



# **Practice of Maritime business: sharing experience 2009**

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**Odessa May 28-29**

**Cargo shortages and bill of lading  
Alberto Batini**





# The “MV KAMYSHIN”

## Main facts

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- Voyage: Kamyshin (Russia) – Brindisi
- Voyage Chartered to receivers
- B/L issued under C/P but incorporation insufficient
- Sealing certificates available
- First Class GAFTA approved surveyor at loading
- Cargo: 2,929.793 mts Russian wheat in bulk
- Arrived port of Brindisi on 10/10/07
- Discharge interrupted on 12/10/07 at 17.23 hrs It per Receivers'/Charterers' order
- ROB: 25-30 mts (Master's estimate)
- Claim for EXPECTED SHORT DELIVERY of about 35 mts – request of Bank LOG otherwise arrest



# The “MV KAMYSHIN”

## Owners’ response

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- Master took pictures of cargo remaining on board
- Appointed first class of quality/quantity control inspectors to effect a draft survey
- Master requested to present SILO electronic scale figure
- Surveyor appointed by master advised that shore scale figure was 2,884.932 mts at the moment of interruption of discharge operations (out of 2,929.793 mts ex B/L)
- Master instructed to close hatches and wait Owners instructions
- Lawyers appointed on 15/10/2007



# The “MV KAMYSHIN” Consequences

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- Vessel was detained at Brindisi
- Bank LOG was arranged



# The “MV KAMYSHIN”

## Analysis of Owners’ Response

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- Pictures of Cargo ROB do not help especially if taken by master rather than by a qualified independent surveyor. Reasons:
  - (1) authenticity can be challenged
  - (2) Receivers not present nor invited
  - (3) quantity impossible to be predicted by pictures evidence
- Appointment of surveyor for draft survey at discharge is a correct procedure to be followed immediately but: (1) must be done inviting Receivers/Charterers to attend (2) does not help if discharge is not terminated and holds fully empty



# The “MV KAMYSHIN”

## Analysis of Owners’ Response (follow)

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- The Master’s request to present SILO electronic scale figure is correct but ineffective under the circumstances because SILO is a third party to the contract of carriage and under no obligation to cooperate
- Closing hatches and wait for Owners’ instructions: does not solve the problem and in fact lengthen the duration of the problem aggravating the same by demurrage accrual and most certainly leading to Vessel being detained / arrested (with consequent heavy financial burdens for Owners)



# The “MV KAMYSHIN”

## Analysis of Owners’ Response (follow)

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- Lawyers appointed late (only on 15.10.2007 when problem started on 12.10.2007 by Receivers’ order to interrupt discharge)



# The “MV KAMYSHIN”

## The Correct approach

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- Appoint lawyers since first problem arise at discharge
- Lawyer should liaise with Master, Owners, harbour Master and Charterers or their lawyer if appointed
- There are two possible scenarios:
  1. The out of court approach (in case of Charterers cooperation)
  2. The Court approach



# The “MV KAMYSHIN”

## The out of court approach

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- Complete discharge and close hatches
- Appoint a first class independent surveyor (better if chosen among those usually used by the local court as an expert)
- Invite by certified mail and fax Charterers and SILO to attend a draft survey after discharge operations is terminated, nominating appointed surveyor
- Carry out draft survey with or without Charterers/SILO attendance (subject to them having been properly notified as above)
- Surveyor shall take pictures and statements if possible



# The “MV KAMYSHIN”

## The Court approach

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- Apply to local court to appoint a court expert with powers to:
- Carry out draft survey with or without Charterers/SILO attendance to ascertain weight of cargo discharged, availing himself of sealing certificates, draft survey at loading, B/L, etc..
- Surveyor shall take pictures and statements from master/crew, stevedores, SILO
- Complete discharge and close hatches
- Should SILO refuse to resume discharge operations then Court Surveyor will record this and follow up with court survey operations



# The “MV KAMYSHIN”

## How did it go ?

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- Court surveyor was eventually appointed to ascertain accuracy of shore scale measures, weight of cargo in SILO, draft survey at loading/discharge (although partial) under the circumstances
- Receivers took the cargo away after notification of court survey operations were beginning, so prejudicing any right of claim
- Court surveyor recognized that shore scale were accurate but also draft survey has an high level of accuracy because the margins of error (in perfect conditions of test) ranges from – 0,2% to + 0,2%



# The “MV KAMYSHIN”

## How did it go ? (follow)

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- Claimants never commenced merit proceedings
- Time bar expired on 12/10/2008



# The “MV KAMYSHIN”

## Conclusions

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- In this case Owners were sufficiently lucky that receivers took the cargo away from SILO after service of notification of Court expert operations commencement, prejudicing their own claim.
- In another context the conclusions might have been very different and not necessarily in Owners' favor
- Owners must stick to the advised procedure in case of alleged cargo shortages in Italian ports to prevent or minimize risks of substantial financial damages



# The “MV KAMYSHIN”

## Some hints

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- In some Italian ports (including Ravenna) is not yet a clear settled principle to compare draft survey at loading port only with equivalent draft survey at discharge port
- *It is not uncommon to see Judges comparing draft survey at loading with shore scale figures at discharge: this MUST BE PREVENTED FROM HAPPENING*
- So court surveys at discharge port are essential
- Court surveys are cheap and quick while LOGs are expensive and cannot be withdrawn before time bar expires of court lawsuits are terminated.