



When draft survey prevails: Brazilian shortage claims after the 'SEA HONEST' judgment

A long-awaited judgment has introduced an important development in Brazilian cargo litigation. In the SEA HONEST case, a court in southern Brazil expressly held that, in the absence of an official discharge certificate, draft survey figures prevail over private apportionment documents and post-discharge calculations. The ruling may influence how shortage claims are assessed in bulk trades to Brazil.

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Bulk commodities remain central to South American trade flows. Fertilisers are essential to Brazil's agribusiness sector and are imported in substantial volumes through Brazilian ports.

With this scale of trade comes recurrent litigation. Importers and, more frequently, cargo underwriters pursue claims against carriers for alleged shortages identified after discharge. These claims are grounded in Brazil's doctrine of strict carrier liability, historically rooted in the 1850 Commercial Code and consolidated in Article 743 and subsequent provisions of the Brazilian Civil Code.

Under this regime, a claimant need only establish that the cargo was shipped in a given quantity and apparent good order under a clean Bill of Lading and that a discrepancy was identified upon discharge based on shore-scale figures. Fault is not required. Once a shortage is evidenced, the burden shifts to the carrier to demonstrate an exempting cause or to challenge the discharge figures.

Brazil is not a party to the international conventions relating to the carriage of goods by sea. Cargo disputes are governed by domestic legislation and by case law that has traditionally attributed decisive weight to shore-based discharge figures.

The evolution of defences in Brazilian shortage claims

Over the past decades, defence strategies have evolved within this strict framework. Early arguments focused on natural loss percentages and commercial allowances, particularly in fertiliser trades. Case law from the 1980s onwards recognised acceptable loss margins, although their application and percentages — typically ranging from 0.6% to 1.0%, and sometimes higher — vary depending on the discharge port and the nature of the cargo.

Procedural defences later gained prominence. These include, *inter alia*, arguments based on the one-year time bar applicable to cargo receivers and their underwriters (as established by Supreme Court Precedent No. 151), the application of bar by laches under Article 754 of the Civil Code where no protest is issued within ten days of discharge, and challenges to Brazilian jurisdiction where charterparties contain foreign jurisdiction or arbitration clauses incorporated into Bills of Lading.

Although Brazilian courts have traditionally asserted jurisdiction in cargo matters when the receivers are based in Brazil and the discharge occurs at a Brazilian port, recent decisions show increasing willingness to uphold arbitration and foreign jurisdiction clauses, albeit with continuing debate before the Superior Courts.

Despite these developments, one significant obstacle persists for carriers: the evidentiary weight attributed to shore-scale figures.

Strict liability and the weight of shore figures

Brazilian courts have consistently treated shore-scale figures, particularly those issued by port authorities or terminals certified by Federal Customs, as the standard for determining shortage.

In practice, however, claimants do not always rely not on an official discharge certificate, but on terminal reports, private apportionment maps, and internal documents prepared without the participation of the carrier and frequently issued after the vessel's departure.

Even where draft survey figures recorded at completion of discharge indicated no cargo discrepancy, courts have tended to defer to shore documentation. The rationale has been that shore scales, being certified for fiscal and customs purposes, enjoy presumptive reliability.

As a result, draft surveys were often assigned very limited (or no) evidentiary weight, notwithstanding their technical character.

The SEA HONEST case: draft survey as determinative evidence

The SEA HONEST judgment (Case 023/1.14.0012954-5, 1st Civil Court of Rio Grande/RS, Brazil) diverges from this approach. The case concerned a 2013 carriage of 12,000 mt of granular urea to the ports of Rio Grande and Paranaguá, with a claimed shortage of 2.31% of the cargo.

In the proceedings, cargo underwriters failed to produce an official discharge certificate issued by the competent authority. Instead, they relied on a private "certificate of apportionment" and terminal calculations prepared after discharge and without the carrier's participation.

The Court considered the absence of an official discharge certificate to be a decisive evidentiary deficiency. It held that private apportionment documents did not constitute official proof of discharge quantities and could not replace a formal certificate of discharge.

In that context, the Court recognised the draft survey conducted on behalf of the carriers at completion of discharge as valid technical evidence. It concluded that, in the absence of an official shore certificate, the draft figures should be treated as valid evidence for the purpose of determining whether a shortage had occurred.

The Court further observed that the apportionment map functioned as an internal distribution mechanism between cargo receivers and was not equivalent to an official measurement of discharged quantity. By contrast, the draft survey reflected a contemporaneous technical assessment of cargo on board at the time it was placed at the receivers' disposal.

This is, to our knowledge, the first express recognition by a court in Brazil that draft survey figures may prevail over shore documentation. It also signals judicial willingness to scrutinise the nature and origin of "shore documents" rather than accepting them at face value.

Practical implications for carriers

The SEA HONEST judgment is not a binding precedent and does not alter Brazil's strict liability regime. Where a discharge certificate is duly issued by the competent authority, shore figures will likely continue to carry significant weight in court.

The decision does, however, clarify that not all "shore documents" are equivalent. Private terminal calculations or internal apportionment maps do not automatically override draft survey results.

From an operational perspective, the ruling reinforces the importance of close monitoring of bulk discharges, particularly in fertiliser and grain trades. Joint draft surveys conducted with the attendance of receivers and terminal representatives remain essential, as they enhance transparency and strengthen the evidentiary record.

From a contractual perspective, shipowners may consider including clauses in charterparties and, where feasible, incorporating appropriate remarks into Bills of Lading addressing the intended prevailing status of joint draft surveys for bulk cargoes destined to Brazil.

Conclusion

Brazil remains a challenging jurisdiction for bulk cargo claims. Strict liability and the traditional reliance on shore figures continue to colour a litigation landscape that is generally favourable to cargo interests.

The SEA HONEST judgment introduces an important clarification. Where cargo interests cannot produce a duly issued official discharge certificate, draft survey figures may constitute the prevailing evidence in determining whether a shortage occurred.

For Members trading bulk cargoes into Brazilian ports, the message is clear: the technical integrity of the draft survey conducted at discharge may carry important judicial weight — and may determine the outcome of litigation more than a decade after the voyage has concluded.

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