

MINIMISING BULK LIQUID CARGO (BLC) SHORTAGE CLAIMS: THE LEGAL AND CONTRACTUAL ASPECTS

Maritime Mutual Risk Bulletin No. 66

January 31, 2023



Ship's Figure vs. Shore Tank BL figure: which one takes precedence?

INTRODUCTION

BLC shortage claims are costly and disruptive. Control and minimisation require consistent application of both industry best practice measurement standards (as described in [RB No. 65 BLC Measurement](#)) in conjunction with legal and contract knowledge. This Risk Bulletin highlights the supporting legal and contractual terms knowledge needed by a Member's chartering department before 'fixing' a tanker under charterparty (CP) terms. The precautions required by tanker masters before confirming and signing Bills of Lading (BLs) containing shipper BLC quantity or weight declarations are also considered.

BACKGROUND

Commercial ship managers or in-house chartering department personnel are usually focused on securing a CP fixture on favourable hire or freight terms. They may then pay insufficient attention to the shortage claim liabilities which can arise if the CP terms and the associated BL terms do not provide adequate protection to the Member/shipowner/carrier.

Ship masters will normally be provided with a copy of the agreed CP terms at the beginning of the voyage and a copy of the shipper's draft BL on completion of loading. However, their understanding of a shipowner's and master's CP and BL obligations is often restricted by STCW syllabus training limitations in relation to these issues.

In the aforesaid circumstances, there is a lot that can go wrong. The potential problems and recommendations for risk minimisation are discussed below.

CONTRACTUAL AND LEGAL ASPECTS OF BLC MEASUREMENT

The contractual and legal issues relating to charter parties and related bills of lading regarding cargo quantity and weight are wide-ranging and complex. A brief summary of the key issues and the MM's recommended protections for consideration and application by tanker Members and their masters is as follows:

PRE-FIXTURE (IN RELATION TO CP TERMS AGREEMENT)

Members should ensure that the CP terms include the following provisions:

- The Hague-Visby (HV) Rules should be incorporated into both the CP and BL terms. This will provide the tanker Member with all the legal exemptions from liability to the tanker owner/carrier provided by the HV Rules, inclusive of limitation of liability, the shipper's indemnity to the tanker Member for any inaccuracy in the shipper's declared BL quantity or weight and the master's right to refuse to sign a BL if they have reasonable grounds to suspect that the shipper's declaration is inaccurate.

NOTE: Members are reminded that under the terms of MM's Rules they should not carry

cargo on contract terms that contain exemptions from liability less favourable than the HV Rules.

- The BL front page text should also include the printed words “*weight, quantity, marks, numbers, quality, contents and value unknown*” on the front of the BL and adjacent to the shipper’s declaration of BLC condition and quantity or weight. If they are not printed on the BL, they should be added to the BL text.

NOTE: In English law and several other common law jurisdictions, the addition of the aforesaid words is considered to qualify and provide a defence to a claim for cargo quantity or weight difference based on the shipper’s BL figure. However, this is not accepted in many jurisdictions.

- The Master should be entitled to enter the ship’s figure quantity or weight on the front of the BL along with and adjacent to the shipper’s declared load port shore tank quantity or weight.

NOTE: The shipper will not usually permit the ship’s quantity/weight figure to be entered on the face of the BL. The shipper’s reason is often that any such entry and any difference with the shipper’s figure could impact on acceptance by bankers controlling a Letter of Credit payment transaction. Members should strongly resist such excuses as cargo sale and purchase contract UCP 600 terms permit a 5% tolerance in the Letter of Credit cargo quantity/weight terms and associated payment.

- A Customary Trade Allowance (CTA) and/or In Transit Loss (ITL) allowance should be agreed which confirms the generally accepted CTA 0.5% allowance in both the CP and BL terms. If less, then a CTA allowance which is realistic in terms of the BLC to be carried and the industry established and accepted experience in the associated trade.
- Clear agreement that any claim for a BLC shortage should be restricted to only a sustainably evidenced physical loss difference between the ship’s quantity or weight figure on departure load port and on arrival discharge port (i.e., from ship’s rail/manifold on loading to ship’s rail/manifold on discharging) which exceeds the agreed CTA and/or ITL figure.

POST-FIXTURE (IN RELATION TO BL ISSUE AND SIGNATURE)

Members should ensure their masters understand their obligations and entitlements under both the relevant parts of the HV Rules and the governing CP and BL terms. A 'main point' summary is provided below:

- The HV Rules provide that the shipper is entitled to demand the issue of a BL by the carrier which includes a statement as the apparent condition of the cargo (as personally and visually assessed by the master) and the quantity or weight as declared by the shipper.
- The reality is that a draft BL will normally be prepared by the charterer's and/or shipper's agent. This will be presented to the master on completion of loading for their approval and signature. The BL will normally describe the cargo condition as 'clean' or 'clean on board' and the cargo quantity or weight will be the figure provided by the shipper.
- Regarding cargo condition, the HV Rules require this must be based on the master's personal and visual observation and their assessment of apparent condition. The master is not expected to be a commodity specialist or cargo analyst. However, if the master can see that BLC colour or clarity appears unusual or they are aware the BLC has been analysed as 'off spec', they would have to insist that this condition is noted on the BL.
- Regarding cargo quantity or weight, the HV Rules entitle the shipper to enter their own figure – usually the load port shore tank figure – on the draft BL. As discussed above, the master is not entitled to enter the ship's figure on the BL unless the shipper agrees either at the time the draft BL is presented or, preferably, under pre-agreed CP terms. If the shipper refuses, then the master and Member must assess whether the difference between the shipper's BL figure and the ship's figure generates any significant concerns as to the accuracy of the BL figure and consequent exposure to a shortage claim.

Factors to be considered include:

- The range and content of the CP and BL terms agreed (inclusive of the HV Rules) which provide the Member with exclusions from liability and with charterer indemnities. If the protective terms are comprehensive, this will reduce the shortage claim risk.
- Whether the ship's figure, after adjustment for the ship's Vessel Experience Factor (VEF), is more than the BL figure. If it is, this should decrease the shortage claim risk.

- If the VEF adjusted ship's figure is less than the BL figure and the difference is more than the CP and BL agreed CTA and/or ITL, this will significantly increase the risk.
- Whether the differences between the BL and ship's figures and the related claims exposures are significant enough to trigger the master's HV Rules entitlement to refuse to sign the BL.

NOTE: In the above circumstances, the Member and/or master may be offered a Letter of Indemnity (LOI) by the shipper and/or charterer. Members are reminded that acceptance of an LOI of this type could be construed as participating in a fraud on the receivers and would then not be enforceable in law. Additionally, any associated losses suffered would likely not be covered under the MM Club Rules.

In summary, the decision factors noted above contain variable elements and outcomes which can make it difficult for a Member and their master to make the best decision. If Members are faced with such situations, they should not hesitate to contact MM to obtain urgent advice and assistance.

CONCLUSION AND TAKEAWAY

The problems and liabilities relating to BLC shortage claims are complex. This does not mean that they cannot be prevented or minimised. But it does require a sound understanding of both the technical and the legal and contractual aspects of BLC quantity and weight issues to control and minimise such claims and losses. This understanding then needs to be applied proactively by a tanker Member's chartering department both before and during the charter fixture process to optimise the HV Rules and the CP and BL terms protections available.

Masters also need to be supported by additional training to improve their knowledge and understanding of BLC quantity and weight causes and solutions. The focus should be on the SMS procedures that masters, their crews and DPAs can create and implement to minimise BLC shortage losses through careful measurement to best practice industry standards and legal awareness and caution when being asked to approve and sign BLs. Members are encouraged to share this Risk Bulletin with their tanker fleet managers (both technical and commercial), DPAs, masters and crews. Members should then ensure full ISM Code or Non-Convention Vessel Standard (NCVS) SMS procedures-based implementation of the recommendations made in both this Risk Bulletin and RB No. 65, BLC Measurement. This should be supported by subsequent SMS auditing to confirm full and effective implementation.