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 guide 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 further explanation of the legal and commercial rationale of ad valorem bills of lading, we refer the reader to the Club's article *'In Focus: 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.

Example – Medical equipment

Number and kind of packages; description of cargo	Gross weight, kg
1 x Medical Equipment – USD 50,000	2

Here the value of the medical equipment is stated on the bill of lading to be USD 50,000, and it is this declaration of value which makes the bill of lading an ad valorem bill of lading.

C. What is the purpose of an ad valorem bill of lading?
Ordinarily, under the Hague or Hague-Visby Rules, if the value of the cargo has not been declared on the bill of lading, the carrier will be entitled to limit its liability for loss or damage in connection with the goods. This is shown in the example overleaf:

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Example – Medical equipment (as above)

The medical equipment is valued at USD 50,000, weighs 2 kg and is in one package. If the Hague-Visby Rules apply, the carrier can ordinarily limit its liability to 2 Special Drawing Rights per kg (gross); or 666.67 Special Drawing Rights per package, whichever is higher.

Special Drawing Rights (SDR), are a unit of account of the International Monetary Fund and may be thought of as a hypothetical currency. The value of SDR is calculated from a basket of five major global currencies. The carrier's liability is calculated in terms of SDR in order to provide a consistent and centralised point of international reference, insulated from the fluctuations of any single currency, from which liabilities can be converted into particular currencies.

At the time of writing, Q4 2021, 1 SDR = approximately USD 1.4.

In this example:

- The weight limitation is calculated as: 2 kg x 2 SDR = 4 SDR, which is equivalent to USD 5.6 (4SDR x USD 1.4).
- The package limitation is calculated as: 1 package x 666.67 SDR = 666.67 SDR, which is equivalent to USD 933.34 (666.67 SDR x USD 1.4).

The higher figure in this instance is the package limitation; so the carrier's liability for the medical equipment is limited to USD 933.34.

Without a declared cargo value in the bill of lading, even though the medical equipment is valued at USD 50,000, the cargo interests would be entitled to a maximum of USD 933.34 in relation to losses for which the carrier is liable.

From the shipper's perspective, the purpose of an ad valorem bill of lading is to ensure, by way of stating the cargo's value in the bill of lading, that the carrier will be unable to limit its liability by reference to the Hague or Hague-Visby Rules.

With a declared cargo value of USD 50,000 on the bill of lading, the carrier's liability is not limited and if, for instance, the carrier is liable for loss of the cargo, the carrier will be liable for the full declared cargo value of USD 50,000. Additionally, as P&I cover is impacted by the issue of ad valorem bills of lading, the carrier would have cover of only USD 2,500 for this liability (see G. below).

D. Inserting Letter of Credit numbers/invoice reference numbers/sale contract numbers

As a matter of English law, there is no clear authority as to whether the inclusion of a Letter of Credit number, invoice reference number or sale contract number in the bill of lading will make the bill of lading an ad valorem bill of lading. Provided the actual value of the cargo is not stated on the bill of lading, the carrier will at least be able to argue that the inclusion of such references should not cause the bill of lading to become an ad valorem bill of lading. In other jurisdictions, the position may be clearer and the inclusion of such references may make the bill of lading an ad valorem bill of lading.

In light of this risk, it is recommended that members resist inserting such references, unless there are charterparty terms requiring them to be inserted. Alternately, if a request to insert references is made by the shipper, the carrier might consider meeting some of the risk by requesting ad valorem freight. If the shipper agrees, the carrier will have some compensation for the increased level of risk. If the shipper does not agree, the shipper may, nonetheless, be deterred by the carrier and desist from pressing his request for the inclusion of such references on the bill of lading.

That said, in certain trades and due to banking requirements, it may be commercially necessary for Letters of Credit numbers or similar details to be included on the bills. In these circumstances, it is recommended members adopt a cautious approach and follow the below list of recommendations.

E. Recommendations for issuing bills of lading with Letter of Credit, invoice reference or sale contract numbers

If a carrier, for commercial reasons, decides to issue a bill of lading including Letter of Credit, invoice reference or sale contract numbers, it is recommended that the carrier:

a. Discusses the position with the Club, which may be able to help the member seek appropriate advice

b. Obtains a Letter of Indemnity (LOI) from the Charterer and/or shipper, and/or

c. Clauses the bills of lading (see example wording below)

It is important to bear in mind that, where P&I cover has been prejudiced as a result of the issue of ad valorem bills of lading (see G. below), this prejudice will not be resolved and P&I cover will not be reinstated if a LOI is obtained. Rather, the LOI acts as a replacement for the P&I cover.

Bear in mind, however, that a LOI is only as strong as the party issuing it and should therefore not be regarded as protection for the carrier that is equal to, or as reliable as, P&I cover.

For more information on LOIs, we refer to our publication *Practical Guide: Letters of indemnity*.

Example wording: Clausing bills of lading
The below wording serves only as an example. Before clausing bills of lading, it is important that the Club is consulted and, if necessary, independent legal advice is sought.

'It is hereby agreed between the shipper and the carrier that the shipper makes no declaration as to the value of the goods and that this bill of lading is not an ad valorem bill of lading. The shipper and the carrier hereby confirm that the value of the goods is not known by the carrier.

Any and all references to letters of credit, sales invoices, sales contracts or order in this bill of lading are inserted solely for the convenience of the shipper to facilitate its business in relation to the goods and under no circumstances shall be construed as a declaration of the value of the goods.'

F. Including other details on bills of lading
Inclusion of the freight rate on the bills of lading will not generally render the bills of lading ad valorem bills of lading. This is because the freight rate is not a declaration of the value of the cargo, but merely of the cost of transporting the cargo by ship.

The position is different where the Cost, Insurance and Freight (CIF) value of the goods is stated. As this value includes costs, insurance, freight and the value of the goods, a statement of the CIF value will constitute a declaration of the value of the goods.

Where the member is in any doubt as to the meaning of details requested to be inserted on the bill of lading, the member should consult the Club.

G. P&I cover for ad valorem bills
The Club covers ad valorem bills of lading up to a value of USD 2,500, piece or package. Any value above this falls outside of 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.