

# RICE CARGO CLAIMS

Rice is a staple food for a majority of the world's population. Each year, close to 450 million tonnes of milled rice is produced, with over 50% of the production taking place in Asia, mainly due to favorable climate conditions and low costs of production. In this article, we will highlight the challenges of rice cargo as well as how to deal with the many forms of claims cases that may arise.



Rice is a staple food for a majority of the world's population. Each year, close to 450 million tonnes of milled rice is produced, with over 50% of the production taking place in Asia, mainly due to favorable climate conditions and low costs of production. China and India are the two biggest producers, responsible for over half of the global output. They are closely followed by Thailand, Vietnam, Indonesia, Pakistan and Myanmar. International trade in rice is about 30 million tonnes, largely taking place between Asia and Africa. Africa accounts for over 30% of the world's rice imports.

Rice is categorized as short grain, medium or long grain, depending on the shape and size of the grain. It is then further subdivided according to its preparation. Cargo rice may consist of about 80% of white or polished rice and 20% of unprepared paddy or brown rice. Being transported in this mixing ration allows the rice to remain drier, reducing

its susceptibility to damage.

Rice is a sensitive product and there are many considerations and precautions that must be taken when dealing with this cargo to ensure loss prevention and minimize liability.

## CARGO HANDLING

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### PACKAGING

Rice is normally transported as break-bulk cargo in bags; usually 20 – 25 kg woven propylene bags, allowing for easy handling and stowage. Bagged cargo is susceptible to a number of problems, including wet damage, tearing and theft. The following considerations must be kept in mind



when dealing with bagged cargo:

- Rice should only be filled into clean and dry bags
- All bags should be the same size to prevent shortage claims later
- The bags must be kept in a dry condition at all times. Additional waterproof material should be used to protect the bags if stored in an open area prior to loading
- As the bags used are typically white coloured, damage to the cargo is easily detectable as dark stains appear on the bags in the event of damage. Therefore, simple visual quality inspections of the cargo to eliminate loading of all damaged, cut/ torn and heavily stained bags is a simple loss prevention technique that should be applied
- Spare empty bags should be kept on board to fill with sweepings in case the bags tear or get damaged during discharge
- Surveyors should be appointed to supervise the loading and discharging operations and prevent stevedore theft of the cargo facilitating by cutting the bags
- Ensure individual bags are counted during the tallying process, and not just the slings

## MOISTURE

One of the main causes of claims that arise when dealing with rice cargoes is its moisture content.

When harvested, rice typically contains 20% - 28% mois-

ture, depending on where it is grown and the atmospheric humidity at the time. It must be dried to about 12 – 14% within 48 hours of harvest before it can be loaded. Therefore, when rice cargo is taken from new crop, it is likely to have a higher degree of moisture, increasing the likelihood of moulding, lumping and spoilage. The optimal moisture content of the rice depends on the desired storage duration. The longer the storage duration, the lower the optimal moisture content should be. Port congestion and inefficiencies at the load and discharge ports often result in the cargoes remaining onboard for prolonged periods. That means good voyage planning prior to shipment forms part of effective loss prevention.

## MIXING DIFFERENT MOISTURE CONTENT RICE

Often lower moisture content rice is mixed with higher moisture content rice to give an overall optimal moisture content. This can, however, prove to be damaging during transport as the damp rice affects not only the undamaged rice in close proximity, but also other rice in the hold by increasing the overall moisture content.

## THE IMPORTANCE OF HOLD VENTILATION

This kind of damage is also very often caused by poor stowage and lack of protection of the bags from the ships' bulkheads. It is, therefore, important to ensure all holds are adequately ventilated. This is especially important during a voyage to West Africa, where the air temperature

and seawater temperature reduces, and day and night air temperatures differ substantially. When the vessel passes from the warm Indian Ocean into the cooler Atlantic Ocean, seawater temperature drops, leading to condensation of the rice cargo. Separation channels between rice bags.

## RAIN AND ITS CONSEQUENCES

Several cases have been reported in Douala, Cameroon in which considerable damage was caused by water infiltration into the ship's holds during rain. Tropical rainfalls are often very sudden. Loading and discharge should not be undertaken during periods of bad weather. Monitoring weather forecasts, the crew should be available and equipped to close hatch covers at the first sign of rain.

## TEMPERATURE

Rice cargo is also susceptible to becoming mouldy if its temperature is greater than 25°C. Higher temperatures result in the rice sticking together and aid in metabolic processes that affect the cargo's quality. The optimal temperature at which rice should be transported is between 5 - 25°C.

## STOWAGE AND DUNNAGE

In respect to stowage, the cargo shall be stowed in a way that ventilation channels are not blocked. Proper dunnage shall be arranged and checked (plastic or bamboo) so as to ensure the cargo is sufficiently protected from the ship's bulkhead. Appropriate dunnage may prevent the bags from coming into contact with the hold surfaces, in the event that condensation takes place. Many claims in West Africa arise due to wet damage of the cargo, and ensuring proper dunnage helps to reduce such claims. The small expense incurred in providing adequate dunnage serves to reduce cargo claims in the future.

It is understood from Masters that at loading ports, the shippers/charterers instruct the crew not to open the cargo holds for some days after fumigation. In such cases, the Master/Owners shall require written instruction and lodge a Letter of Protest in respect to the moisture which the cargo may suffer as a result of condensation produced in the closed holds. Salinity tests shall be performed if moisture is observed.



## LOADING PORT PROBLEMS

### INDIA

There have been several incidents reported in which a serious problem of short landed bags of rice have occurred (between 3,000 and 5,000 bags on each voyage) when cargo is loaded in Kakinada, India.

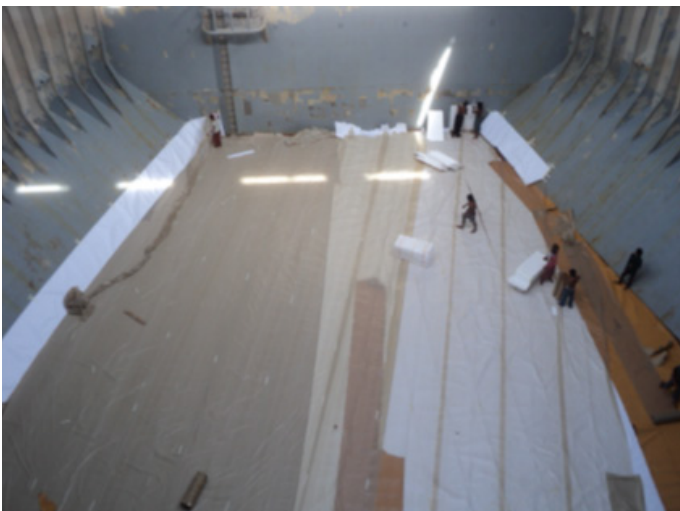
In a large number of these cases, pre-loading surveys had not been carried out at the load port. Members are, therefore, reminded to appoint competent surveyors to conduct pre-loading surveys. For a number of loss prevention tips suggested by our correspondents, please visit our website - <http://www.skuld.com/topics/cargo/solid-bulk/agricultural-cargoes/west-africa-heavy-shortage-of-bagged-rice/>

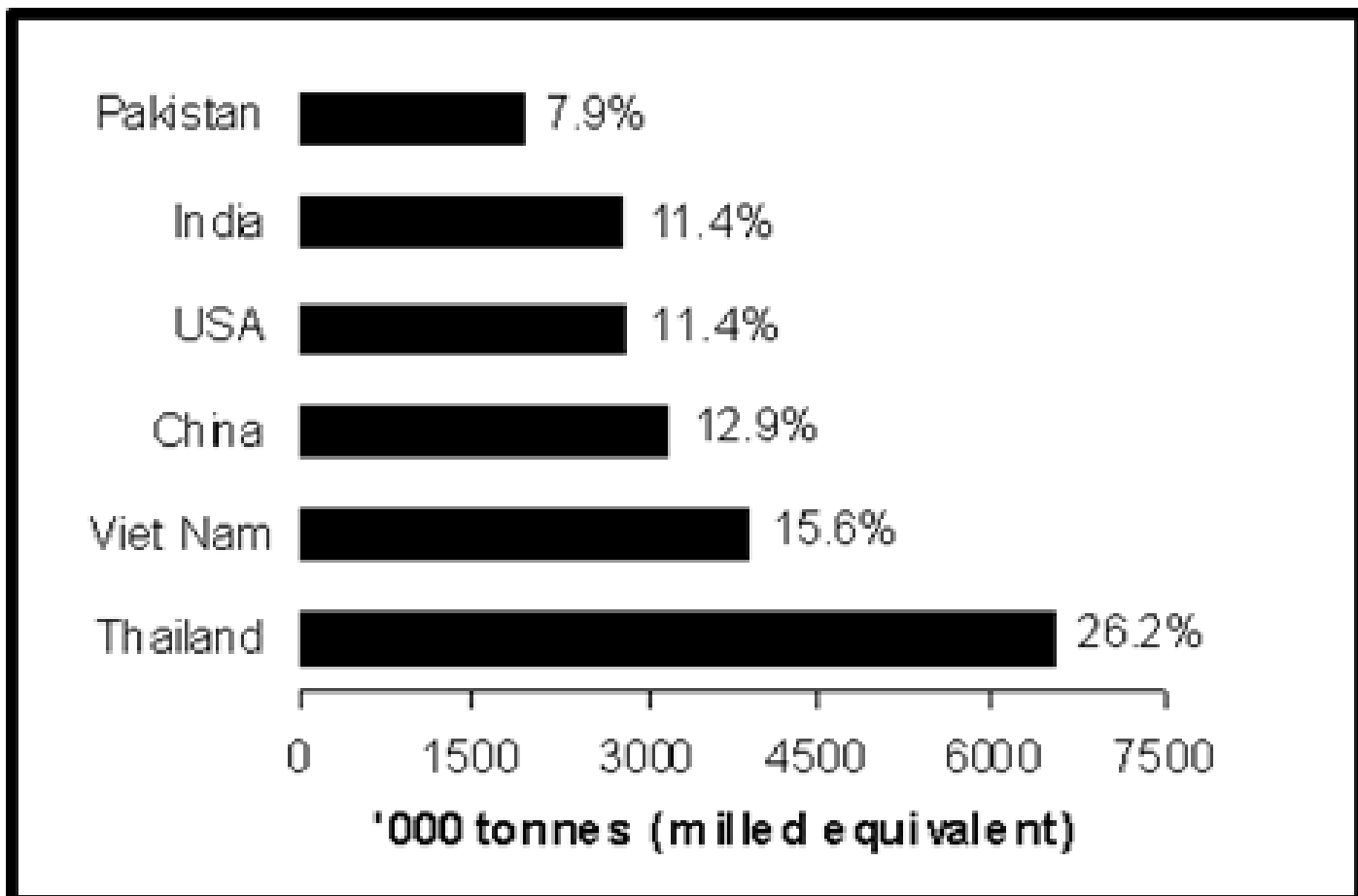
The Indian monsoons also pose a significant problem. A lot of vessels load bagged rice during the months of June to September, when rainfall in many parts of India can be quite heavy. There have been many instances of damage to bagged rice as a result of sudden rain and the vessels not being able to close their hatch covers in time.

Our correspondents in India have provided us with the

following loss prevention tips to keep in mind when loading rice cargoes in India during the rainy season:

- a) Port Authorities only issue precautionary weather warnings (based on the met department's forecasts) in the case of prevailing depression and cyclonic weather.
- b) Normal weather forecast reports issued by the Met Dept. are easily available on the internet and can be viewed for reference and compliance.
- c) However, from experience, it is observed that the accuracy of such reports especially regarding rain is only correct 40 – 50% of time and may often be the opposite of what is predicted.
- d) Crew on board the vessels need to be extra cautious and close the hatch covers and hatch access covers when the sky is overcast and rain is suspected, despite an insistence of the stevedores to continue loading. Weather forecast should not be solely relied on.
- e) Masters are also advised to post an Officer on the bridge to watch the Radar regarding approaching rain, so they are able to act in time and close the hatches, preventing damage to the cargo.
- f) Hatch cover top has to be cleaned and mopped to remove rain water prior opening hatch covers to resume loading after it has stopped raining.





g) Ensure that the hatch coaming non return drain valves are not blocked.

In general, torn and stained bags must be promptly removed from cargo holds and must be replaced by sound rice bags. Competent surveyors appointed at the time of loading must assist the ship's staff in ensuring that this is carried out effectively.

## VIETNAM

There have been arisen numerous cargo claims involving rice cargoes loaded in Ho Chi Minh City. Vietnam is a relatively new player in the large scale export of rice and production methods have not yet advanced significantly in the country.

Rice produced in this region has been observed to have a high moisture content of up to 30%. Due to the lack of sophisticated equipment in the region, most of the rice is left to dry under the sun. In addition, due to the sudden rise in the export of rice from Vietnam, the rice is almost immediately shipped after production, reducing its chances of further drying in storage. The prescribed moisture content for most grades of rice in the region is 14%, and often rice is mixed and re-bagged to achieve to achieve this.

As a result of the high moisture content, the likelihood of condensation forming in the holds increase significantly, giving rise to conditions favorable for mold growth and the deterioration of cargo. This can be mitigated by a good ventilation system, however, may not be adequate to protect the rice from molding in the rainy season when

high atmospheric humidity compounds the likelihood of condensation in the holds and warehouses.

In order to prevent such claims arising from rice cargoes originating in Vietnam, the following precautions should be taken:

- Loading should only commence once the Master has obtained a written specification of the rice including its moisture content
- Independent surveyors should be hired to conduct moisture content tests and oversee the loading operation to ensure only sound cargo is loaded
- Ensure adequate ventilation of the holds to prevent the cargo from molding
- It may be prudent to only consider mechanically ventilated vessels for this trade
- Appropriate dunnage and proper stowage can improve the condition by preventing cargo from coming in contact with the sides of the ship
- An independent surveyor should be instructed at the discharge port to monitor the condition of the cargo and arrange an independent tally

Another problem associated with loading in Vietnam is poor check tallies and unqualified surveyors in this region. It is therefore, of utmost importance to contact your club when loading in Vietnam so they can instruct qualified and competent surveyors for you.

Ensuring that tally clerks count individual bags and not just slings is important to prevent shortage claims at discharge.

## THAILAND

Recently (May 2013), the BIMCO Marine Department was informed that in an attempt to increase its export trade, Thailand intends to export older rice stockpiles harvested many years ago.

As a result, members are advised to seriously take into consideration the moisture content of the rice and closely assess the cargo quality certificates. The general principles discussed in this article should be followed to reduce claims when dealing with rice cargoes from Thailand.

There have also been a number of cargo shortage claims arising from Thailand due to the following reasons:

- Poor check tally and unqualified surveys conducted at the load port
- Vessels which load cargo from lighter vessels normally face severe shortages as the lighter vessels do not deliver the sweeping cargo to the mother vessel

Instructing a competent and independent surveyor can help to minimize such shortage claims. Qualified survey-

ors, albeit more expensive, have experience with specific cargo and their appointment serves to reduce shortage claims.

Vessels which load cargo in Thailand via lighter vessels usually face shortage claims as normally lighter vessels do not deliver the sweeping cargo to the main vessel. This becomes evident when empty bags given, to be refilled by sweeping cargo, are found to be empty at the discharge port.

## MYANMAR

Myanmar is projected to become a major global rice exporter in years to come and will soon rival top exporters like Thailand, Vietnam and India.

Myanmar rice usually have a high degree of humidity. Cargo from here should always be checked for this kind of damage before it leaves the warehouse. It may be prudent to appoint surveyors to identify where and in what conditions the rice is being stored and to determine the moisture content of the cargo prior to loading.



# DISCHARGE PORT PROBLEMS

## WEST AFRICA

Rice is not easily cultivated in Africa. This necessitates a large amount to be imported. Africa accounts for over 30% of the world's rice imports.

Members will appreciate that beyond the increased risks of cargo claims, some of the problems highlighted below can occur:

- Pilferage of cargo
- Shortage of cargo
- Stowaways

African ports are notorious for stowaway embarkation. Careful stowaway checking shall be performed with more attention than in other ports. Stowaway incidents can potentially be very expensive to the ship owner and burdensome to the crew, so there is every reason to take measures to minimize the risk of stowaways getting on board.

To learn more about the IMO Guidelines on Stowaways, please visit [http://www.skuld.com/Documents/Topics/People/Stowaways/IMO\\_Stowaway\\_Guidance.pdf?epslanguage=en](http://www.skuld.com/Documents/Topics/People/Stowaways/IMO_Stowaway_Guidance.pdf?epslanguage=en)

For more information on how to deal with stowaways, please visit our website

<http://www.skuld.com/topics/people/stowaways/insight/stowaways/>

<http://www.skuld.com/topics/people/stowaways/china/Stowaways/>

### Piracy

Piracy in West Africa has become of increasing concern to the shipping industry and local coastal states and members must always carefully consider the risks and precautions necessary when trading to high risk zones.

For more information on piracy issues, please visit our website <http://www.skuld.com/topics/voyage--port-risks/piracy/overall/piracy---gulf-of-guinea/general-information/> <http://www.skuld.com/topics/voyage--port-risks/piracy/gulf-of-guinea/west-african-piracy-lessons-learned-from-an-actual-incident/>

### Detention by authorities

The approach of authorities (customs, PSC, Agriculture) can be very uncertain in many African ports. Masters should take care to ensure the vessel and cargo documentation is up-to-date. Special attention should be given to the bunker declaration onboard the vessel.

- Increased/ excess war premium
  - Bottom fouling due to prolonged stay
- The risks of trading to West Africa can be reduced by understanding the nature of the cargo being shipped as

well as implementing appropriate loss prevention mechanisms. In addition, the use of additional clauses, to apportion who in the venture should bear such risks, can reduce a parties' liability. If members are trading to areas such as West Africa and Yemen, please contact your syndicate which can provide you with additional protective clauses for incorporation in your charterparty.

## BANGLADESH

Cargo shortage claims are common in the ports of Chittagong and Mongla, where short landed cargo is subject to a penalty. Under s 156(1), ss 24 (I) and (II) of the Customs Act 1969, the Customs Authority can impose a penalty up to a maximum of 200% of the duty leviable on short landed cargo. Once such a penalty is officially imposed on an agent, there are a number of procedural requirements and hearings which take place. Members are advised to be careful of how local Agents choose to deal with such situations.

Most agents will withhold sailing clearance of the vessels until the shortage claims and custom penalties are settled or a bank guarantee is issued as per the agents demanded wording.

Bangladesh prefers to import rice during the monsoon season, as due to heavy rain the country's rice production level drops. Carrying and discharging rice during the monsoons can increase its chances of damage if not handled properly. If the cargo is declared to be unfit for human consumption by the Port Health Authority, procedural formalities must be carried out for destroying or dumping damaged cargo. This can delay the vessel by weeks and sometimes even months. The following formalities must be undertaken when dealing with damaged cargo in Bangladesh port, significantly delaying the vessel:

- a) The damaged cargo must be surveyed to ascertain the extent, nature and cause of the damage
- b) This survey report must be submitted to the local Quarantine Authority
- c) The Health Authorities will then inspect the damaged cargo to make sure it fits the description in the survey report
- d) It will then issue a certificate confirming the damage and ordering the cargo to be destructed or dumped
- e) The agents must then file for an approval to destroy/ dump the cargo with the Customs Authority
- f) Thereafter, the agents must file an application with the harbour master and Deputy Traffic Manager for permission to carry out the destruction/ dumping
- g) The Harbour Master will then designate a location where dumping can take place
- h) After receiving permission from the Customs and Port Authority, the agents must book Customs representatives, port police and receivers to witness the dumping after which a dumping certificate is issued.



## LOSS PREVENTION

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Below are a number of precautions a prudent carrier can take at the loading and discharge ports to minimize their exposure:

### PRE-LOADING SURVEY

Below are a few pre-loading checks a prudent carrier can carry out to ensure the safe carriage of rice cargo:

- The vessel's holds are clean and free of salt or other residues
- The hatch covers are weather tight
- There are adequate ventilation systems on-board which are not being obstructed
- Material used as dunnage should be clean and dry
- Adequate ventilation channels should be constructed

In addition to making sure the vessel can safely carry the cargo, independent pre-loading surveys can be conducted to ensure the following:

- Moisture tests on the cargo to ensure they are

within the moisture content limits noted on the cargo quality certificate or as per the receivers requirement

- Independent tallying of cargo to avoid shortage claims
- Pre-loading inspection/ continuous tally on board to ensure that only sound bags are loaded into the vessel
- Visual quality inspection of the cargo to eliminate the loading of all damaged, cut/ torn and heavily stained bags
- Packing and marking inspections
- All bags are the same size. See if it is possible to get spare empty bags to put sweepings into, if bags get torn or damaged during carriage or discharge

### LOADING SURVEYS

At the port of loading, an independent surveyor should be instructed to assess the following features of the cargo loading operations:

- To remain on board the Vessel during the entire loading operation and be available to assist the Master and his Officers at any given point of time
- Ensure that dunnage material and separation paper (kraft paper) is being laid out properly prior



- commencement of loading and throughout the loading operation
- Ensure that tally surveys are being carried out effectively and more or less matches with the daily draught survey figure as calculated by the Chief Officer
- Tally figures / Daily working reports from various parties must be compared shift-wise so that discrepancies, if any, can be sorted out well in time
- Cut / torn and stained bags are removed from the hold in consultation with the ship's staff and replaced with sound bags
- Means of providing a separation channel is discussed with the Master of the Vessel and the loading foreman, prior commencement of loading, so as to ensure that there is adequate ventilation between the various lots of rice bags loaded in the hold
- On completion of loading, the complete top layer of the bags should be covered with kraft paper so as to prevent any condensation from the hatch cover undersides from landing on the rice bags during the course of the voyage
- Hatch covers and hatch access covers must be sealed on completion of loading and a 'Sealing certificate' and a 'Fumigation certificate' be obtained from the appropriate authorities after completion of any in-transit fumigation (The Recommendations on the Safe Use of Pesticides in Ships published by the IMO provides necessary guidance on the use of pesticides and fumigants on ships)

## DISCHARGE SURVEYS

At the port of discharge, an independent surveyor should also be instructed to assess the following features of the cargo:

- Appearance of cargo in hatches
- Discharge operation
- Draft surveys
- Stevedore handling of cargo – Stevedores are usually unskilled and provided with only rudimentary equipment for slinging bagged cargoes. Often the preservation of cargo is sacrificed in order to achieve quicker discharge times.
- Pilferage, rough handling or mishandling of the cargo by the stevedores should be documented by photographic evidence
- Discharge supervision to avoid theft of the cargo
- Tallying

## PILFERAGE AT DISCHARGE PORT

This is also a common issue encountered with rice in African Ports. And there may be little control on those getting on and off the vessel : despite the best efforts of the crew and even of hired security.

Sometimes, stevedores do not hesitate to tear some bags of rice and pour the rice in their backpacks. Crew control and checking is important in order to avoid or at least limit such behavior and its consequence : but crew safety remains paramount at all times. If possible, crew should seek to :-

- Collect Evidence (keep any cut/ torn bags as evidence)
- Take pictures
- Issue Protest Notes
- You may need to put Charterers on notice
- Have checks and systems in place
- Consider employing private security guards
- Instruct independent surveyors to oversee the discharging process
- Contact your Skuld syndicate

## SHORTAGE CLAIMS

Shortage claims may arise due to a mistake in tallying at loading, leading to an incorrect figure in the Bill of Lading, or due to a mistake in tally during the discharge of the cargo. Note that the manipulation of draught surveys by the receiver to file shortage claims is not unheard of either.

At the discharge port, a common cause of cargo shortage is negligent and rough handling of cargo by stevedores during the discharge operation. This results in tearing of bags, the contents of which are spilt and lost.

How to prevent shortage claims?

- Perform tallies and cross-check them with other interested parties during both loading and discharge operations
- Appoint independent surveyors to supervise sealing of cargo holds and perform draft surveys before and after loading and discharging
- Shortage claims seldom arise when loading supervision and tally surveys are conducted by qualified surveyors
- Although rice discharged in West Africa is usually bagged cargo, draught surveys prior to the start and at the conclusion of discharge can provide useful evidence to challenge allegations of shortage
- Make sure the draught surveys are accurate by
  - o Properly reading and recording draught marks
  - o Keeping the vessel stationary
  - o Accurately measuring the dock water density
- Issue hatch cover sealing certificates
- Issue a certificate showing ports called at after

the load port, and which hatches were opened, if any

- Issue a moisture content certificate for dry bulk cargo
- Measure/ record the moisture content of the cargo at the load/ discharge port. This can help in challenging an allegation of cargo shortage on the grounds of moisture loss during the voyage. However, although loss in the weight of cargo can result from natural shrinkage and moisture evaporation, it is hard to prove this without concrete evidence.
- Instruct independent surveyors to take pictures and collect evidence to defend shortage claims
- Obtain an empty hold certificate from the owners' surveyor which should be countersigned by the receivers after completion of discharge
- Make sure all bags are of the same size. 50 kg bags are the most common bag sizes, but rice can also be shipped in 1 kg retail boxes
- Issue a notice of protest to charterers and receivers if tally clerks are counting slings and not the individual number of bags
- Instructing available crew members to tally the cargo can ensure accuracy

# CONTRACTUAL RESPONSIBILITIES

## TIME CHARTERERS

### Allocation of Responsibility under the Charterparty

At common law, the Owners are obliged to load, stow, trim and discharge the cargo. Owners can, however, endeavor to include clauses in the charterparty that serve to transfer these obligations to charterers. Incorporation of clause 8 of the NYPE '46 achieve this.

NYPE '46 – clause 8

“Charterers are to load, stow and trim the cargo at their expense under the supervision of the Captain”

NYPE '93 – clause 8

“Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashng, discharging, and tallying, at their risk and expense, under the supervision of the Master.”

Despite the wording of clause 8, the vessel’s master owes no positive duty to the charterers to supervise these operations. The responsibility for any stevedore damage will only be transferred back from the charterers to the owners if the master actively interferes in the stevedoring operations or shows negligence by failing to intervene in the stevedoring operations that endanger the vessel, its crew or cargo.

Clause 8 is sometimes amended to include “and responsibility” after “supervision”. Where this is the case, responsibility stays with the owners unless they are able to prove that the charterers actively interfered in the cargo operations/stevedoring operations.

### Stevedore damage

Where charterers are under an obligation to load and discharge cargo, the losses caused by the negligence of stevedores, prima facie, remains with them.

It is common to include additional stevedore rider clauses holding charterers liable for stevedore damage, in particular in charterparties in which clause 8 is amended to include “and responsibility”. Where there is the case, responsibility for stevedore damage is considered to rest with the owners, with the rider clause only transferring liability to charterers where their intervention is the direct cause of the damage. (London Arbitration No. 2/89 [LMLN 242])

Conflicting rider clauses can sometimes lead to uncertainty in respect of liability for stevedore damage, as demonstrated in the London Arbitration Award [1992] 318 LMLN 1. However, as a general rule, liability for stevedore damage usually rests with the party responsible for the loading and discharging operations and clear words are necessary to transfer this responsibility to the other party.

### Recourse against Charterers

The ICA is an agreement between the P&I Clubs who are members of the International Group. It aims to provide a simple mechanism for apportioning liability for cargo claims between Owners and Charterers.

The ICA is incorporated in the standard NYPE '93 charterparty

### NYPE '93 – Clause 27

“Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club New York Produce Exchange Agreement of February 1970, as amended May, 1984, or any subsequent modification or replacement thereof.”

### The ICA provides, inter alia, as follows:

“(8) Cargo claims should be apportioned as follows:

(a) Claims in fact arising out of unseaworthiness and/or error or fault in navigation or management of the vessel:

100% Owners

save where the Owner proves that the unseaworthiness was caused by the loading, stowage, lashing, discharge or



other handling of the cargo, in which case the claim shall be apportioned under sub-Clause (b).

(b) Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo:

100% Charterers  
unless the words "and responsibility" are added in Clause 8 or there is a similar amendment making the Master responsible for cargo handling in which case:

50% Charterers  
50% Owners

save where the Charterer proves that the failure properly to load, stow, lash, discharge or handle the cargo was caused by the unseaworthiness of the vessel in which case:

100% Owners  
(c) Subject to (a) and (b) above, claims for shortage or overcarriage:

50%	Charterers
50%	Owners

Unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

(d) All other cargo claims whatsoever (including claims for delay to cargo):

50%	Charterers
50%	Owners

Unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim."

## VOYAGE CHARTERS

GENCON 1994

Similar considerations will have to be made in connection with voyage charterparties. Again, if the voyage charterparty has no express clause allocating responsibility for cargo operations, this will be an owners' responsibility.

The Gencon Charterparty, recommended by the The Baltic and International Maritime Council (BIMCO), is a commonly used charter party for the transport of rice cargoes. Under clause 5(a) this charterparty, the responsibility of loading and discharging cargo is on the charterers.

Clause 5: Loading/ Discharging  
a) Costs/ Risks

The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken

from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners. The charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board, the owners allowing the use of all dunnage available on board. The charterers shall be responsible for and pay the cost of removing their dunnage of the cargo under this charter party and time to count until dunnage has been removed.

## ADDITIONAL CLAUSES

FIOS (Free In, Out, Stowed)

Under a charterparty fixed on a FIOS basis, all responsibility of loading, stowing and discharging lies with the charterer. The Owner is usually free of any risks and expenses in respect of cargo damage, unless the alleged damage is caused by owners or owners' agents.

However, as expressed in the House of Lords decision, *The Jordan II* [2003] 2 Lloyd's Rep. 319, the use of a FIOS clause on its own does not always transfer responsibility to charterers in all contracts.

## BAGGED CARGO CLAUSE

When dealing with bagged cargo, we recommend Owners adopt the following clause to limit their liability.

"In case bagged cargo is carried, Owners are not responsible for all bags torn/ shortlanded/ damaged/ leakage/ pilferage except for those wetted or those damaged due to the vessels' unseaworthiness".



## HOT TIPS

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### FOR CHARTERERS

- Make sure your head-charter is on back-to-back terms with your sub-charter

### FOR OWNERS

- Be ready to issue protest notes
- Incorporating the ICA clause in the charterparty can limit owners liability for cargo claims
- Make sure your charterers are financially secure and is insured by an IG Club

## CASE STUDY: A RECENT SKULD SHORTAGE CLAIM

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### FACTS:

- A cargo of bagged rice was being transported from Ko Sichang, Thailand to Abidjan, Ivory Coast
- A shortage of 8,922 bags was recorded on completion of discharge
- In addition to shortage, several bags along the hold sides were found to be mouldy on discharge, despite being protected from any direct contact with the steel work. The mould was found to be due to condensation
- No pre-loading survey was conducted and thus it was difficult for Owners to prove precisely what was loaded onto the vessel and the condition of the cargo loaded
- The lack of a pre-loading survey made it hard for Owners to defend the shortage claim and prove the damage to the cargo was not as a result of their own negligence. A recourse claim against charterers also proved to be more difficult
- According to the local customs rules in Abidjan all discrepancies noted between the cargo noted on the B/L and the cargo discharged is subject to an automatic fine of USD 2 per missing bag for rice cargoes
- The local agent, under local law, is held to be the legal representative of the Owners, even if appointed by charterers
- The local agent responsible for payment of the fine to the customs department demanded a guarantee for payment in the form of a LOU before allowing the vessel to leave

### CLAIM AMOUNT = USD 437,500

- Shortage = 8062 short landed bags
- Cargo loss = 64 mouldy bags and 1480 bags torn during handling

### LESSONS LEARNT:

- Always conduct an independent pre-loading survey which includes an independent tally of cargo loaded
- Moisture tests on the cargo must be conducted to ensure they are within the moisture content limits noted on the cargo quality certificate
- Pre-loading inspection/ continuous tally should be conducted on board to ensure that only sound bags are loaded onto the vessel
- Visual quality inspection of the cargo can help to eliminate the loading of all damaged, cut/ torn and heavily stained bags
- Contact the club immediately
- Place Charterers on notice of the claim as soon as possible

## CASE STUDY: LONDON ARBITRATION

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[1992] 318 LMLN 1

### FACTS:

- The vessel was time chartered on the NYPE 46 form
- During the course of discharge, one of the crane was damaged by the stevedores

### CHARTERPARTY

- Clause 8: Charterers are to load, stow, trim and discharge the cargo at their expense under the supervision of the captain
- Clause 35: GEAR BREAKDOWN. In the event of a breakdown of . . . crane or cranes for any period by reason of disabement or insufficient power, the hire to be reduced pro rata . . . If Charterers continue working by using shore gear, such to be for Owners' account but then the vessel not to be off hire pro rata . . . Time lost by stevedores as a result of such breakdown . . . and all other expenses thereby incurred, to be for Owners' account. . .
- Clause 47: STEVEDORES. The stevedores although appointed by Charterers are to be considered Owners' servants and shall load, stow, trim and discharge the vessel under the control of the Master. The Master is to direct and control the loading, stowage and discharging of cargoes in co-operation with the local authorities. . . .
- Clause 48: STEVEDORE DAMAGE. Damages to the vessel caused by the stevedores during . . . discharging to be repaired at Charterers' expense before redelivery to Owners if affects vessel's seaworthiness, but Charterers not to be responsible if Master fails to notify . . . except hidden damages which to be notified as soon as discovered, in which case a joint survey to be held. Otherwise Charterers not to be responsible. . . .

### HELD

- The unamended Clause 8 transferred the responsibility of cargo operations onto the charterers. However, although clause 47 obliged the charterers to arrange and pay for the stevedores, they were considered the owners servants and placed on the master the responsibility to direct their obligations.
- It was therefore, found that clause 47, being a typewritten rider clause took precedence over any existing provisions in the charterparty and in effect served to amend clause 8 to place responsibility of stevedores on the owners.
- Clause 48, however, being an additional rider clause expressly placed liability of stevedore damage on the charterers and the tribunal thus concluded that the charterers were responsible for the damage caused to the cranes by the negligent stevedores.

### LESSONS LEARNT:

- Owners and Charterers should clearly specify liability for stevedore damage by use of rider clauses
- A clause obliging Charterers to appoint stevedores or making them responsible for the expense of employing stevedores does not transfer the responsibility of their acts or negligence on to them

## CASE STUDY: THE JORDAN II

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[2003] 2 LLOYD'S REP. 319

### FACTS:

- A cargo of steel coils was to be carried from Bombay to Barcelona and Motril
- The claimants alleged that damage to the cargo was due to rough handling during loading and/or discharge and/or inadequate stowage

### CHARTERPARTY

- The charter was effected on a Stemmor 1983 form
- Clause 3: Freight to be paid on a FIOST (Free In and Out, Stowed and Trimmed) basis
- Clause 7: charterers to have full use of all vessel's gear to assist in loading and discharging cargo
- Clause 17: Shippers/charterers/ receivers to put the cargo on board, trim and discharge cargo free of expense to the vessel

### BILLS OF LADING

- The bills of lading provided that freight was payable "as per the charter party" and it incorporated the Hague Visby Rules (HVR)
- Article III r.2 HVR: the carrier is responsible for properly and carefully loading, stowing and discharging the goods carried
- Article III r.8 HVR: Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to goods ... shall be null and void and of no effect

### ISSUE

- Were the owners liable for any damage to the cargo caused as a result of loading, discharging or stowage?

### DECISION

- Clause 3 would not have stood alone to transfer responsibility to the charterer but with clause 17 it did
- Clause 17 clearly places the obligation to load and discharge the cargo on the charterers
- As all cargo work had to be performed by charterers, it follows that they would be liable if it was not properly or carefully carried out
- Incorporation of the Hague Visby Rules, specifically Article III r.2 and r.8, did not render clause 3 and clause 17 of the contract null and void. Parties are free to determine and allocate responsibility by their own contract

### LESSONS LEARNT

- A charter party clause seeking to transfer the responsibility to load, discharge and stow cargo on the charterers/ shippers / receivers must be extremely clear and precise
- It must specifically mention the cargo handling activities it aims to transfer on the charterer/ shipper/ receiver



## CREDITS

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