



## **KPI Information Update IU-92-2016** **(Cargo Shortage Claim)**

Amongst the risks covered by P&I clubs is the claims for shortage of cargo at discharge port raised against the carrier by cargo interests. Carrier is the person by whom or on whose behalf the bill of lading is signed. The coverage provided is subject to few exceptions one of which is that the carrier should subject its contract of carriage of goods by sea, either in the form of a bill of lading or charter party or otherwise, to either the Hague Rules or Hague-Visby Rules or similar legislation otherwise he would be stripped of his right of recovery from his Club either fully or to the extent that the contract of carriage had been subject to either Hague Rules or Hague-Visby Rules or similar legislation. To protect the carrier's position and to overcome the problem of statutory application of Hamburg Rules or similar legislation that are unfavorable to the carrier the person signing the bill of lading has to satisfy himself that the contract has been made subject to one of the above conventions by incorporation into the reverse side of the bill of lading a properly worded General Paramount Clause analogous to the one in Recommended Clauses of the Club's Rule Book.

Three obligations are placed on the carrier, that usually may not be contracted out, by Article III Rules 1, 2 and 3 of Hague and Hague-Visby Rules namely, to exercise due diligence before and at the beginning of the voyage to provide a seaworthy, cargoworthy and a fit ship to carry the contemplated cargo to destination safely as identified on the bill of lading

(Seaworthiness obligation), to care for the cargo during the whole voyage (Carefully to carry obligation) and to issue a bill of lading if one is requested by the shipper showing among other things the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper and apparent order and condition of the goods.

Article III Rule 3 of the same conventions goes on to say that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking and Article III Rule 4 states that except for particulars in respect of which and to the extent to which a reservation has been entered the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading and, except in the event of bill of lading being subject to Hague Rules, proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

In layman terms, those particulars of bill of lading for which and to the extent to which a reservation had been entered does not even operate as *prima facie* evidence against the carrier.

It rarely happens that the ship and the shore loaded quantities correspond upon the completion of loading and as explained above it would be the shore figure (shippers' figure) that is to appear on the bill of lading. Disputes arise if the ships' measured quantity falls to be below the bill of lading quantity. Carriers should seek advice from P&I clubs and generally the ships' figures should be shown along the shippers' declared figures on the bill of lading. As payments may occasionally be

made through letters of credit and normally are subject to uniform customs and practice for documentary credits (UCP 600), these sort of bills of lading may be considered as dirty or claused and may be rejected by banks. Shippers are reluctant to adopt such a course of action and pursue the carrier for having a clean bill of lading. To resolve the anomaly the person signing the bill of lading has to make sure that appropriate and wide blanket clause or disclaimer either in handwritten or printed form such as "Weight, measure, quantity, quality, contents and value unknown" appears on bill of lading indicating that the carrier does not assent to the shippers' declared loaded quantity.

