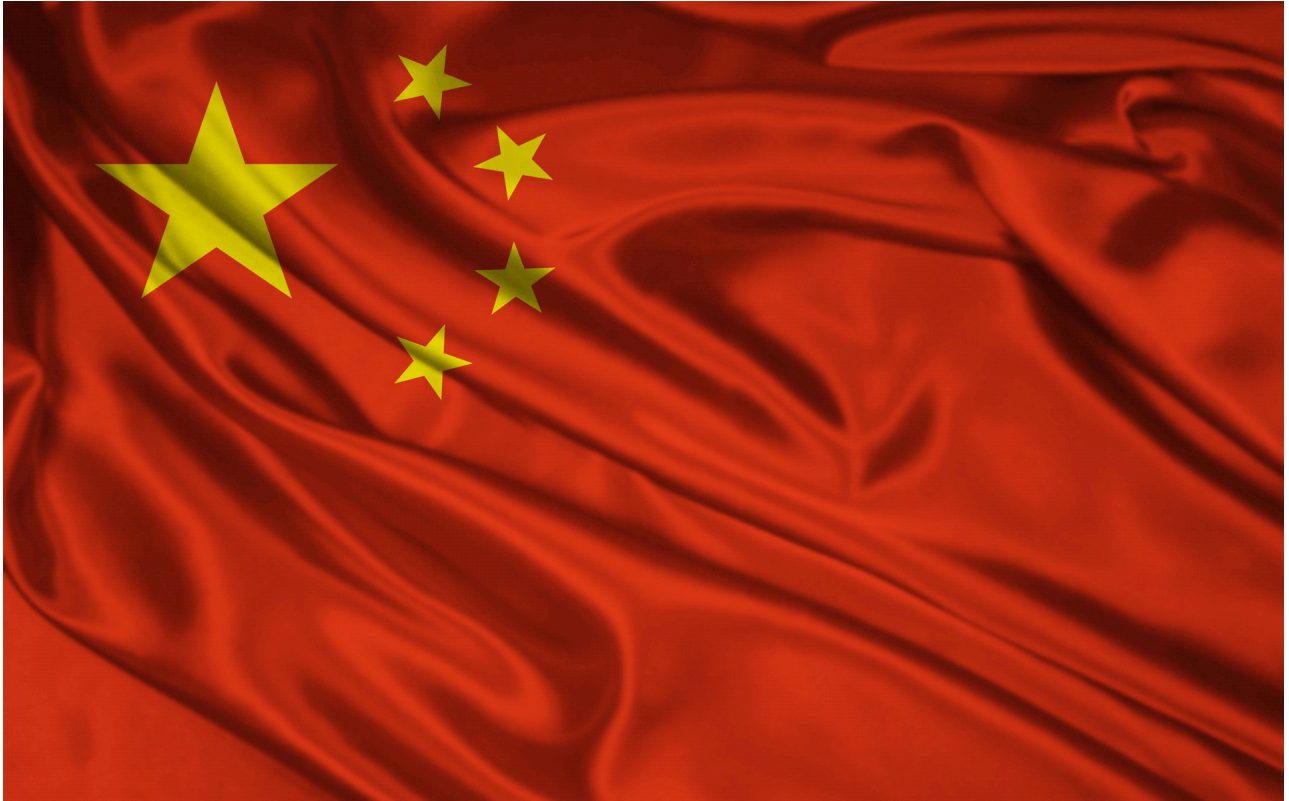




Iron ore shortage claims in China – a welcome court decision for shipowners

Documentary evidence is key as Chinese Appeal court dismisses appeal from cargo insurers ruling in favour of shipowners.

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Shortage claims in China

Claims from Chinese cargo receivers against shipowners for alleged short delivery of cargoes of iron ore fines in bulk are invariably *paper losses* – the cargo is bought and sold in dry metric tons (DMT) but shipped in wet metric tons (WMT) under a bill of lading – the vessel can only check the wet weight of the cargo, e.g. by draft survey, when issuing a bill of lading. Where iron ore fines are to be treated as Group A cargoes that may liquefy under the IMSBC Code, a shipper-issued certificate with a declaration of the cargo's moisture content (MC), transportable moisture limit (TML) and flow moisture point is provided to owners at the load port. The MC of such cargoes can be as high as 12 per cent, which amounts to a significant quantity of water onboard large bulk carriers, such as capesizes, which can typically carry in excess of 160,000 MT. During the voyage, a large quantity (up to 60 cubic metres per day) of moisture in the cargo will usually drain to the bilges and is pumped overboard in accordance with applicable regulations. At the discharge port in China, draft survey reports and certificates of weight and quality – including the cargo's MC – are usually issued by the China Inspection & Quarantine Services (CIQ), which is affiliated with the Chinese government. Chinese receivers then make a claim against the owners of the carrying vessel for short delivery of cargo, which is often successful.

Recent judgment by the Shanghai courts

In a shortage case between China Pacific Insurance Corporation (CPIC), subrogated cargo insurer and Teh May Maritime Corporation Limited (owners), the Shanghai Higher People's Court recently upheld the decision of the lower court in favour of owners, dismissing the appeal by the cargo insurers. This is a departure from the Chinese courts' usual approach in iron ore shortage disputes. *The facts* A cargo of 166,379 WMT of "sinter feed Guaiba" (iron ore fines) were loaded in Itaguai, Brazil for discharge in Shanghai, China. The shipper issued the following certificates:

- Solid bulk cargoes information sheet stating the general MC of iron ore fines to be 8.0 per cent
- Shipper's load port certificate stating the MC of the cargo to be 7.3 per cent
- Certificate of moisture and TML stating the MC to be 7.82 per cent.

At the port of discharge, CIQ issued a certificate of weight showing that the quantity discharged was 164,633 WMT (a difference of 1,746 WMT) and a certificate of quality stating the MC of the cargo to be 7.37 per cent. The vessel's bilge water logs showed that 1,753.20 MT of free water was pumped out from the cargo holds, almost equal to the alleged weight shortage at the discharge port. A subrogated claim was brought by CPIC against the owners for RMB 225,685.64 (approximately USD 36,000). CPIC calculated the alleged shortage in DMT using the MC of 7.3 per cent in the shipper's load port certificate. The court found that:

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1. The moisture analysis by CIQ, being an independent party with no connection with the shipper, owners or consignee, was preferred.
2. The MC of the cargo should concern the owners only to the extent that it affects the safety of the vessel (i.e. that it does not exceed the TML). The fact that shippers had produced three different load port MC values may have influenced the court on this point.
3. There was no evidence to show an agreement between owners and shipper to use DMT as the unit in which to deliver the cargo.
4. DMT was only relevant for compliance with the Letter of Credit (LOC) under the cargo sale contract and had no binding effect on the owners. The cargo insurance policy, the sales contract and the bill of lading were all on the basis of WMT.
5. Owners were able to provide extensive evidence, duly notarised, to show that they and the Master took due care in respect of the carriage of cargo.
6. The detailed bilge logs showed that the drained/discharged bilge water was basically equal to the WMT difference between load port and disport – accordingly, there was no shortage.

Advice for vessel owners carrying iron ore to China

The judgment in this case turned on both the facts and the strong evidence presented by the owners. However, it remains clear that in shortage disputes that the evidentiary burden on owners is high and documentary evidence is key. It is therefore important for owners to preserve the following documents:

- Cargo Ship Safety Construction Certificate;
- Cargo Ship Safety Equipment Certificate;
- Document of Compliance;
- Safety Management Certificate;
- Testing certificate of hatch covers;
- Port log at the loading port;
- Weather reports during loading operation;
- Statement of Facts at load port;
- Signed bilge log;
- Deck log;
- Result of any *can test* performed by the crew after loading;
- Shipper's IMSBC Code documentation.

Mitigating the risk of liability for shortage claims

Avoid any reference to the dry weight of the cargo in the bill of lading. If owners are required to sign the shipper's load port MC certificate, try to include the words, ...*for receipt only. This does not constitute any admission/confirmation of the content* .

Copies of the vessel's bilge log, signed daily by the crew, should be sent to the shipper and other relevant parties, such as charterers and vessel's agents.

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The Chinese courts have been reluctant to disturb the findings made by CIQ as to the weight and MC of the cargo discharged on the basis that CIQ are independent – not connected to shippers, owners or cargo claimants. In order to be in a position to offer a comparison with CIQ's figures, owners could ask charterers for further load port documents showing how the MC was calculated, e.g. the number of samples per quantity of cargo.

Clausing a bill of lading with the statement that the cargo is shipped on board *weight, measure, quality, quantity, condition, contents and value unknown* would not be upheld by the Chinese courts in a shortage dispute. Therefore, the Master should try to clause the bill *moisture content unknown* or with other remarks when there are grounds for suspicion or a lack of reasonable means for checking.

Final comments

The fact that the Chinese courts found against a subrogated cargo insurer is a positive development for owners in the bulk mineral business trading to China. However, judgments in China do not set precedents, there is therefore a risk that another Chinese Court would not arrive at the same decision in a similar case. Nevertheless, it seems that owners may be able to successfully rely on this judgment to dismiss or settle these types of *paper loss* shortage claims on more favourable terms than previously.

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