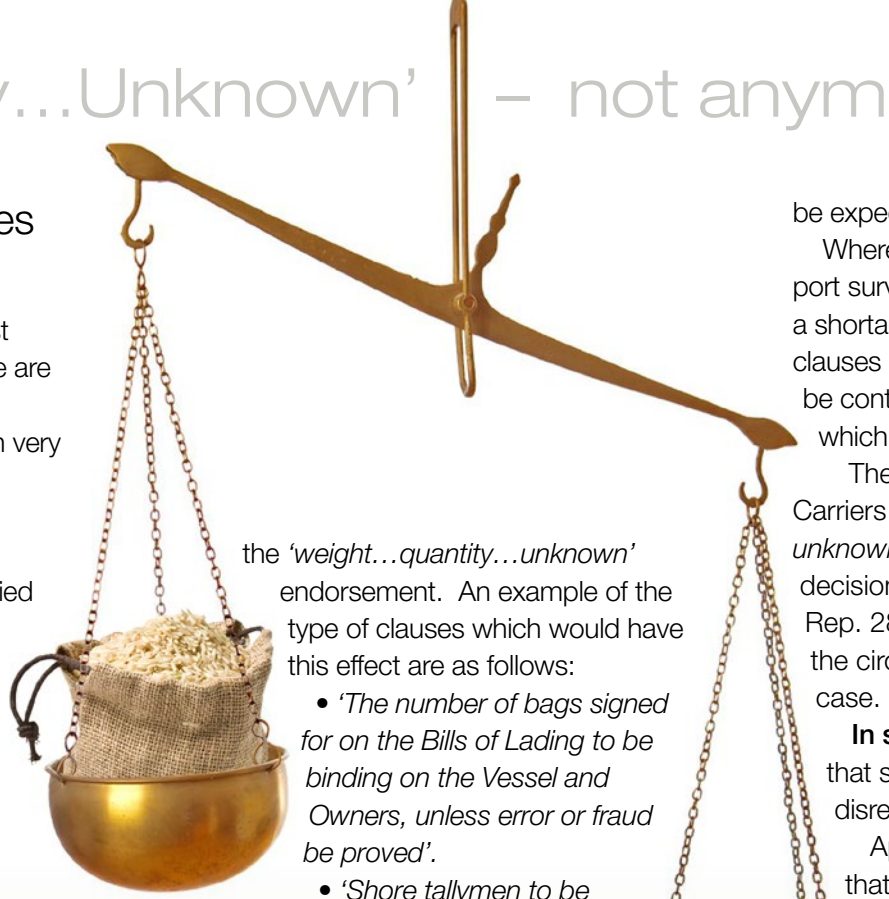
‘Weight…Quantity…Unknown’ – not anymore…



Are you maximising your recoveries for shortage claims?

Frequently, shortage claims are not pursued against Carriers, or they are settled at very low levels. There are a number of reasons for this:

- shortages, particularly on bulk cargoes, are often very difficult to prove;
- it may simply be a ‘paper shortage’, i.e. a miscalculation of the amount loaded; and/or
- the *‘weight…quantity…unknown’* provision is relied upon by the Carrier.

The contract of carriage may in fact make it easier to recover for shortage than you might think.

We are frequently finding that it is possible to make a recovery against Carriers because of accommodating provisions in the contract of carriage.

For example, a recovery for shortage may be possible where the contract of carriage provides that the shore tally quantity figures inserted in the bills of lading are binding.

In defence of shortage claims, the Carrier would usually rely on the *‘weight…quantity…unknown’* endorsement on the face of the bills of lading to argue that the quantities stated therein are not conclusive evidence of the amount of cargo loaded.

But, provisions which are incorporated into the bill of lading contract by reference to the charterparty may prevent the Carrier’s customary reliance on the *‘weight…quantity…unknown’* endorsement. An example of the type of clauses which would have this effect are as follows:

- *‘The number of bags signed for on the Bills of Lading to be binding on the Vessel and Owners, unless error or fraud be proved’.*
- *‘Shore tallymen to be appointed and employed by the vessel for Owners’ account and such figures to be conclusive evidence against the ship as to the numbers of bags of rice shipped errors and obvious fraud excepted. Ship to be responsible for any number of bags short delivered of signed Bills of Lading quantity.’*

The above clauses specify that the Carrier will arrange and pay for a shore tally and that those figures should be inserted into the bills of lading.

Where there is any difference between the shore tally figures and those in the bills of lading, the Master would be expected to clause the bills appropriately.

Where Cargo Interests can adduce discharge port survey evidence demonstrating that there was a shortage in the quantity delivered, with the above clauses in the contract of carriage, the Carrier is likely to be contractually bound by the results of the shore tally, which in turn, are inserted into the bills of lading.

The key point is that there are situations where Carriers are unable to rely on the *‘weight…quantity…unknown’* endorsement in the bills of lading as per the decision in The ‘*Herroe*’ and ‘*Askoe*’ [1986] 2 Lloyd’s Rep. 281. Clauses such as those above would make the circumstances distinguishable from the latter case.

In summary, this is an important illustration that shortage claims should not automatically be disregarded, or considered as lacking in merit.

Appropriate provisions in the contract of carriage that are favourable to Cargo Interests, give the opportunity to oust the Carrier’s well-rehearsed argument that the “weight…quantity…unknown” endorsement precludes a recovery for shortage. It is worthwhile checking carefully the provisions of your contract of carriage when you have a shortage claim.

It would be beneficial if the chartering arms of major traders were to insert similar wording into charterparties during their fixture negotiations.

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