KISH P&I CLUB

Loss Prevention Circular KISHPNI-LP2-APR-2022

(Tanker Cargo Shortage Claims & Stepwise Approach to Problems)

Avoidance/Reduction of cargo shortage claims on a tanker, one must consider various stages of the operation and the considerations, which should be taken into account:

SECTION ONE:

►A) Prior loading the following should be noted:

1- Ability to load the offered cargo:

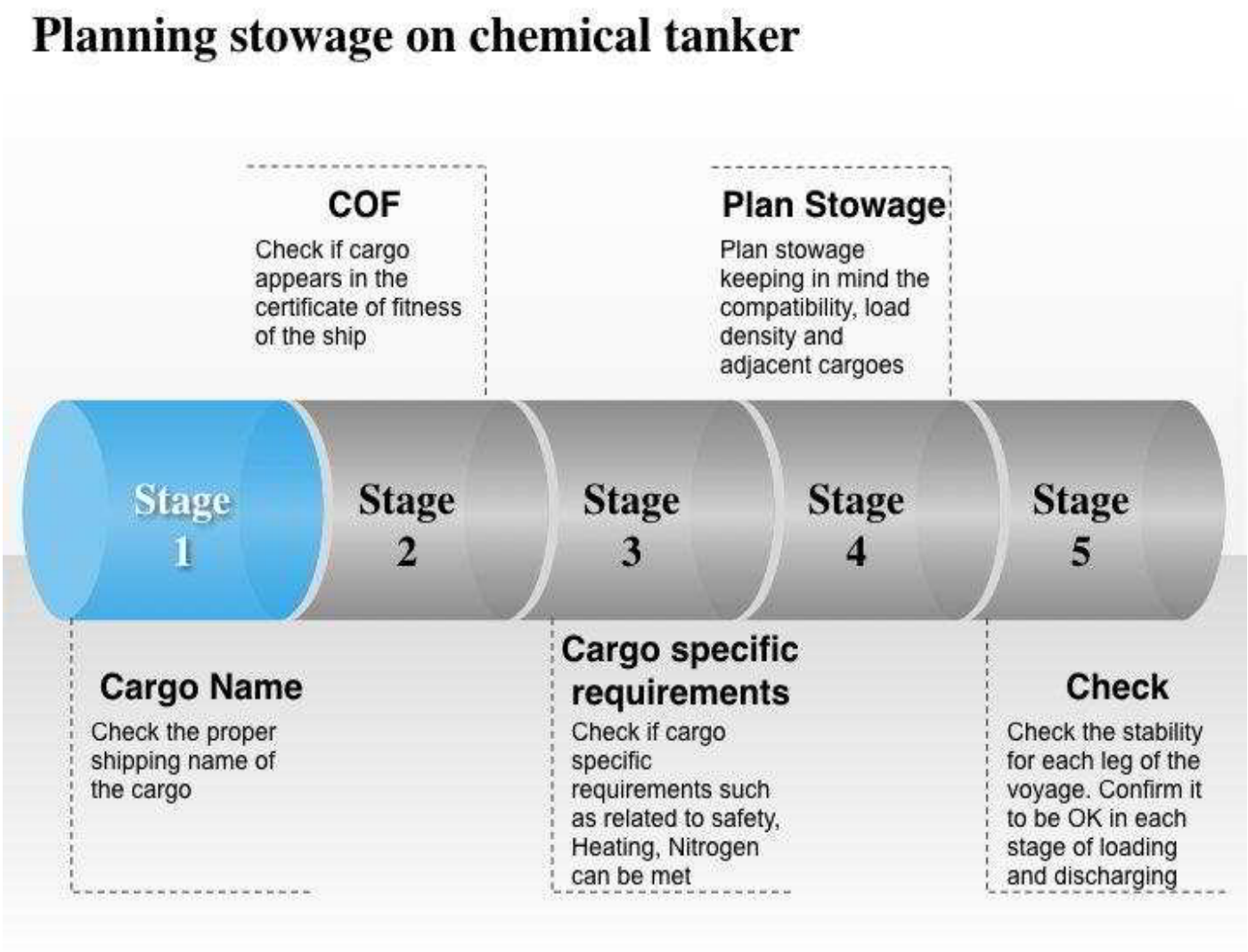
- Information & details of the nominated cargo with reference to quantity, quality, carriage and discharge as well as suitable cargo heating instructions for loading, the loaded voyage and subsequent discharge are made available through charterers/shippers.
- If the vessel can safely load, carry and discharge the nominated cargo & comply with any cargo segregation instructions.
- If the cargo lines & tanks are ready for loading and free from previous cargo residues or wash water, etc.
- If applicable, the vapour side of each nominated cargo parcel (inert gas and vapour relief systems) to be segregated throughout the entire voyage.
- To avoid large vapour losses, the Reid vapour pressure (RVP) of the cargo should be within the ship's capacity.
- If the cargo is required to be heated on the loaded voyage ensure that an accurate record of daily individual cargo tank temperatures (upper, middle and lower) is maintained throughout the whole loaded voyage, together with daily ambient air and sea temperatures.
- If the vessel is required to crude oil wash (COW) under the terms of the governing charter-party the master is to ensure that the nominated cargo is suitable for COW. If not then owners/ charterers should be informed as soon as possible.
- If the specific gravity of the cargo is high, confirm what ullages will be required to avoid exceeding the maximum weight for which the tanks were designed.
- The cargo/es to be loaded safely with regard to trim and stability (free surface effect) limitations.

2- Loading plan:

-When loading to maximum capacity make sufficient allowance for cargo expansion on the loaded voyage. Company policies often dictate the allowable filling limit but, in general, loading to 98 percent of capacity is allowed for a cargo temperature increase of 20 deg.C. *Remember that the temperature difference between northern Europe and the tropics often exceeds this figure.*

- Ullages outside of the limits set out in the stability booklet can lead to excessive free surface and cargo sloshing. This sloshing effect can damage the cargo tank structure and will result in excessive boil-off of the lighter fractions in the liquid. This, in turn, will lead to an increase in vapour loss through the pressure/vacuum valves on each tank. Hence try to minimize the number of slack tanks when planning the loading operation.

-Try not to load high RVP or light distillate cargoes into tanks adjacent to those containing heated cargoes as this will increase evaporative losses.



KISH P&I CLUB

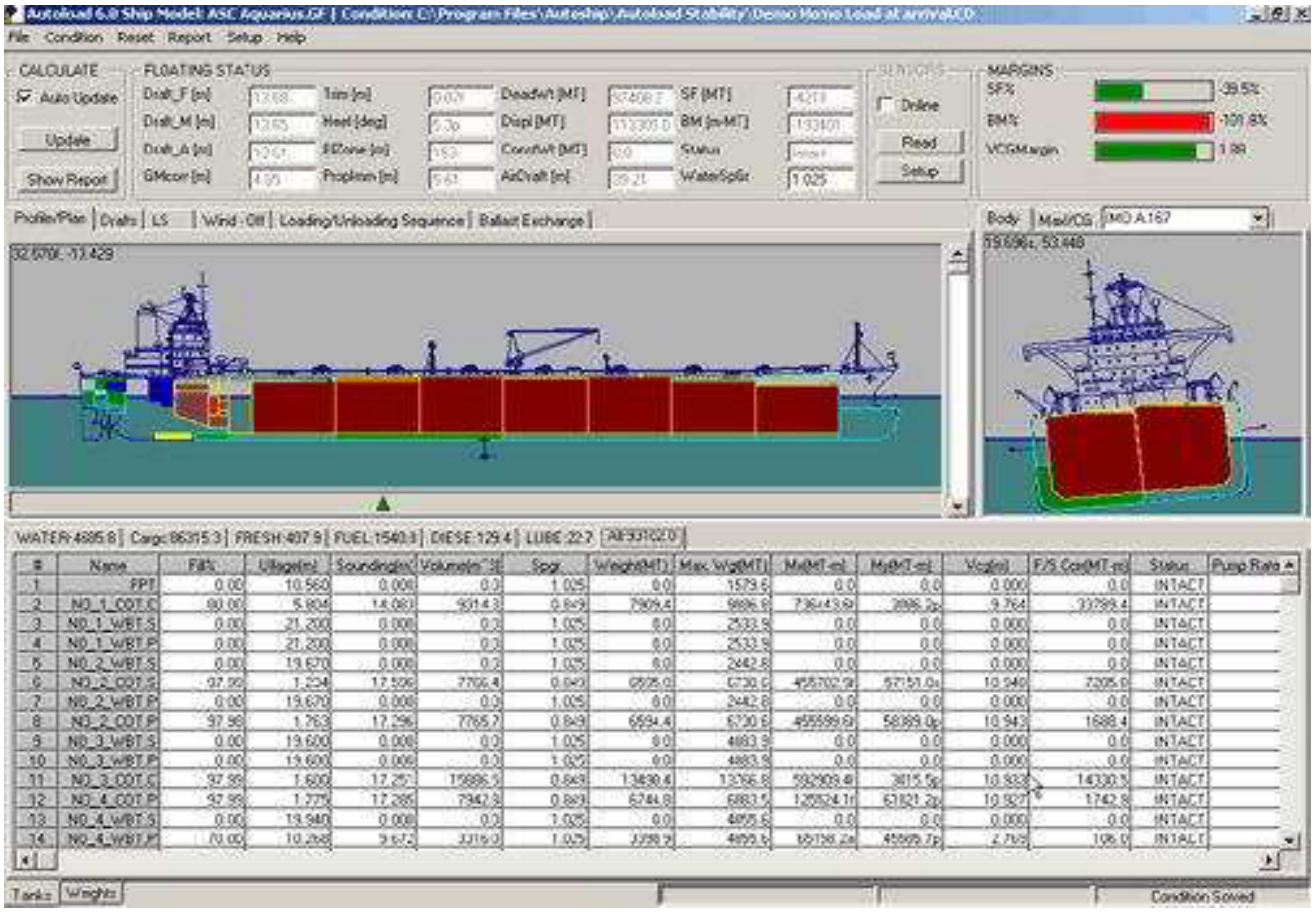
►B) During loading the following are to be considered:

1- Interaction with the terminal staff:

It may not be enough if only checklists are interchanged. The cargo officer should take the chance to build a strong & comprehensive working relationship with shore personnel. The following items should be made clear:

-Means & how to communicate.

- Grade(s) and quantity/ies of cargo/es to be loaded and whether it will be a ship or shore stop.
- Number of shore tanks to be loaded from, and the quantity, temperature and density of cargo in each.
- Whether density is being expressed *"in air"* or *"in vacuum"*.
- If shore pipelines are full or empty at the start of loading, and details of any pipeline displacement checks planned.
- Proposed loading rate(s) and the notice required by the shore for stopping.
- Whether loading will be interrupted for shore tank change-overs.
- The emergency-stop procedure and ensuring that all of the equipment is in good working order.
- If loading by gravity or shore pumps.
- If applicable, whether pumps are displacement or non-displacement (in an emergency, only a non-displacement pump can tolerate the ship shutting valves, whilst the pump is running).



KISH P&I CLUB

2- Liaison with the cargo inspector:
On Board Quantity surveys prior to loading: If any cargo tanks are not dry, the inspector must determine the on board quantity (OBQ) of the previous cargo. At the time of the OBQ survey all cargo line valves should be in the open position.

For accuracy, the inspector must establish:
- The amount of any sediment and/or free water present in each cargo tank. Ideally each tank should be dipped from at least three locations, with one dip taken at the aft most dipping point.
- If the residues are liquid or non-liquid. Liquid residues should be determined by wedge formula calculation.
- If applicable, the temperature of any liquid residues in each tank.
- The ship's draughts, trim and list at the time of the OBQ survey.
-When there are remains in the ship's pipelines, tell the inspector how much. He is unlikely to certify these figures but should include them in his report, prefaced *"said to contain".*

<u>It is never in the ship's interest for the OBQ to be underestimated.</u>

This will result in an overstatement of the ship loaded figure, exposing the ship to an unwarranted short delivery claim. Establishing the amount of cargo loaded Claims for alleged shortages, after completion of discharge, are always based on the difference between the net bill of lading and outturn quantities in the first instance.
Even if both terminals carry out their measurements diligently, each will (quite legally) round off temperature and ullage readings in its favour, so differences are to be expected.
In general the bill of lading quantity may be overstated and the outturn quantity may be understated. In the absence of a like for like comparison, the ship is the only common factor and, therefore, the measurements taken on board are critical.

It is vital to the ship's interests to ensure that all cargo inspections are carried out carefully and comprehensively. The inspector must be accompanied at all times and his ullage measurements actively verified. In all instances where more than one method of measurement is available use all methods independently to confirm the accuracy of measurements obtained.
Bear in mind that an inspector is as prone to error as the next person.

3- Measurement Errors arise from:

A. **Various especially commercial pressures.**
B. **Use of defective equipment.**
C. **Improper measurement technique.**

4- Mitigating or Reducing the error risks by:
- Bearing in mind that the vessel shall remain responsible & accountable after the immediate pressure has been forgotten, hence one must ensure that the measurements were carried out correctly. If, despite all measures taken, the ship is exposed to an unwarranted liability then a protest must be made.
- Frequently maintaining and checking ship's (electronic) measuring devices. These devices should be regularly calibrated by an agent approved by the manufacturer.
- Doing systematic work, sharing experience around and encouraging everyone to talk about their mistakes can help to avoid making the same mistakes in the future.
- Never permitting the sole use of the terminal's measuring equipment on board. Always compare the ship's equipment with the shore equipment.
- Recording differences & noting protest if measurements, taken with the independent inspector's equipment differ from those taken with the ship's equipment.
- Noting that Retro-fitted vapour lock valves, required by electronic gauging equipment, may have changed the height and/or position of the reference ullage point. If so; measurements taken at such points must be corrected to the official reference point before use.
-Practicing that if the ship is pitching or rolling, five measurements should be taken from each tank. The highest and lowest should be ignored and the middle three averaged. Weather and sea conditions should be logged at the time of the measurement survey.
- Realizing that in the same conditions on inerted ships, or where electronic closed gauging equipment is used, the probe should be withdrawn and lowered until three readings differ by no more than 5mm.

5-Cargo temperature measurement:
-The temperature of every cargo tank should be recorded separately.
-Cargo temperature may vary by 5 deg.C at different levels in the tank, so must be averaged from at least three readings (upper, middle and lower). Some digital probes can measure at more frequent intervals.
A measurement error of 1 deg.C can distort the volume calculated by 0.1%, depending on cargo density.

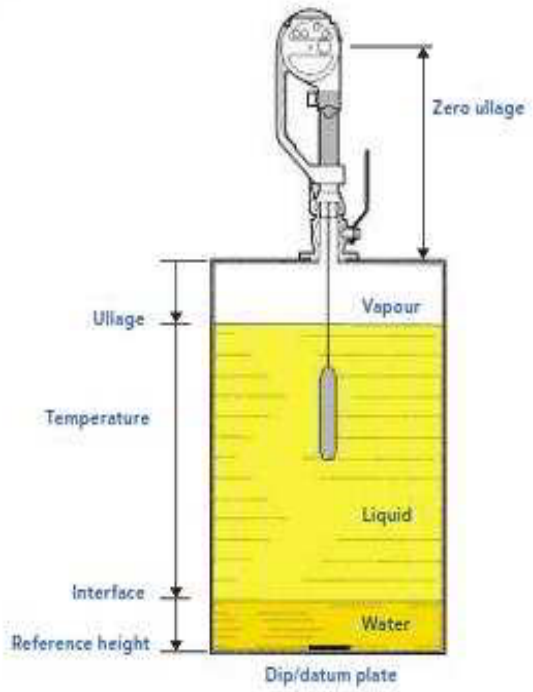
6-Checking cargo density:
- Despite practical difficulties, it is best practice to make sure the density of the cargo on board is measured and compared with the figures supplied by the terminal.
- If the loading terminal measures densities *"in vacuum"* and the discharge port *"in air"*, the figures must be corrected to avoid an apparent loss.

7-Allowing for vessel's trim and list:
- Many load port cargo measurement errors are caused by failing to make due allowance for trim and list. These should be based on visual draught readings whenever possible.

8-Sediments and water:
-The quantity of any free water detected must also be corrected for trim and list. Protest even for small amounts as it is likely to have more in suspension, which will settle to the bottom during the loaded voyage.
-If crude oil has been loaded in the Persian Gulf then it is imperative that a careful record is maintained, on the loaded voyage, of any free water increase. If a free water problem is suspected then it is recommended that charterers are asked whether the ship can stop at any designated place outbound so that an independent check can be made on any free water present. *Once the voyage has been resumed then a check on free water should be made at least every three days.*

9-Calculating cargo quantity:
- Make sure all parties are using the same edition of the ASTM petroleum measurement tables.
- The pre-1980 Table 6 (still used, instead of Table 6A or 6B, by some terminals. particularly in the Middle East and Asia) will overstate the quantity of cargo loaded, if the cargo temperature exceeds 60 deg.F (approx. 15 deg.C).
- If applicable, ensure the contents of the ship's pipelines are included in the calculations. In general; new buildings now have the cargo lines above main deck level.
- Sign the inspector's report *"for ullages and temperatures only"*.
- Apply the vessel experience factor (VEF) to obtain a more representative *"ship loaded"* quantity.
- If the ship's figures (adjusted for VEF) differ from the shore figures, review the calculations.
-If the difference is confirmed, initiate the owner's standard procedure.

A UTI/MMC ullage tape



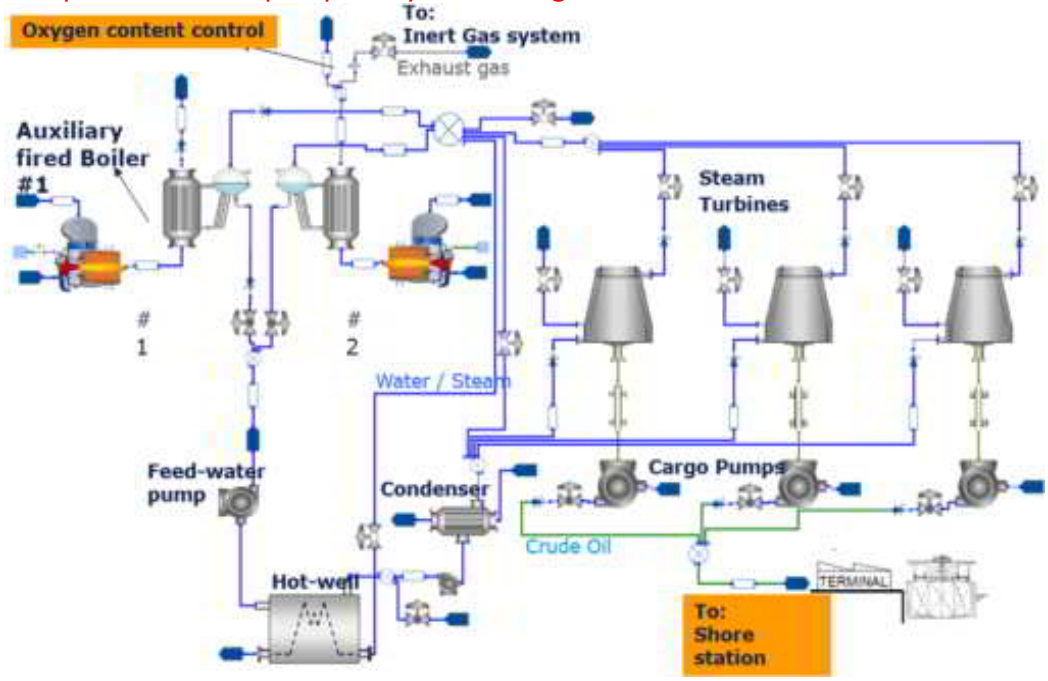
Taking an Ullage

KISH P&I CLUB

►C) While Unloading, the following should be borne in mind:

1-Liaising with the cargo inspector & Monitoring the discharge of cargo:

- Accompany the inspector at all times, ensuring that he measures temperatures, ullages, densities, list and trim accurately.
- Water delivered with the cargo at the load port is nearly always understated on the bill of lading, whilst the amount of water said to have been received at the discharge port is almost always overstated. The result of this under and overstatement leads to a shortfall in the declared net quantity out-turned.
- If sludge is found, during the free water dipping operation, try to obtain a representative estimate of the quantity in each tank.
- Ensure that the arrival trim and list are accurately recorded and that the trim/list corrections are applied to all ullage measurements.
- Before discharging cargo, ask the inspector to witness that the overboard valves are sealed and record the seal numbers in the log.
- Make sure pump-room valves are properly set and bypass valves closed.
- As soon as cargo starts to be discharged, check over the ship's side for any signs of leakage.
- Verifying that ullages are constant in idle tanks confirms that the cargo is not being misrouted or leaking within the ship, during discharge operations.
- Ullaging active tanks regularly, and comparing results with hourly shore tank received rates, helps ensure that cargo is not being misdirected in the receiving terminal.
- Ensuring that cargo heating is maintained in the tanks being discharged and *recording* when the heating coils are shut down, and the time the tank has been completely drained, provides valuable evidence in cases of claims concerning the quantity of ROB.
- Monitoring air and sea temperature (and sea state) can provide valuable evidence in case of a subsequent dispute about the pumpability of the cargo.



2-Outturn Maximizing & Crude oil washing (COW):

A properly & carefully executed COW plan is a core element for maximizing the outturn of a crude oil cargo. Where applicable, *clingage* can account for as much cargo as remains on the tank bottoms if a ship is not able, or permitted, to carry out COW. On new buildings, with double-hulled construction, clingage may be minimal.

To avoid delaying the discharge operation, any officer involved in crude oil washing must have the appropriate training and be familiar with the vessel's COW systems.

To prove that COW was performed efficiently, log the following on hourly basis:

- Which pump is being used.

- Start and stop times for each tank.

- Number of cycles each tank is washed.

- Wash program used (e.g. top wash, bottom wash).

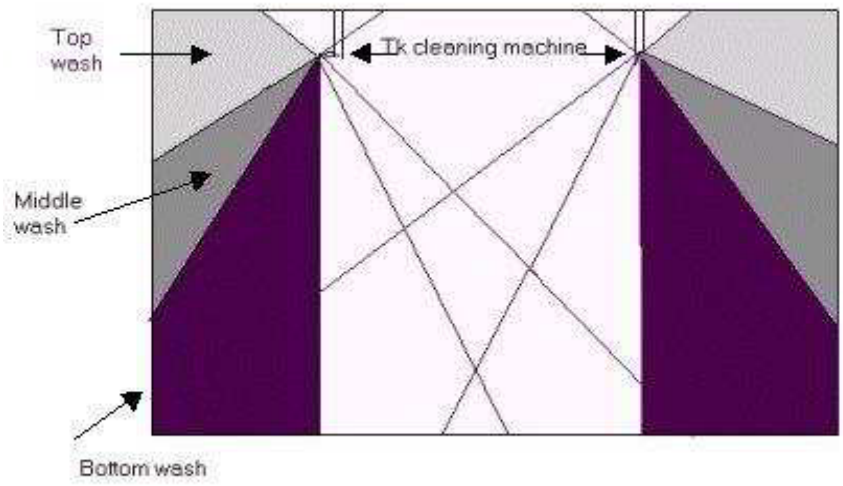
- Depth of residue detected on the bottom of each tank before and after the wash. These measurements should be taken in at least three points in each tank.

- Type of machine, and settings, used.

- Pressure in the wash line at the pump and on the wash line on deck.

Ask the cargo inspector to witness that COW is being carried out efficiently.

If either the terminal or the charterer will not permit COW, ask for written confirmation and consider a protest to protect against a subsequent shortage claim.



Crude oil wash pattern

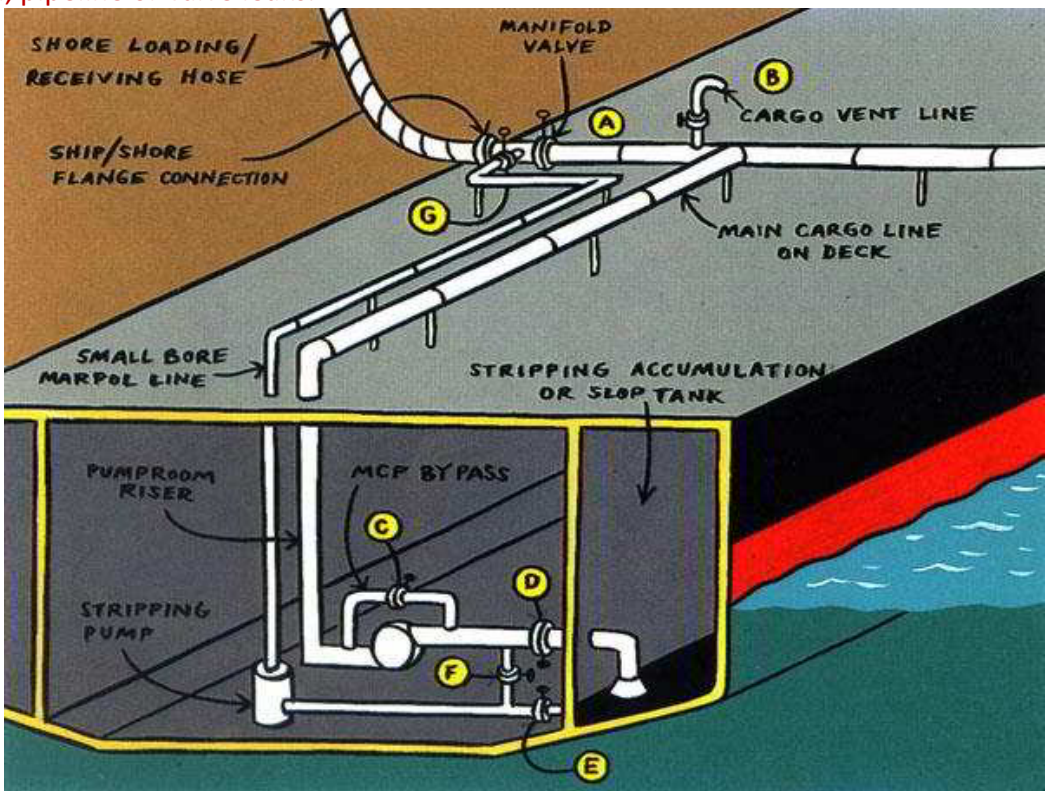
3-Stripping:

The best way to avoid losses, resulting from charter-party freight retention clauses, is to make sure the ship can demonstrate it handled the cargo appropriately, and did everything possible to discharge all of the cargo.

The discharge plan must take account of the locations of the tank stripping suctions and give directions for achieving the desired trims and lists.

Allowing for ship's stress limits, the greater the trim aft, the better the drainage.

When stripping high pour-point cargo:
- Maintain cargo at the recommended discharge temperature until the heating coils are exposed.
- Start stripping as soon as cargo pumping stops.
- Protest any request from the shore to stop during stripping operations.
- If the stop is essential, continue stripping to an accumulation tank. Heating should be maintained until the cargo is below heating coil level.
When stripping high vapour pressure cargoes:
- Avoid operating pumps at excessive speed as this will increase vaporisation, causing cavitation and reduced suction.
- Increasing the pressure of inert gas in the cargo tank, or manipulating the discharge valve on the pump to maintain high back pressure on that pump.
Re-inspect empty tanks before declaring a grade finished, or discharging the last cargo (or slops) capable of driving eductors.
Additional cargo may have accumulated due to: - Changes in list and trim.
- Bulkhead, pipeline or valve leaks.



4-Remaining on board (ROB) surveys:
Determining an accurate ROB quantity is difficult due to:
- Difficulty of calibrating bottom levels of tanks.
- Where applicable, blocked limber holes (New building double-hulled cargo tanks do not usually have such a problem)
- Un-measurable tank side clingage.
- Uncertainty about the liquidity of bottom residues.

KISH P&I CLUB

SECTION TWO: Cargo Shortage and claims thereof

►Bulk Oil or Liquid Storage claims- * A BRIEF LOOK*

Set out below are the steps that you should take in the event that you experience a shortage in bulk oil or liquid shipment.

Step 1: You should notify your broker immediately you become aware of a potential loss in order that insurers may appoint a surveyor, if required. The documentation required to lodge your claims is set out in the following lines.

Step 2: Cooperate with insurers to ensure that the vessel has discharged all liquid cargo and has performed discharge operations satisfactorily. If not, a protest should be lodged, or pressure applied, either direct or via surveyor, to endeavour to improve (and thereby minimise) the potential shortage.

Step 3: Cooperate with insurers to protect all rights of recovery. This is likely to include issuing a properly worded Letter of Guarantee, to obtain security from the shipowners or their P & I Club covering the shortage. Care should be taken not to prejudice the recovery rights of insurers.

Step 4: If there is a suspicion of theft for bunkers, then it is imperative that samples of ship's bunkers and slop tanks be obtained. You should also give written instructions to the surveyor that all load port samples, discharge port samples, bunker samples and slop tank samples be kept for an indefinite period at the surveyor's disposal.

This course of action is required, since the various samples can be "fingerprinted" and following identification, can possibly assist in any recourse action.

Claims documentation:

When lodging your bulk oil or liquids claim insurers require the following information:

- **Original Bill of Lading**
- **Copy of Charter Party**
- **Shipping invoice and sales contract including specification evidencing terms of sale and title of ownership and insurable interest**
- **Copy of the purchase invoice, if any, evidencing the terms of purchase and change of ownership**
- **Copy of letter to shipowners and/or charterers and/or other third parties holding them responsible. You should also submit any subsequent correspondence exchanged with them**
- **Insurance certificate or insurance declaration**
- **Statement of claim to insurers**
- **In the event of total loss of the cargo, a letter from the shipowner confirming that the respective cargo was on board at the time of the loss**

KISH P&I CLUB

Independent Load Port Quality and Quantity survey, which certifies the following:

- ❖ **Ships tanks clean, dry and ready to receive cargo**
- ❖ **On board quantities (O.B.Q.) of oil and/or free water prior to loading operations**
- ❖ **Shore to ship pipeline full or empty before and after loading operations**
- ❖ **Shore tank measurements before and after load showing details of measurements and calculations applied. Where automatic metering is employed manual gauging by the surveyor to check the metered figures**
- ❖ **Ships ullage figures and bunker report**
- ❖ **Vessels experience factor (V.E.F.) for the last five voyages or more**
- ❖ **Quality certificates appropriate to the cargo**
- ❖ **Receipt of samples taken from shore tank, pipeline and/or ship. This should also include bunker samples and slop tank samples, if taken**
- ❖ **Time sheet/load history report**
- ❖ **Copy of letter of protest issued by the surveyor, if the quantity is disputed with the ship**

Independent Discharge Port Quality and Quantity survey, which certifies the following:

- ✓ **Shore pipeline full or empty before and after discharge**
- ✓ **Ships ullage figures before discharge operations**
- ✓ **Shore tank measurements before and after discharge, showing details of measurements and calculations applied.**

Where automatic metering is employed manual gauging by the surveyor to check the metered figures:

- **Remain on board (R.O.B.) figures, or alternatively, certificate confirming that the tanks were clean, dry and empty after discharge**
- **Ships bunker and slop tank report**
- **Vessels experience factor (V.E.F.) for the last five voyages or more**
- **Quality certificate appropriate to the cargo**
- **Receipt of samples taken from shore tank and/or pipeline and/or ship. This should also include bunker samples and slop tank samples, if taken**
- **Time sheet/discharge history report**
- **Letter of protest issued by the surveyor, if the quantity is disputed with the ship**
- **If the vessel is fitted with a crude oil washing (C.O.W.) system, a statement of performance/confirmation of successful stripping.**
- **A copy of the bill of lading, front and reverse sides, covering the goods is to be attached**
- **A copy of the commercial invoice covering the goods is to be attached**

KISH P&I CLUB

►Thorough stepwise explanation:

"The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried". *Hague Rules, Article III, Rule 2*

We are bound to deliver the amount of cargo for which we issued bill of lading.There are many claims & disputes concerning shortage of liquid, bulk & dry cargoes.The following circular is issued to provide simple guidelines derived from past experiences in the international arena in order to remind all involved for a regulated & practical approach.

►A) Shore or Ship Figures ?

1. Shippers or charterers may try and insist that the master accepts shore figures. The key issue for any master when ship and shore figures do not match when loading any types of cargo, is to decide whether he can issue an honest bill of lading.
2. An honest bill of lading is one that will not deceive the receiver into thinking that he is getting something that the ship, in fact, is not able to deliver.
3. The vital decision for the master to take, therefore, when faced with a difference between ship and shore figures, is to decide whether that discrepancy is within an acceptable margin.
4. If it is within an acceptable margin, then either of the figures could conceivably be correct. It would not,therefore, be dishonest to use the shore figure if compelled to do so.
5. On the other hand, to issue a bill of lading with a figure which a master knows to be false, or where the master has no belief in its truth, or where he has simply decided to make no effort at all to check its accuracy, would be to issue a dishonest bill.

►B) Within the acceptable margin ?

6. What is an acceptable margin will vary according to the facts and circumstances of each loading. There is no universal margin acceptable for all cases.Some guidance can be obtained from IG circulars suggesting that if on comparison of shore and ship figures there is a discrepancy of more than 0.3%, then this needs to be investigated.

7. It is important to remember that the only relevant criteria are those applicable at the load port. Whilst there will often be a difference between ship figures from load port to discharge port (the Institute of Petroleum, now the Energy Institute, recognising that this may be in the region of 0.2% -[This figure could vary in diffrenet trades or P&I club stipulations]), and while other cargo will lose volume or weight in the course of a voyage due to evaporation (giving rise to discussions about "customary allowance" or acceptable "intransit loss") there is no justification for using these to give guidance on what may be an acceptable margin at the load port. The Customary trade Allowances should not be taken as a scape route for being less diligent. Unfortunately this is a usual practice amongst many involved in the trade to attribute shortcomings and try to ease off the operational supervisions necessary.

8. If, on an objective assessment of the figures (helped by the rule-of-thumb at 6) the discrepancy is within an acceptable margin, then the owner's position should be relatively straightforward.

a) Firstly, of course, owners should try to get:

i) the ship's figures shown on the bill;

or ii) both figures shown on the bill.

b) If neither is acceptable to the shipper (as is likely to be the case), then there is nothing wrong in the shore figure being shown on the bill of lading; in particular:

i) The owner will preserve his right to an indemnity from the shipper (or charterer) if the shore figure is inaccurate and;

ii) The owner will retain P&I cover on the basis that he has not included an "incorrect" description of the cargo.

c) In any event, the owner should also try to include on the bills of lading any or all of the phrases "weight...(etc) ...unknown", "said to be", "shippers' figures" or any of the similar phrases which appear on many standard bills of lading.

d) Finally, to be sure of evidencing the care that the Owners have taken to legitimise their decision to issue a bill where there is a known discrepancy, it is useful also to issue a letter recording all of the steps taken by owners, and recording that whilst Owners consider the discrepancy to fall within an acceptable margin, Owners nevertheless rely upon shippers' guarantee and indemnity in respect of the figures they have supplied.

(This is in accordance with the Hague Rules)

KISH P&I CLUB

►C) Not Within acceptable margin ?

9. Where the discrepancy does not fall within an acceptable margin then:

a) the master should immediately give notice that he is willing to issue a bill of lading showing the ship's figure and that the ship is ready to sail, but if that is not acceptable, then;

b) call for a recalculation of the shore figures and a joint re-measurement of the ship's figures. This may lead to a reduction in the discrepancy falling within the acceptable margin, whereupon paragraph 8 above can be followed. If the discrepancy continues to fall outside the acceptable margin, then the master should: c) insist on ship's figures: or if rejected;

d) insist that the bill of lading contains both ship and/or shore figures: or if rejected;

e) refuse to sign until an acceptable figure has been identified and agreed. (Any such refusal can be justified on the grounds set in the proviso to Article 3 Rule 3 of the Hague Rules.

f) Sail and leave the matter to be debated while the ship makes it way to the discharge ports.On a cautionary note, however, it is important that before the ship sails, every opportunity has been given to shippers, charterers and independent surveyors to check or verify the ship's measurements and to take their own, and that all such steps or offers to assist are recorded in written notices.

g) If not allowed to sail, record this in a suitable Letter of Protest.

h) Do not sign a bill of lading with a figure which is not true or not credible. If such a bill of lading is signed, a Letter of Protest recording that the figure in the bill of lading is not a true or credible figure will not provide protection.

10. Throughout the whole process, it is essential that a clear record is maintained in documentary form (and with the assistance of P&I correspondents and surveyors) of all steps taken by the ship, measurements and calculations, and any other factors relevant to any potential disputesbetween Owners, Charterers, Shippers and Receivers. In particular, in the event of disputed quantities at load port an independent surveyor should be appointed to verify all measurements and calculations at an early stage.

►D) Letters of Protest ?

11. There is a widespread practice of using Letters of Protest to record discrepancies between ship and shore figures, suspected presence of water content etc. The use of Letters of Protest is referred to a number of times in the Shipboard Petroleum Surveys. This is a useful way of recording the difference between ship and shore figures "***when they are within the acceptable margin"*** and reinforces the process recommended at paragraph 8 above.

12. However, the use of Letters of Protest can be *counterproductive* for owners in circumstances "*where the discrepancy falls outside the acceptable margin"*. Typically, in such a situation, the master issues the bill of lading with the shore figure, and then subsequently issues a Letter of Protest stating what he believes to be the correct (ship's) figure. The difficulty with this is twofold:

a) It clearly evidences a belief on the part of the master that the bill of lading figure is wrong. It therefore immediately suggests that it is a bill of lading that he should not have signed.

b) It also does little to assist the shipowners' defence against the receivers. The receiver has not seen the Letter of Protest, he has only seen the bill of lading. The bill of lading states that a higher figure was shipped. The shipowner is not in a position to deny that figure (conclusive evidence rule at Article 3 Rule 4 of Hague-Visby Rules).

►E) Letters of Indemnity (LOIs) ?

13. Similarly, Letters of Indemnity are fraught with difficulty. If the bill of lading contains a figure which the master does not believe to be true, then that bill of lading will deceive the receiver. A letter of indemnity promising to indemnify the Owners for issuing such a bill, would usually be unenforceable.

(The Hamburg Rules has slight consideration for such a letter at Article 17.3 but remains highly problematic).

►F) Insertion of various phrases ?

14. Some laws (like English Law) do allow a denial by the master that he is confirming any of the figures stated in the bill of lading. The use of the expression such as "weight, quantity unknown..." which appears in many printed forms of bills of lading is very helpful to an owner wherever any claim is brought.For that reason, those words, should therefore always be included in your standard bill of lading. Other words such as "shippers figures" or "said to be" are probably of less effect, but they certainly do no harm. They will not, however, help where the figure inserted in a bill of lading is obviously wrong.

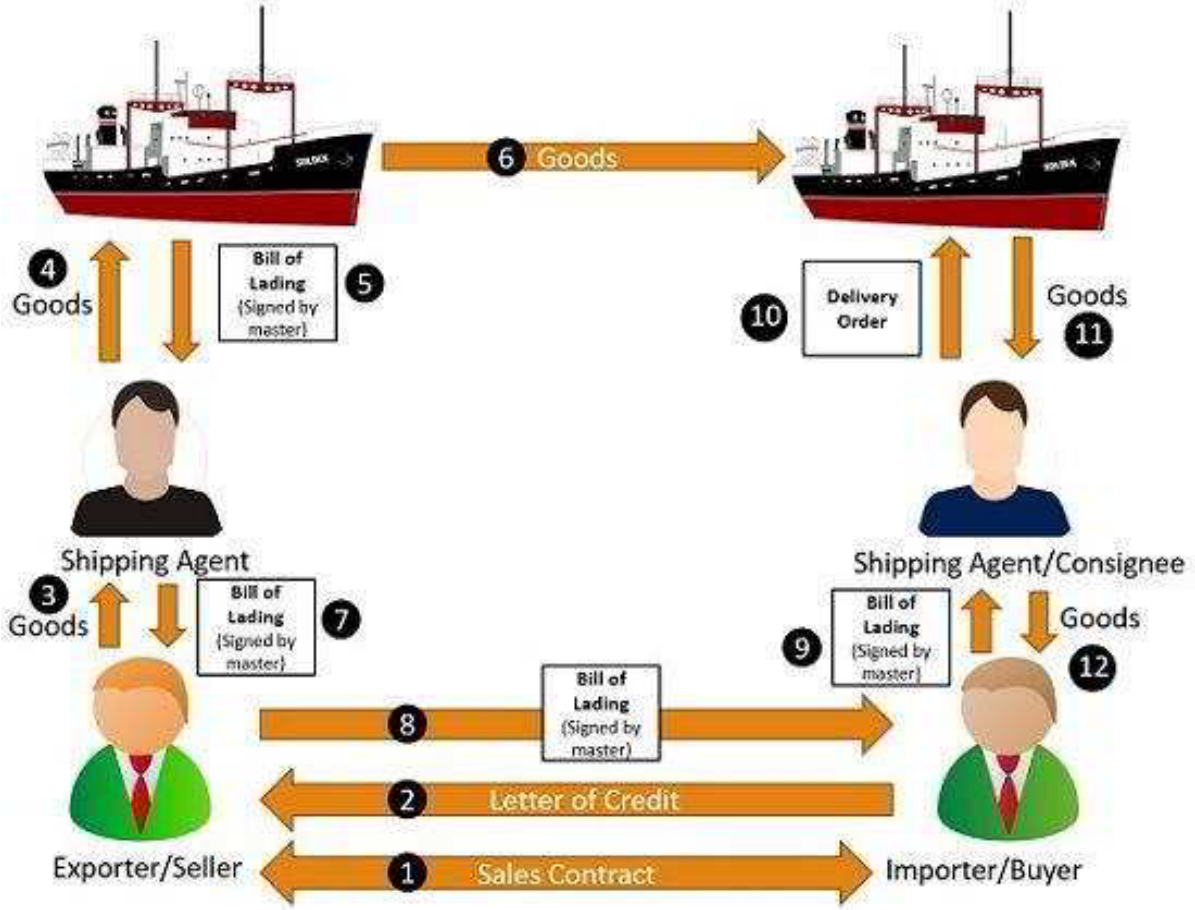
►G) Sign or Not ?

15. Refusal to sign a bill of lading is clearly a drastic step. The following points should be noted: a) Refusal to sign does not mean that the vessel should not sail as soon as possible after completion of loading and completion of all measurements, (and re-measurements where called for).

b) Refusal to sign is permitted under the Hague,Hague-Visby and Hamburg Rules.

c) Refusal to sign may bring considerable pressure to bear on the shipper. The shipper will usually have a letter of credit expiry date to meet. There is thus some pressure on the shipper to get a bill and an owner holding his ground can sometimes drive the shipper to accept one of the options at 9 (b), (c), (d) above. Furthermore, courts and arbitrators have always been quick to support Owners who take a stand to insert an accurate figure in the face of a shipper who is demanding a questionable figure.

d) Whilst a refusal to sign a bill of lading is, certainly, a serious step and is the last thing that an owner will wish to do in terms of charterers/shippers/customer relations, the attempt to avoid the problem at the load port by issuing a bill with too high a figure will, of course, come back to burden the owner at the discharge port. It is in a shipper's interest to obtain a bill with a high shore figure and it is also in a dishonest shipper's interest to exaggerate that figure so that he makes a "turn" on the cargo on each occasion. As soon as the shipper has procured such a bill of lading, the question of delivery of the quantity recorded becomes the shipowner's problem, often without the support of its P&I Club.



KISH P&I CLUB

►H) Letters of Credit (LCs) ?

16. A shipper will often argue that the ship's insistence on inserting the ship's figure; or of inserting both ship and shore figures in the bill of lading, is going to be fatal to the letter of credit transaction. As to this:-

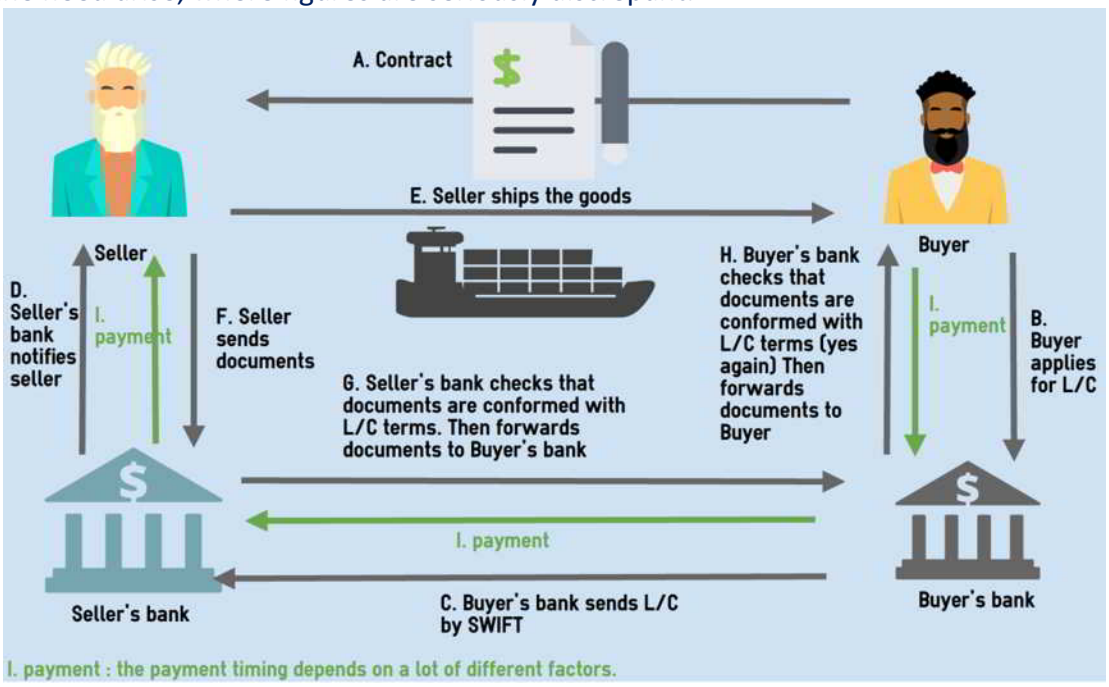
a) Ship and shore figures. It is possibly correct that there may be a problem here for the letter of credit transaction. If two figures are inserted in the bill of lading, but the commercial invoice and other documents show only one figure (as is likely), then there will be a discrepancy between the documents and this might lead to a rejection;

b) However, the shippers' argument that insisting on a lower ship's figure is likely to take the quantity outside that contemplated by the letter of credit is weak, and even if it does, the parties to the sale contract and their bankers have ways of easily and quickly resolving these problems.

c) In particular, UCP 600 (the standard practice for documentary credit transactions) expressly states that (absent more stringent express provisions) a tolerance of 5% either side of the letter of credit figure will be acceptable. So if the sale contract and supporting letter of credit anticipate the shipment of 100,000 mt, a bill of lading ranging between 95,000 and 105,000 (± 5%) will usually be an acceptable document to enable the credit transaction to proceed. Indeed, frequently the contract and the supporting letter of credit allow a 10% margin either side on bulk cargoes.

d) Even where the UCP (5%) or other (e.g. 10%) L/C margin is exceeded, it is still very easy for the sellers and the buyers and their banks to agree to an ad-hoc arrangement accepting documents even though they fall outside the anticipated quantity, and authorising payment of an amended amount in order for the credit transaction to proceed. These ad-hoc arrangements take hours, or at worst days, and it would be extremely unusual for a shipowner to jeopardise an entire sale and credit transaction simply by insisting on his own figure.

e) This is useful background information because it does bolster an owner's option of standing firm, should the need arise, where figures are seriously discrepant.



►I) Application Of Hague or Hague Visby Rules ?

17. The Hague and Hague-Visby Rules will apply to most shipments, will often feature in charter-parties and, of course, their principles form one of the foundations of P&I cover.

a) The Hague and Hague-Visby Rules recognise that there is such a thing as an acceptable margin; or to put it another way, an acceptable level of inaccuracy.

b) Hague-Visby Rules Article 3 Rule 3 requires a shipowner on demand to issue a bill of lading which contains both the description of the apparent good order and condition of the cargo, and a description as to quantities.

c) Unlike the obligation placed on the master with regard to good order and condition (where it is he who must determine its apparent condition) it is the shipper who must furnish the figure that is inserted in the bill. Furthermore, he guarantees the accuracy of that figure. (Article 3 Rule 5)

d) Thus, the Hague-Visby Rules contemplate the shipper supplying the figures; and where the cargo is a liquid cargo, commonsense would suggest that the only figure he can supply is the shore figure.

e) Hague-Visby Rules goes on at Article 3 Rule 5 to say that the shipper will indemnify the carrier against any loss arising or resulting from “inaccuracies” in the figures supplied. Thus the Hague-Visby Rules contemplate that the shore figures might be inaccurate but that they may still be inserted in the bill of lading.

f) The question then is what degree of inaccuracy is contemplated as being acceptable. The answer lies in the proviso to Article 3 Rule 3 of the Hague-Visby Rules which provides that the master is not bound to put a figure in the bill of lading:

“**which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has no reasonable means of checking**”.

g) What the Hague-Visby Rules contemplates is that the master will carry out a check. If he cannot check the figure (which seems unlikely) he should follow the procedure at paragraph 9. If he can check, he is to use that as a benchmark for assessing the reasonable accuracy (or truthfulness) of the shippers' figures.

h) Clearly, the master has no reasonable means of checking with any precise accuracy the shore figure, nor the shore mechanisms for measurement. What he does have is his own tools onboard the ship, draft survey, ullaging, etc which enable him to form a rough view of the figure that has come onboard. He is then to compare that rough view with a figure proffered by the shipper, and see what the difference is. If that difference is within normal measurement error, then he can follow paragraph 8. If it does not, he should follow the procedure at paragraph 9.

i) Finally, it should be noted that whatever figure is inserted in the bill of lading will be treated as conclusive evidence of what was loaded; so far as any receiver of the cargo is concerned. The receiver has bought the bill of lading in reliance upon the figures stated in it, and the shipowner cannot later try to argue or produce evidence (e.g. a Letter of Protest) that the figure was incorrect. (Art. 3 Rule 4).