

MEMBER ALERT

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PEOPLE'S REPUBLIC OF CHINA (PRC) MARITIME COURT RULING ON BULK CARGO SHORTAGES AT LOADING PORTS

A 2020 civil judgment handed down by the Guangzhou Maritime Court has ruled that shipowners can be liable for shortages of less than 0.5% of the quantity stated on the bill of lading (B/L). The judgment of the Court gives rise to concerns regarding similar types of claims in future.

To prevent and mitigate such claims, your Managers recommend the following.

1. For shipments of bulk cargo destined for the PRC, it should be ensured that the draft survey report of either loading port or discharging port is not to be disclosed to the cargo interests including shippers, consignees, and charterers, especially a draft survey report arranged by the shipowner or conducted by crew members themselves.
2. Masters and crew members should be made aware that there is little prospect for carriers to defend shortage claim in the PRC by arguing short loading at the loading port. On the contrary, it may create liability for the shipowner. The draft report at the loading port should not be disclosed to anyone including the cargo interest's representative, the cargo interest's surveyor, PRC customs authorities, PRC Maritime Safety Administration, port authorities, or shipping agents.
3. It is suggested that the draft survey be named "Preliminary Information Advice" other than "draft survey report" if the bulk cargo carried is bound for the PRC. It is also suggested to include the following remarks on such document: "*This [Preliminary Information Advice] [draft survey report] is not a certificate and is not intended for negotiation nor does it have any commercial value in any respect whatsoever.*"
4. Caution should be exercised regarding demands for a letter of indemnity from the shippers for shortage at the loading port since it may be considered as evidence of the shipowner's negligence in issuing the B/L by a PRC court.
5. It is advisable that Member consider commencing settlement negotiation before the claimants take any legal action. To this end, it is recommended that Members contact the Managers at the earliest opportunity so that timely assistance can be provided.

Your Managers recommend that Members take note of this information and be guided accordingly. They also wish to thank the Club's correspondents, Huatai Insurance Agency & Consulting Services, Ltd., for their assistance in providing the information contained above.