



BILLS OF LADING

Ad valorem bills of lading

Executive summary

- Ad valorem bills of lading are bills of lading that state the value of the cargo.
- The package and weight limitations of the Hague and Hague-Visby Rules do not apply to ad valorem bills of lading, meaning the carrier's liability is generally increased.
- Standard P&I cover for ad valorem bills of lading is limited to USD 2,500 per unit, piece or package. Additional cover is available from the Club on request.

- Insertion of Letter of Credit, invoice and sale contract numbers on the bill of lading may or may not make the bill of lading an ad valorem bill of lading, depending on the jurisdiction. Members should be cautious in these circumstances.

A. Who is this article intended for?

This article is written with the member, in-house claims teams or legal counsel in mind, or whoever else encounters ad valorem bills of lading.

For a practical explanation, we refer to the Club's publication *'Practical Guide: Ad valorem bills of lading'*.

B. What is an ad valorem bill of lading?

An ad valorem bill of lading is a bill of lading in which the value of the cargo is declared on the bill of lading.

C. The legal background – Hague and Hague-Visby Rules

Under Article IV, Rule 5/5(a) of the Hague and Hague-Visby Rules, the carrier and the ship are allowed to limit liability for loss or damage in connection with the goods carried: 'unless the nature and value of [the] goods have been declared by the shipper before shipment and inserted in the bill of lading'. This means that where the shipper

has declared the 'nature and value' of the cargo, and this information has been inserted on the face of the bill of lading, the carrier is not permitted to limit its liability in accordance with Article IV, Rule 5/5(a) of the Hague and Hague-Visby Rules and, consequently, will be exposed to greater liability than it would otherwise have been if the cargo is lost or damaged.

The Hague and Hague-Visby Rules have been enacted differently in different countries. Under English law, where the Hague Rules apply, the carrier's liability per package or unit is limited to the gold value, at the time of the non-delivery of the goods, or their delivery in damaged condition, of GBP 100, the weight of which is calculated by reference to the Coinage Act 1971. Where the Hague-Visby Rules apply, the carrier's liability is limited to 666.67 SDR* per package or unit or 2 SDR per kg of the gross weight of the goods lost or damaged, whichever is higher.

If the shipper has declared the value of the goods before shipment, however, and if the bill of lading contains a declaration of the nature and value of the goods, the carrier cannot rely on the limitations of the Hague or Hague-Visby Rules to cap its liability.

However, if an ad valorem bill of lading has been issued, all is not necessarily lost for the carrier. Both the Hague and Hague-Visby Rules, pursuant to Article IV, Rule 5/5(f), provide that the declaration of the value in the bill of lading is only prima facie evidence of the value of the goods. This means that the carrier can challenge the value declared by the shipper if it has evidence that this was not the true value of the goods. Furthermore, Article IV, Rule 5/5(h) of the Hague and Hague-Visby Rules provide that if the nature or value of the goods has been 'knowingly misstated' by the shipper, the carrier and the ship shall be relieved of all liability.

In view of the potential exposure to the carrier if an ad valorem bill of lading is issued, members are advised generally to avoid issuing such bills of lading.

If an ad valorem bill of lading has been issued, and a claim received, the carrier may still be able to challenge the value of the goods stated by the shipper as mentioned above and so reduce its final liability, although it is not recommended that members rely upon this mechanism as a guaranteed escape from liability. In many instances, due to the accuracy of the shipper's declaration or a lack of evidence available to the carrier, it will be difficult for the carrier to challenge the value stated by the shipper.

D. Why would a shipper ask for ad valorem bills of lading?

Ad valorem bills of lading are mainly used for shipments of valuable cargoes of relatively low weight and/or packed in few packages. This means that the cargo will otherwise attract a relatively low level of limitation under the Hague or Hague-Visby Rules, which may not reflect, or even come close to, the value of the cargo. This would leave the shipper, even in the event that the carrier was liable for loss or damage, with a significant loss, which it would be unable to recover from the carrier.

An example may be a shipment of medical equipment. This may be of high value but low weight and shipped in few packages, placing the carrier's liability at a very low level. See the Club's publication '*Practical Guide: Ad valorem bills of lading*', for a fuller explanation of this example.

In these circumstances, it may not be in the shipper's commercial interest to ship cargo at the risk of a limited recovery from the carrier if the cargo is lost or damaged. Thus, the shipper may ask the carrier to issue ad valorem bills of lading so as to remove the limitation on the carrier's liability.

Alternatively, the shipper's request to issue ad valorem bills of lading may be motivated by the requirements of other parties involved in the transaction, such as the cargo receivers, buyers or banks issuing Letters of Credit.

Where a request from the shipper has been motivated by one of these parties, the purpose is often ostensibly so that the shipping documents complement the relevant Letter of Credit or invoice. However, this is sometimes a ploy by the buyer to create another step in the transaction (cross-checking of documents) which may cause some delay and thus defer the buyer's obligation to pay for the goods. Either way, the outcome for the carrier is the same. If it issues an ad valorem bill of lading it will not be entitled to limit its liability in accordance with the provisions of the Hague and Hague-Visby Rules.

E. Compensation for the carrier for issuing ad valorem bills of lading

A carrier will normally request 'ad valorem freight' to be paid in return for issuing ad valorem bills of lading. This is an increased rate of freight, based on the value of the goods and charged to off-set the carrier's greater exposure to liability for loss or damage.

*SDR being Special Drawing Rights and a unit of account of the International Monetary Fund. See the Club's guide 'Ad valorem bills of lading – Practical Guide' for further details.

F. Including other details on bills of lading

For a bill of lading to be an ad valorem bill of lading, the bill of lading must state the nature and value of the cargo. As a matter of English law, at the time of writing, there is no decided case law as to whether the inclusion on the bill of lading of Letter of Credit numbers, invoice reference numbers or sale contract numbers will make the bill of lading an ad valorem bill of lading.

In each case, the carrier would argue that the actual value of the goods, although within the referenced document, has not itself been inserted on the bill of lading, and that the requirements of Article IV, Rule 5/5(a) have not therefore been satisfied and the bill of lading cannot therefore be an ad valorem bill of lading. However, the Court's response to this argument is yet to be ascertained.

As to freight, a similar argument applies. Even if freight is calculated on the basis of the value of the goods, the carrier would argue that a declaration of freight is not a declaration of the actual value of the goods. Rather, it is a declaration of the cost of transporting the goods.

This is to be contrasted with a situation in which the Cost, Insurance and Freight (CIF) value of the goods is inserted in the bill of lading. In this case, the bill of lading will likely be deemed to be an ad valorem bill of lading because the CIF value is constituted of costs, insurance, freight and the value of the goods.

In other jurisdictions, the position may be clearer and the insertion of Letter of Credit, invoice reference numbers, sales contract numbers etc. may make the bill of lading an ad valorem bill of lading. Caution therefore needs to be exercised, and appropriate advice sought, before including any of the above details on bills of lading.

Where a request to include such details on bills of lading is made, we recommend that members refer to the Club's publication '*Practical Guide: Ad valorem bills of lading*', which contains a list of recommended practical steps.

G. P&I cover for ad valorem bills of lading

The Club's P&I Rules, Rule 4, section 1 provide a limited cover for ad valorem bills of lading in cases where the declaration of the cargo value deprives the carrier of the right to limit its liability. Consequently, there is no cover for any liability exceeding USD 2,500 per unit, piece or package under standard P&I cover.

For carrier members that wish to have cover for ad valorem bills of lading above USD 2,500 per unit, piece or package, the Club can offer an extension cover under the 'All Inclusive Shipowner's Liability to Cargo' (SOL) cover.