargo claim that, in essence, may accrue before the vessel even departs the loading port limits. If a shipowner or disponent owner chooses to make the commercial decision to include such a term in its charter party agreement, it runs the risk of prejudicing its P&I cover for cargo claims that may arise with that voyage.
- 2.3.5.3.3** *Incorporation of charter party jurisdiction: Choice of law provision.* Incorporate dispute resolution and/or have all disputes under the charter party and/or under the bill of lading subject to the same jurisdiction and applicable law set forth in the governing charter party. By doing so, the shipowner or disponent owner can preserve jurisdictional arguments which may have a considerable bearing and influence as to:
 - (1) how a particular cargo claim is presented or prosecuted;
 - (2) the forum in which such claims are defended, including any vessel arrest proceedings; and
 - (3) the substantive law to govern all such disputes.

2.3.5.3.4 *Potential prejudice to P&I coverage for cargo claims.*

Whenever possible, the shipowner should ensure that any decisions made in connection with the carriage of a cargo do not unnecessarily prejudice a shipowner's protection under the P&I insurance policy. Essentially when the cargo is carried in less favorable terms than that permitted by the charter party or claused in the B/L, accepting a letter of indemnity (LoI) from the charterer is one such criteria that can prejudice P&I cover. All International Group (IG) clubs contain provisions in their P&I contract terms which provide that coverage for cargo related claims may be prejudiced under the following circumstances:

- (1) delivery of cargo to a port or place other than the port or place listed in the governing Bs/L or contract of carriage;
- (2) delivery of cargo without production of original Bs/L;
- (3) the issue of antedated or postdated Bs/L;
- (4) the issuance of a B/L issued without the knowledge of the shipowner or the Master of the insured vessel with an incorrect description of the cargo or its quantity or its condition; or
- (5) the failure to arrive or the late arrival of the insured vessel at a port of loading, or the failure to load any particular cargo in an insured vessel other than liabilities, loss and expenses arising under a B/L already issued.

2.3.6 The Master, if requested to sign any documentation by cargo interests, if not in agreement with the contents of the letter, should always clause their signature with the remark, "WITHOUT PREJUDICE, FOR RECEIPT ONLY", that states that the Master has received the documentation but without accepting the information contained therein and maintains the shipowner's rights in the event of a future claim.

2.3.7 Members and their Masters may also refer to the American Club's Signing Bills of Lading: A Pocket Guide for further guidance found in [English](#), [new](#) and [traditional](#) Mandarin.

2.4 Survey monitoring and interaction (load port and discharge port)

2.4.1 It is recommended that shipowners arrange for independent surveyors to ensure proper care of the cargo during loading, stowage and discharge of the cargo and conduct proper precautionary surveys, tallies and draft surveys. It is important

to note that draft surveys are not allowed in certain ports. Shipowners should check and confirm with their local agents in advance of arrival or discharge to determine whether draft surveys are allowed.

- 2.4.2** The Master should ensure that draft surveys are only conducted prior to opening hatch covers to load or discharge cargo.
- 2.4.3** The credentials and identification of any cargo surveyor who arrives to perform their designated survey tasks should be checked and verified before any such surveying work is allowed to commence.
- 2.4.4** As with the stevedores, the vessel's Master, chief officer and any other crew responsible for monitoring cargo operations should be aware of the specific tasks to be performed by the individual surveyor. The scope of work to be performed by the surveyor should be communicated with the Master and/or officer on watch in writing and discussed prior to taking on their duties.
- 2.4.5** The crew should regularly monitor and ensure the surveyors are performing their assigned survey tasks that include, but not be limited to the following:
- (1) the proper tallying of the number of bundles of bags coming aboard a vessel;
 - (2) visually survey bundles of bagged cargo to ensure the bags are undamaged as they are coming onboard;
 - (3) monitor and attendance of any other surveyors instructed by cargo interests, charterers or other relevant third parties; and
 - (4) perform draft surveys before and after loading while taking into account **Section 2.3.2** above.
- 2.4.6** The crew should draw attention of the cargo surveyor to any issues with the cargo that the surveyor may have missed, being busy with inspecting other cargo holds or documentation.

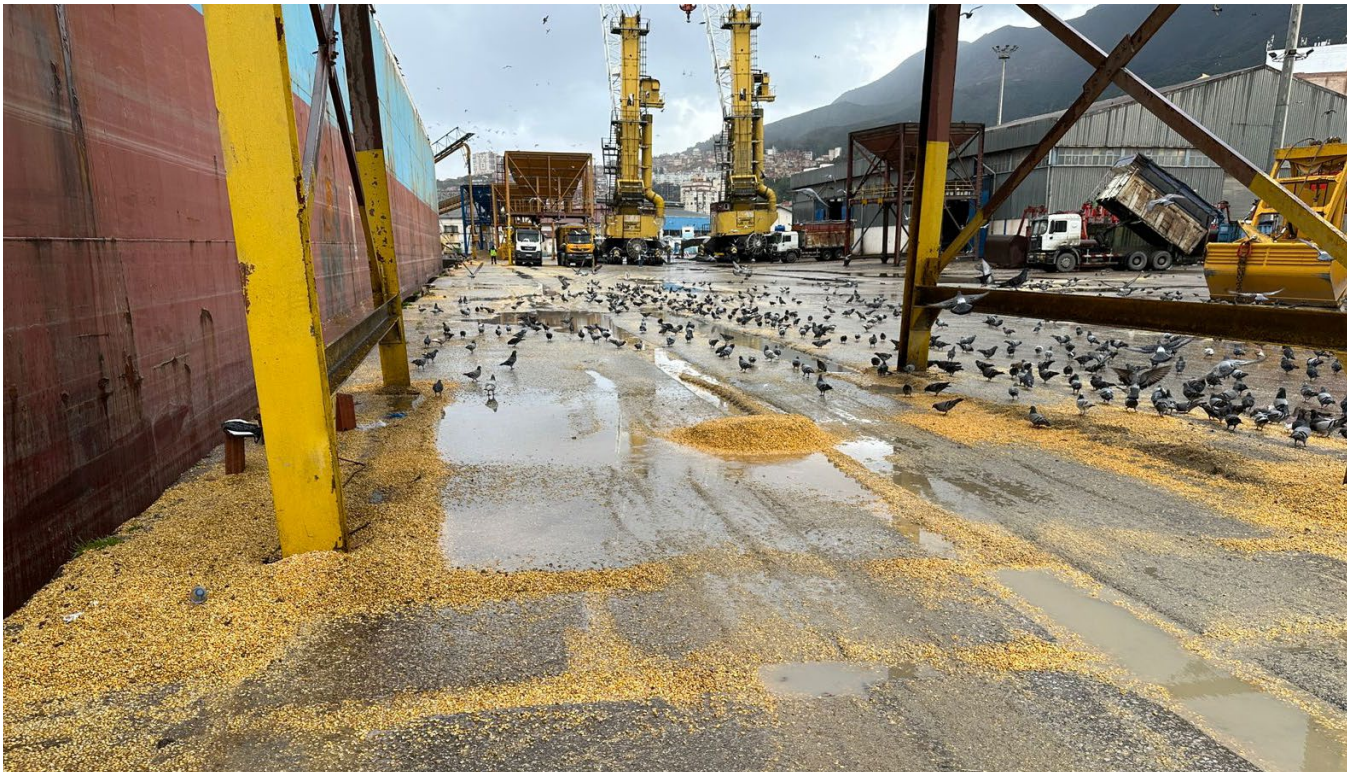


Figure 5 | Bulk grain cargo left on deck dock having fallen through discharge grabs that is difficult to recover as it may be mixed with animal feces and rain water (c/o Budd Algiers)

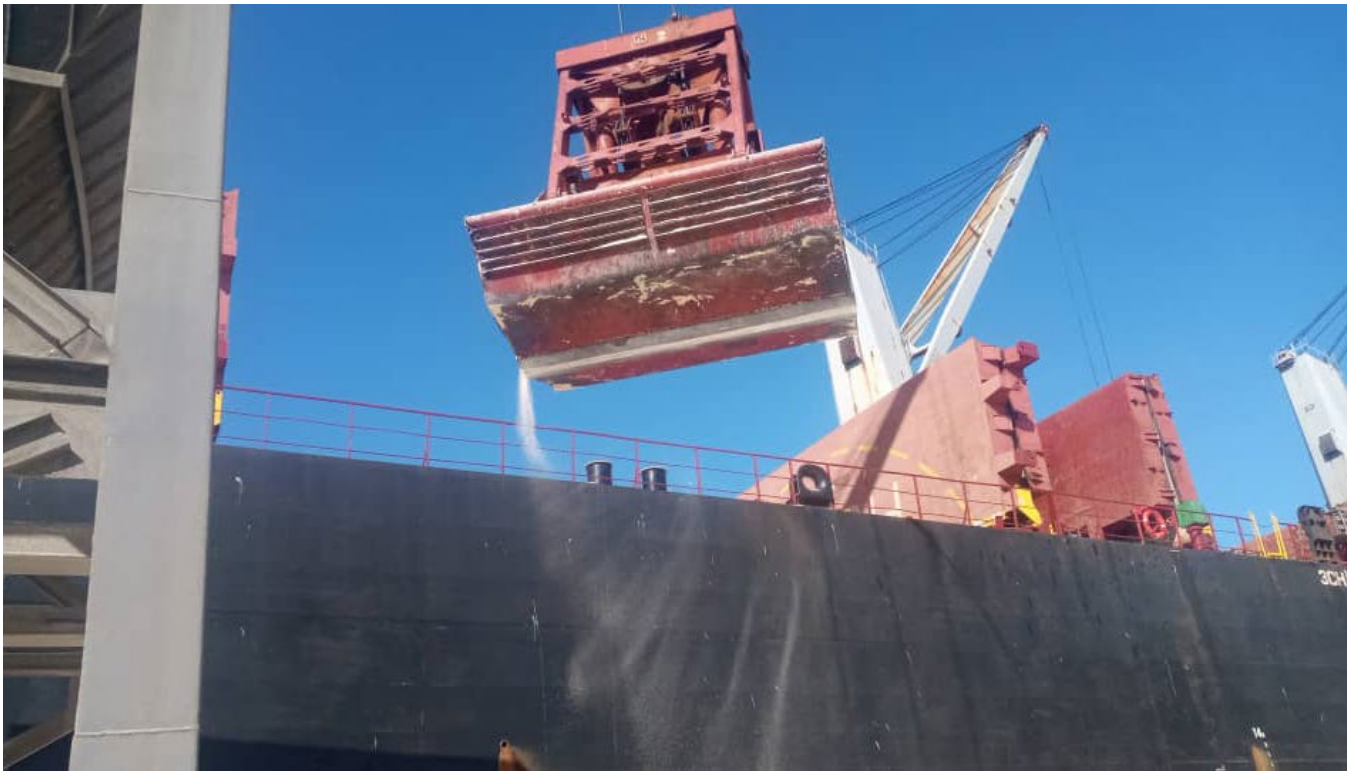


Figure 6 | Bulk cargo falling through grabs onto deck, water and quayside during discharge (c/o Budd Algiers)



Figure 7 | Bulk grain cargo spread quayside during vessel discharge (c/o Budd Algiers)



Figure 8 | Bulldozer cleaning up residual grain cargo quayside (c/o Budd Algiers)

3.0 Best practices for shipowners

3.1 Objectives

To specify best practices to be considered for shipowners to consider in support of their Masters and crews to prevent cargo shortage incidents.

3.2 Procedures

Shipowners should review their cargo operations procedures and ensure that Masters and crew are fully familiar with tasks associated with both tally and draft surveying for their vessels.

3.3 Training of crew

Shipowners should ensure that their Masters are fully trained in understanding what their duties and obligations are as it relates to engaging third party cargo interests.

3.4 Engaging cargo surveyors

Shipowners should ensure that all relevant cargo surveyors (e.g., tally, draft, cargo condition, etc.) are engaged to protect their interests with shippers, receivers and charterers. Any additional or specific instructions can be provided to surveyors as deemed necessary for a specific cargo.

3.5 Letter of Protest (LoP)

- 3.5.1** Related to the cause and potential damages, losses or discrepancies related to the loading of cargo aboard ship, the vessel's Master should be encouraged to issue a Letter of Protest (LoP) to notify shippers, charterers and/or cargo consignees that they are reserving the shipowner's rights in such events. Incidents such as irregular draft or tally measurements, rough handling of cargo, improper stowage of cargo, or pilfering of cargo are examples of reasons to prepare and present a LoP.
- 3.5.2** For cargo, the LoP should include such relevant information as, but not limited to:
- *Vessel details:* Name, IMO number or other primary identifying number, and flag State;
 - *Voyage details:* Departure and arrival ports and date of the incident or circumstances;
 - *Cargo information:* The type and quantity of cargo;
 - *Reason for protest:* Note whether the protest is related to, e.g., irregular

draft or tally measurements, rough handling, improper stowage, or pilfering of cargo;

- *Description of incident:* The reason for the protest should be described in detail and include any resulting consequences as may be observed;
- *Potential damages:* Provide an estimate of the amount of damage to the cargo that was observed;
- *Master's statement:* The statement should specify that the Master reserves the right to extend the protest at a later date; and
- *Master and witness signatures:* The LoP should be signed by the Master and any relevant witnesses that were present and observed the incident or circumstances.
- *Parties LoP should be addressed to:* The LoP should be sent to relevant party as designated by the shipowner or ship operator such as the vessel's agent while copying (i.e., cc'ing) all affected parties (e.g., shippers, charterers and/or cargo consignees) with instructions that a copy of the LoP be forwarded onto those parties.

3.6 The Inter Club Agreement (ICA): What is it and applicability to shortage claims

- 3.6.1** The Inter-Club New York Produce Exchange Agreement or otherwise known as the Inter-Club Agreement (ICA), provides a simplified means to fairly apportion liability for cargo claims that arise under the New York Produce Exchange (NYPE) Form or Absatime charter parties as well as contracts of carriage under such charter parties. Such claims are to be allocated 50%-50% as between the vessel owner and charterer unless there is “clear and irrefutable evidence” that the claim arose from pilferage or act or neglect of one of the parties (including their servants and subcontractors), in which case liability would be allocated 100% to that party. The ICA will normally not cover customs fines as not being a cargo claim brought under a contract of carriage.
- 3.6.2** Shipowners and operators should be diligent in their review and consideration of charter parties whereby it should clearly state that the responsibility for cargo operations remain with the charterer to ensure that the 100% apportionment of liabilities associated with cargo operations as set forth in the ICA remain intact.



Figure 9 | Cargo spilling from torn polypropylene bags during discharge (c/o Budd Algiers)



Figure 10 | Bagged cargoes quayside that were handled roughly during discharge (c/o ETIC SAS-Africa P&I)



Figure 11 | The crew should be observant to how bagged cargoes are handled quayside (c/o ETIC SAS-Africa P&I)

4. Communicating with your P&I club

4.1 Objectives

To ensure prompt and timely communication between the Member and its P&I club to prevent or minimize the risk of potential cargo shortage and/or damage claims, and if such a claim is asserted against the Member and/or its vessel, to best coordinate their respected efforts to defend against any such claims.

4.2 Precautionary pre-load and discharge survey arrangements

4.2.1 In order for the P&I club to contact its correspondent in a particular port and to make the necessary arrangements for a precautionary load and/or discharge port survey, the following basic information should be provided by the Member to the P&I club at least seven (7) days prior to the vessel's estimated arrival at the load or discharge port:

- (1) full details of the vessel;
- (2) the load or discharge port and/or terminal in question;
- (3) the type and quantity of cargo to be loaded/discharged;
- (4) the contact details of the vessel's local agent, charterer, shipper, receiver or cargo forwarder;
- (5) the estimated time of arrival of the vessel at the load or discharge port;
- (6) the type(s) of survey(s) to be requested (e.g., tally, draft, etc.) at the load or discharge port; and
- (7) any other relevant information.

4.2.2 Copies of all relevant cargo surveys (pre-load survey, tally survey, draft survey, and or relevant survey) should be forwarded immediately to the P&I club and should be maintained by the vessel owner and charterer until the period of limitations for cargo claims lapses.

4.2.3 Vessel owners and charterers are reminded that in cases where other interested parties are onboard the vessel (e.g., surveyors, receivers, etc.), they should only be permitted access to the cargo and/or the vessel's documents, if so, advised by P&I club. Their requirements are to be conveyed to the owner's P&I Club surveyor to be subsequently passed to the P&I club for their consideration.

4.3 Cargo claims related to shortage

4.3.1 If a cargo shortage claim is presented by cargo interests, the Master or the vessel owner should immediately contact its P&I club and advise it of

the allegations of the shortage. The P&I club may then instruct its local correspondent and/or lawyers to attend to the matter and protect the vessel owner’s interests as best as possible.

- 4.3.2** Prompt and timely communication, combined with close cooperation between the Member its P&I club, will contribute greatly to an effective defense of any such asserted cargo shortage claims, and preserve all avenues for potential indemnity claims against any other responsible third parties.
- 4.3.3** Demands for security. If a demand for security is made to the vessel owner or charterer, or if the vessel is threatened with arrest or arrested, the vessel’s owner should immediately contact its P&I club for assistance. The vessel owner should also refrain from communicating with cargo interests to ensure that it does not inadvertently waive any jurisdictional arguments or otherwise potentially prejudice its rights or defenses.
- 4.3.4** Anti-suit injunctions. Should a shipowner find his vessel detained and/or arrested and cargo interests refuse security based on an arbitration clause in the relevant charter party, which is incorporated into the relevant Bs/L, the shipowner should immediately contact its P&I club for consideration of using the anti-suit injunction mechanism to oppose cargo interest’s unreasonable demands. In short, the security that is issued should comply with the jurisdiction for dispute resolution as per the charter party.

4.4 Noted experiences related to dry cargo shortages

4.4.1 Bagged sugar cargoes bound for West Africa

Many bagged sugar cargoes that are destined for West Africa are often loaded in Latin America, notably from Brazil (particularly at Santos) it happens that only the shore figures are recognized to ascertain loaded quantities (and not the shipowner’s surveyor’s tally figures). It is still recommended that shipowners perform an initial and final draft survey at the load port. The local correspondent at the load port may also confirm and provide guidance in this respect.

With the objective of limiting cargo shortage claims for bagged sugar, it is recommended that vessels carry out a draft survey at the load port and upon arrival in Africa, to also carry out a draft survey at the discharge port in addition to monitoring the discharge (tally).

It is also recommended that the cargo holds be sealed at the load port. If so, the ship can plead that: “the quantity loaded is XX MT, the holds have been sealed, and therefore the quantity discharged is the same as that mentioned in the B/L”. Thus, any objection that cargo has been spilled during the voyage or while waiting at anchorage at the discharge port may possibly be rejected. These steps may help shipowners to defend themselves against any allegation of cargo shortage.

However, if several ports of unloading are anticipated, the line of defense may be less convincing for discharges at ports that follow the initial discharge. Re-sealing of the holds may take place after the discharge at the first port, but cargo consignments to be delivered at multiple ports, the risk of shortage increases.

Regarding “torn” bag damage, as a general rule, charter parties for this type of cargo are rather unfavorable to shipowners. In fact, charter parties generally provide for stevedores to be the shipowner’s servants. In the event of bags being torn during discharge, the vessel will most likely be deemed liable for such damage, unless it can be proved that the stevedores are incompetent.

For this purpose, it may be useful to appoint a surveyor to carry out the tally on behalf of the shipowners. Thus, the surveyor could suggest to the Master, the issuance of LoPs on a regular basis to highlight the negligence and incompetence of the stevedores, which could assist the shipowners in the defense of such claims.

In summary, to avoid and mitigate bagged sugar shortage claims it is recommended to:

- systematically carry out a draft survey at both the load and discharge ports;
- upon completion of loading cargo, seal the holds at the load port with a seal certificate signed by all parties;
- unseal the holds at the disport, inviting all parties to attend the unsealing operation; and
- monitor the discharging operations (tally) and instruct the surveyor to address regular LoPs to the stevedores if and as may be necessary.

4.4.2 Weight determination procedures for bulk cargoes in Algerian ports

As part of the precautionary measures undertaken in respect of the discharge of bulk cargoes in Algerian ports, the carriers generally arrange initial & final draft surveys prior to and on completion of the discharging operations.

In this respect, it should be noted that although draft surveys carried out on the vessel's behalf have the advantage of determining the quantity of delivered cargo, such draft surveys cannot be used as conclusive evidence of the quantity of discharged cargo. This is due to Algerian cargo receivers having not taken part in such draft surveys.

The only weight determination procedure applied in all Algerian ports and recognized by the Algerian courts is the weighing of cargo on the shore weighbridge or silo scale, being the procedure followed by the receivers, the stevedores, and imposed by the customs authorities. Draft surveys are thus performed by the carriers as an indication only of the quantity present onboard and generally performed to assist shipowners in pursuing counter claims

against the shippers or charterers if they are found answerable for a cargo shortage claim put forward against them by the local receivers or underwriters.

Performing a draft survey at the discharge port will not avoid a shortage claim if a shortage is determined by the shore weighbridge scale and will not prevent the receivers from claiming the value of any such cargo shortage from the vessel.

4.4.2.1 Draft surveys by court appointed surveyors

Shipowners periodically enquired about the possibility of organizing an Algerian court appointed draft survey. However, Algerian courts do not authorize the appointment of court surveyors unless there is an actual dispute between the parties justifying the recourse to appoint a court surveyor. Thus, in the absence of a formal claim on the part of cargo interests, a judge will automatically reject our application for the appointment of the court surveyor.

In any event, findings and conclusions reached by court appointed surveyors are not binding on the parties and are taken into consideration as guidance only by the judges when considering a dispute. Since the draft survey results are not recognized by the local courts as a reliable weight determination procedure, even a court appointed surveyor's draft survey report will bear no relevance in the event of a cargo shortage claim being put forward by the cargo receivers

4.4.2.2 Recommendatory precautionary measures to prevent and mitigate fraudulent practices

Bearing in mind the fraudulent practice experienced in many ports whereby a few loaded trucks are allowed to leave the port without passing on the weighbridge scale, the presence of a surveyor monitoring the discharging operations and performing a tally of the trucks departing from the discharging quay and checking the discharge figures at the weighbridge scale may prove quite dissuasive in avoiding such situations. It is recommended that the surveyor maintain a vigilant watch throughout the discharging operations to at least discard any possibility of undue shortage claims due to a local fraudulent practice.

Past experience has shown that when a surveyor is in attendance checking the number of trucks and monitors the weighing procedure at the weighbridge, the receivers are less prone to inflate shortage claims. However, when a real shortage exists due to a short-shipment, or to extensive losses caused during the discharging operations, the surveyor's monitoring of the discharge will not necessarily prevent the occurrence of a shortage claim.

4.4.2.3 Application of a 0.5% trade allowance by the Algerian Office of Cereals (OAIC)

Bulk wheat cargoes are almost exclusively imported by the OAIC who generally do not claim for cargo shortages unless the ascertained shortage is more than the applicable 0.5% trade allowance.

4.4.2.4 Position of local courts regarding shortage claims

Successfully defending against such shortage claims is relatively slim. As previously noted, local courts in Algeria are unlikely to consider the draft surveys results as conclusive evidence of the quantity of delivered cargo and exclusively rely on the results of the shore scale which is also the official procedure relied upon by the stevedores and the customs authorities to check the weight of discharged cargo. Algerian jurisdictions are known to systematically hold the vessels liable for cargo shortage claims of this nature as shore weighbridge scale results – that are certified by the differential reports and weighing statements issued by the Algerian port authorities – are considered by the local courts as the only acceptable evidence of the weight of delivered cargo.

4.4.2.5 Position of local courts regarding shortage claims

Shortage of bulk cargoes in Algerian ports are usually the result of, but not limited to, extensive cargo spillage that are noted by the Master and/or surveyors throughout the discharging operations whereby:

- stevedores overloading grabs;
- stevedores using leaking steel grabs;
- rough handling resulting in cargo spillage from the hoppers and from the overloaded receivers' trucks;
- the absence of protective tarpaulins between the vessel's side and the quay; and
- cargo spilled quayside is not collected by the receivers or stevedores.

Furthermore, when significant discrepancies are found between the obtained draft survey results and the shore scale results, it is generally due to faulty shoreside weighing procedures from unreliable shore scales, or fraudulent statements of the number of loaded trucks, not excluding a loss of weight in transit, or an incomplete shipment at the load port.

4.4.2.6 The difficulty in defending shortage claims before Algerian courts

In practice, cargo spillage can be proved by taking videos and

photographs in support of Master's LoPs and remarks in the receiver's documents. However, other causes of shortage are difficult if not impossible to prove before the courts that the delivered cargo weight is certified by the port authorities in the presence of customs authorities. These documents, along with the differential report issued by the port authorities, are considered by the Algerian judge as evidence of the shortage which makes it difficult for the foreign carrier to repudiate liability for shortage claims asserted based on measurements by certified shore weighbridge scale results.

The reliability of shoreside scales is difficult to prove. Port authorities calibrate their scales and obtain a calibration certificate annually. Claiming that the shore scales are unreliable will not exonerate the carrier from his contractual liability towards the cargo interests and can only be used to assert a counter claim or recovery action against the stevedores. And that can only be done after indemnifying the cargo interests as required by the present jurisprudence.

Under Algerian maritime law, stevedores are considered the shipowner's servant performing work under the vessel's supervision whereby liability, and their fault or negligence in the conduct of the discharging operations or weighing procedures, cannot therefore be invoked by the shipowner to elude his liability towards the cargo interests.

Thus, shipowners are held liable by the local courts based on the restrictive maritime code for shortages without considering draft survey results or accepting the principle of trade allowances or loss of weight during transit.

4.4.2.7 Difficulties in discharging non-bulk cargoes in Algeria

Similar experience similar challenges with non-bulk cargoes, (e.g., bagged cargoes) whereby cargo receivers generally arrange for the tally jointly with the stevedores even when the shipowners also arrange their own tally by an independent surveyor. Cargo shortages are systematically ascertained on completion of the cargo being discharged whereby pilferage is witnessed with many highly coveted commodities. It is very difficult for the vessel's crew to repress such pilferage due to the often-aggressive behavior of the local labor and/or stevedores where police authorities rarely accept to interfere.

4.4.2.8 Further considerations & recommendations

As noted, the most significant recourse for shipowners is to hold stevedores liable and file successful legal action against them for

mishandling and/or pilferage of cargo. In summary, to avoid and mitigate bulk and non-bulk cargo claims it is recommended that:

- the crew should be diligent and take photographic and video evidence of pilferage; and
- the Master should file LoPs that record the evidence of pilferage.

Generally, for most shortage claims, it is preferable and more cost-effective (particularly if a bank guarantee may be in place) to settle such claims amicably, especially when the claimants are cooperative and accept reasonable offers of settlement, which generally range between 70% and 80% up to 85% of the claim amount.

Security demanded by the consignees at Algeria (usually consignee for food products are government agencies) have a specific wording that “if claims are not settled within 30 days, then LOU to be converted to a Bank Guarantee (BG)”. This causes additional pressure for ship owners as chances of winning court cases there are almost negligible, and if the BG is provided, then one can forget about any mercy, and one must continue to pay the costs to the bank for maintaining BG.

Similar cargo shortage claims have been experienced in both Moroccan and Tunisian ports.

4.4.3 The case of the MV PROBLEMATIC

The MV PROBLEMATIC was chartered to load 45,000 metric tons (MT) of coal at Richards Bay, South Africa for delivery at Rotterdam, The Netherlands. A dispute arose at the discharge port where receivers claimed a shortage of 1,100 MT had been delivered.

The bill of lading stated that 45,000 MT of coal had been loaded aboard the MV PROBLEMATIC. The draft survey, attended by ship owner’s, shipper’s, charterer’s and receiver’s representatives at the load port showed a 44,800 MT of displacement based upon the cargo surveyor’s calculation while the receivers draft survey at the discharge port showed a displacement of 43,700 MT. The shoreside weighbridge calculations were certified to show 43,700 MT of coal had been discharged at Rotterdam. The receivers claimed that there was a shortage of 1,100 MT of coal delivered based upon the joint draft survey performed at the load port and the weight of the cargo measured at the discharge port’s weighbridge (i.e., 44,800 MT – 43,700 MT).

The difference between draft surveys showed that there was a shortage of 1,100 MT between loading and discharge ports that pointed to the possibility that the cargo was lost during transit.

Potential causes for the shortage were considered. First, the coal had been

loaded at Richards Bay during a rainy period and the cargo had been left outdoors without cover that protected was found that the initial moisture content at the load port had been found to be 12.5%. The moisture content was tested and measured again at the discharge port and was found to be 12.207%. The moisture lost was calculated as follows:

$$\frac{(\text{Initial moisture content at loading} - \text{Final moisture content at discharge})}{\text{Initial moisture content at loading}} = \frac{(12.5\% - 12.207\%)}{12.5\%} * 100\% = 2.34\%$$

Therefore, the moisture lost during the transit from Richards Bay to Rotterdam was equivalent to 44,800 MT * 2.34 % = 1,050 MT lost due to water evaporation.

Second, spillage and poor handling of the cargo were considered as contributing factors to the discrepancies found between load and discharge ports. The load port stevedores’ logs were checked and the MV PROBLEMATIC’s crew found no evidence of spillage or poor handling of cargo issued any letters of protest to that effect at the load port. So, spillage and poor handling were ruled out as possible causes of the shortage.

Third, the vessel’s hatch covers were inspected to determine if they had been a source of water ingress during the voyage and were ruled out as a contributing factor to the shortage. Fourth, it was observed that the cargo had shifted while experiencing rough seas during transit, but this did not affect the discharge that would have led to a cargo shortage. Also, it was estimated that around 50 MT of the coal cargo was stuck in hard to access areas in the cargo holds and stuck to the hold walls and this explained part of the shortage claimed by receivers.

So, there was no major negligence found on the part of the ship owner or the vessel related to spillage, water ingress into the cargo holds or handling errors. Most of the loss was attributed to natural causes so the dispute was resolved without significant financial loss to either ship owner or the cargo receiver.

Lessons learned in this instance are:

- Taking account of the importance of accurate moisture monitoring. Moisture levels should be checked periodically before, during and after transit.
- Improving cargo handling procedures for better stowage and unloading can minimize residual cargo left onboard.
- Ensuring standardized and consistent precision in draft surveying through periodic audits of performance and procedures can minimize the chances of disputes.



Figure 12 | Cargo falling off of trucks can lead to loss beyond the immediate quayside (c/o Budd Algiers)



Figure 13 | Significant volumes of bulk cargo can be lost under loader transferring to trucks (c/o Budd Algiers)

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