

# Pakistan shortage claims



**Nicole Lian**  
Senior Claims Executive, Standard Asia  
+65 6506 2857  
niccole.lian@ctplc.com

Liquid cargo shortage claims continue to be a routine occurrence in Pakistan. Individual claims are generally of low value, but as there tend to be numerous claims raised, the total claim value can be substantial. Difficulties arise in the handling of such claims due to the peculiarities of this jurisdiction.

## Scenario

When a ship arrives in Pakistan, she is typically required to discharge her liquid cargo into customs-bonded shore tanks. The various consignees then take delivery of the cargo from these shore tanks. When claims for shortage arise, they are raised against the ship. The allegation is that the quantity of cargo received from the shore tank is less than the quantity of cargo stated in the bill of lading. When legal proceedings are commenced, the shipowner and the local agents are usually named as co-defendants. This is notwithstanding that an empty tank certificate has been issued and signed off by the various consignees' surveyors confirming that the ship discharged all her cargo into the shore tanks.

## Legal position

A shipowner may raise all available defences against such claims since it should not be liable for cargo shortage that occurs after discharge from the ship. The Pakistan courts have not however adopted a uniform legal position on this issue. There have been a few lower court judgments that have decided in favour of the shipowner or have taken into account varying levels of trade allowances.

## What to do with such claims

In the meantime, if such claims are raised, the shipowner has the following options:

### Ignore or reject the claims

Where claims are initially rejected or ignored, the likelihood is that the claimant will pursue formal proceedings against the shipowner and the local agent. If all named defendants continue to ignore the suit, a judgment in default of appearance will eventually be obtained, which will allow the claimant to enforce the judgment against the ship on her return to Pakistan or against the local agent's assets.

### Defend the claims

Suits will require, on average, five to 10 years before a first instance judgment is issued by the lower courts. The legal costs incurred to defend such claims are not recoverable from the claimant, even if the shipowner successfully obtains a judgment in its favour. As such, legal fees are usually negotiated on a lump sum basis ranging from 10% to 15% of the claim value.

A local correspondent's assistance may additionally be required in certain circumstances and so members should anticipate incurring additional correspondent fees over the life of the suit.

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It is therefore likely that the total fees incurred to maintain defences for protracted proceedings may form a substantial portion of the total claim value. Some shipowners may therefore prefer to take a commercial view on such claims.

## **Amicable settlement of the claims**

If so, the local agent, correspondent or a local lawyer may assist to negotiate amicable settlements of cargo shortage claims. It is possible to negotiate with the claimant so that trade allowances are deducted from the alleged shortages.

Most claimants are prepared to settle in the region of 30% of the claim value and so the benefit to a shipowner is that savings are made on the fees that would have been incurred in defending the claim.

## **Charterparty terms**

The shipowner may include a term into the charterparty that requires the charterer to handle, defend, settle and be responsible for all cargo shortage claims that are raised in Pakistan. Alternatively, a letter of indemnity (LOI) may be obtained from the charterer stating similar terms.

However, the shipowner is unlikely to obtain immediate benefit of such terms if claims are raised in Pakistan. This is especially the case if the master issued the bills of lading or if the

claimant names the shipowner and its local agent in formal proceedings. Regardless of the charterparty or LOI terms, the defence costs to the shipowner will be as mentioned above, since the shipowner will be obliged to defend the claims in the first instance.

Further difficulties arise if the charterer does not comply with these terms. The shipowner will need to enforce the terms by pursuing an indemnity against them. This requires the shipowner to first defend all the cargo shortage claims until a judgment is issued before it is entitled to pursue an indemnity against the charterer.

The process of pursuing an indemnity against the charterer will also require the merits of each shortage claim to be reviewed individually together with the indemnity provisions in the charterparty. The shipowner must therefore be prepared to incur various sets of legal costs, which may exceed the total claim value.

## **Conclusion**

When trading to Pakistan, shipowners should anticipate that shortage claims will be raised against them regardless of whether there has been a genuine shortage at discharge. The above difficulties should be borne in mind given the nature of the jurisdiction and the options available to shipowners in the handling of such claims.