

**Loss Prevention Bulletin - AVA/2013/0002**

---

February 12, 2013

**Minimizing Cargo Shortage Claims –  
‘Importance of Draft Surveys’**

In this bulletin: 1) Understanding the Customary Trade Allowance  
2) Correctly clausing Bills of Lading

**Applicable to:** Dry Cargo: Bulk

**Region:** World Wide - Grain Loading Ports

**Category:** Loss Prevention – Potential Bulk Cargo Shortage Claims

**Abbrev:**

B/L<sup>s</sup> Bill(s) of Lading  
C/P Charter party  
LOI Letter of Indemnity  
LOP Letter of Protest  
LOU Letter of Undertaking

In order for the Member to minimize its liability in regards to bulk cargo shortage claims it needs to understand the customary trade allowance and its application to bulk cargo trades. At the same time it is vitally important that the Member also understands the need to conduct and document its own draft surveys accurately.

### **Understanding the Customary Trade Allowance:**

Bulk cargo shortage claims are brought about when difference between the B/L and discharge figures is greater than the customary trade allowance. This difference or shortage being due to factors such as measurement inaccuracies between the load and discharge ports, physical properties of the cargo (inherent vice) like evaporation through ventilation etc. It is assumed that unless this shortage exceeds a percentage (usually 0.5%) of the total quantity of cargo regarded as 'customary' in that trade; claim of cargo shortage will arise and the Member will most likely be held accountable.

In fact, contrary to the above, there is no uniform level of this trade allowance or a binding law confirming that the Member will be automatically exonerated from any liability when the shortages are less than the tolerance (0.5%) admitted. In other words there is no guarantee that the receivers will ignore small shortages and can still request a P&I Club LOU for the smallest of shortages.

The phrase 'customary allowance' originally stems from the cargo underwriter's insurance deductible (which was applied as depreciation on goods in transit marine insurance policies). The 0.5% allowance could be better described as 'measurement allowance' since measurement of any bulk commodity as mariners would know is more than an art than a science!

Also to rely on this exemption, the Member will often be required to prove that the cargo shortage is due to inherent vice or measurement inaccuracies. It is almost impossible for the Member to establish that the quantity of moisture loss during a voyage is equal to the quantity of cargo shortage or in case of coal cargoes the quantity of water pumped out from the bilges is equal to the cargo shortage (having said that it would be prudent for the Member to maintain records for the quantity of bilge water being pumped out; ventilation timings/duration and temperatures)

In many grain loading ports around the world like Vancouver, the quantity of cargo loaded into the ship's holds are always those determined by the shore scales and subsequently the same reflected on the bill of lading. This creates an impression for the Member that no matter what, the shore scale figures will be final and accepted at the discharge port - despite the fact that the quantity obtained in way of draft survey would differ substantially. Also neither any LOP would be issued nor B/L clausured reflecting this shortage – perhaps due to commercial obligations which is discussed further.

In some countries where the grain is regulated by the government and any shortage over and above the customary allowance will result in a claim and security demanded from the Club to release the vessel. This is especially true for the ports in Saudi Arabia and even there have been cases such as these in China and other parts of the world.

### **Some common causes for cargo shortages:**

- Physical phenomena (inherent vice) - loss in weight resulting from natural shrinkage and moisture evaporation.
- Loss due to dispersal of cargo during the load, storage and discharge operations
- Measurement inaccuracies – both shore and ship measurements

### **So how can the Member minimize cargo shortage claims?**

It is practically impossible to measure the declared quantity exactly to the last grain in any bulk cargo operations; however, some of the steps the Member could take to minimize shortage claims are:

- Measuring/recording the moisture content of the cargo at load / discharge port
- Joint draft surveys at load and discharge ports, preferably involving a Club surveyor
- Measurements of hold volume and stowage factor (least preferred method) as stowage factor may not be correctly declared or can change
- Joint sealing / unsealing of holds at departure and arrival
- Inclusion of a trading/measurement allowance into the contract.
- Correctly clausing the B/L if the declared weight is not accurate
- Maintaining accurate records for the quantity of bilge water being pumped out; ventilation timings / duration and temperatures
- Using the same measuring methods at load / discharge port for weighing cargo.

It is therefore very important to understand when and how the customary trade allowance applies. The law in this area is very complex and the consequences serious. Sometimes the charterer will rely on the clause stating the B/L<sup>s</sup> must be signed “as presented” and “clean” without any clause or remarks. The Member should be aware that signing B/L or accepting LOI where the B/L figures are factually incorrect could lead to criminal penalties, be unenforceable in a court of law on the grounds of fraudulent misrepresentation and may also jeopardize the P&I Club cover. (Note: A Member’s P&I insurance is subject to the warranties, conditions exceptions, limitations and other terms set out in the rules and the Certificate of Entry)

It is therefore prudent for the Member to involve a Club correspondent / lawyer should there be any signs of commercial pressure by the shipper/charterer to negotiate the shortage or accepting the risk of signing incorrect B/L<sup>s</sup> or whether to accept a LOI.

The legal position in respect of shortage claims depends entirely on the contract of carriage and the evidence available. For example if the B/L incorporates the C/P terms such as “charterers shall perform all loading, stowing, trimming, discharging etc at their risk and expense; then this may prove useful during a court arbitration and go in favour of the Member. However, on the other hand if the contract gives the Member no protection, the chances are high that the courts will hold the Member responsible for shortages. This will in turn require the Club to issue security in the form of a Club LOU in order to satisfy the receivers and to secure their claim for the value of the short-landed cargo - otherwise the vessel could be arrested or departure delayed till this condition is met.

In conclusion even though the shore scale figures may be relied upon but this does not reduce the responsibility of ships' officers to conduct its own draft surveys, tallies or involve a Club surveyor to conduct independent draft surveys – as after all this evidence is vital in trying to show that there is no real shortage and can prove invaluable in avoiding costly claims.

Disclaimer: This loss prevention bulletin is based on the author’s own research, knowledge and experience in the subject matter and should only be used for reference rather than being taken as a legal advice for any particular case or used for any other purpose.

**About AVA MARINE GROUP:**

AVA Marine is a professional marine surveying and consultancy firm – founded and led by its principal marine surveyor Kaivan H. Chinoy. The Company provides a comprehensive range of specialist marine surveying, marine loss control & consultancy services primarily in Western Canada and the West Coast of the United States

To learn more about our marine surveying capabilities, visit our website at [ava-marine.com](http://ava-marine.com)

AVA Marine | Bunker Detective is also the member of the AIMU (American Institute of Marine Underwriters), CBMU (Canadian Board of Marine Underwriters) and MIABC (Marine Insurance Association of British Columbia) and the IBIA (The International Bunker Industry Association)

Global Network: **Toronto | Houston | Panama | Veracruz | Rio de Janeiro | Buenos Aires / San Lorenzo | Amsterdam | Singapore | Shanghai**