

ALERT!

ARGENTINA
Guidance for Masters.
P&I Correspondent Advice.

Draft Survey & Shore Scale discrepancy

KEY POINTS WHEN DEALING WITH DISCREPANCY BETWEEN DRAFT SURVEY AND SHORE SCALE.

Shortage claims resulting from the use of shore scale measurements have been a problem for some time involving a variety of imported and exported bulk cargoes. The common feature of all of these claims is the use of shore scales as the means of determining cargo quantity. Consequently, it is highly recommended that draft surveys and hatch sealing are performed as precautionary measures.

Under Argentine law, the cargo receivers and/or shippers are entitled to choose whether to use shore scales or a draft survey to ascertain quantities of cargoes. The preferred system will normally be specified in the sales contract, and normally the carrier will not be able to influence this. It is not uncommon for shore scale measurement to be chosen. The problems that can arise for a ship-owner as a result can be divided into two categories: cargo shortage claims and Customs fines.

In this paper we will focus on the discrepancies usually found between shore scale and draft survey on export cargoes and the further steps that the crew should be aware of.

By the time that the loading operation is finished, the Captain will have great pressure from Shippers and Charters to sign mate's receipt and sail as soon as possible; however, and if a draft survey was performed, there might be a discrepancy between shore scale figures and draft survey figures. In said scenario, we would like to advise as follow:

Under The Hague and Hague-Visby Rules, which are the benchmark for P&I cover, Article III Rule 3, the carrier must state the quantity of cargo in the bill in accordance with the information provided in writing by the shipper. The statement is prima facie evidence that the ship received that quantity.

As already stated, in many grain loading ports around Argentina, the quantity of cargo loaded into the ship's holds are always those determined by the shore scales and subsequently, the same is reflected on mate's receipts.

Therefore, if the figure which the shippers wish to have inserted into the

mate's receipts / bill of lading is greater than the draft survey figure e.g. by more than 0.5%, it is of utmost importance to ignore the commercial pressures from Charters, Agent, Shipper and probably the pilot onboard and urgently contact the P&I Club.

The reason is that the quantity stated in the bill of lading will often be binding as against the ship-owner, whether or not it is in itself accurate.

Although under the English law it has been held as effective reservations to the statement of quantity in the bill, such as "Weight ... quantity ... unknown" (New Chinese Antimony Company Ltd. -v- Ocean Steamship Company Ltd. [1917] 2 KB 644 approved in the "MATA K" [1998] 2 LLR 614), there are however many jurisdictions which will not give effect to such reservations.

The safer course then is for the master to write the ship's figures (draft survey) alongside the shippers' figures in the Mate's receipt. e.g. "ship's figure, as determined by draft survey 40,000 mt" or some other suitable wording.

If the Master accepts an inaccurate figure in the mates receipt without inserting an appropriate clause, the Owner could face serious consequences like claims which they are unlikely to be able to defend, loss of the right to limit liability, loss of the right of indemnity from the charters, criminal prosecution (fraud) and last but not least **LOSS OF P&I COVER.**

Charters and/or shippers may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for issuing clean B/L or ante/post dates bills of lading. Such request should be resisted due to the risks involved in accepting such letters or undertakings.

Although our surveyor will assist the Captain of the vessel by explaining the above mentioned, **the law in this area is complex and the consequences serious; therefore, if a cargo shortage is noted, it is essential that the Members discuss the position with his P&I Club and lawyers.**

"If the figure which the shippers wish to have inserted into the bill of lading is greater than the draft survey figure by more than 0.5 per cent, the alarm bells should ring, both on board and in the shipowner's office"

ADVICE IN AN ARTICLE ISSUED BY GARD AS (P&I IG MEMBER).


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