



KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-73-2013 ***(Notes on the Importance of the Bill of Lading)***

► Introduction:

The bills of lading are the essential pieces of documents in a contract of carriage by sea & information contained in the bill of lading is very important and decisive for the Company. There are various aspects to this issue but those related to the master & associated responsibilities are reiterated in the following notes.

► 1-Description of the goods in the bill of lading:

It is important to ensure that, when signing the bill of lading, the description of the goods in the bill of lading is accurate (marks, apparent order and condition and number, quantity or weight).

**Consequences of inaccuracy:*

I) - Exposure to claims:

The carrier/company will then be exposed to claims which may be unlikely to be defensible. For example, if the bill of lading indicates that the goods were loaded in good order and condition, but the consignee receives them at the discharge port in a damaged condition, the consignee will be entitled to make a claim for the damage against the bill of lading carrier. Even if the Company is not the carrier, their liability may still be involved, particularly if the Master has signed the bill of lading. Similarly, if the bill of lading indicates that the goods were loaded in a quantity of, for example, 50 bundles, but the consignee receives only 48 bundles at the discharge port, the consignee will be entitled to make a claim against the bill of lading carrier for the shortage. Even if, in the above examples, the goods had actually & truly been loaded in the same damaged condition as they were discharged, or, if only 48 bundles had been loaded, the

consignee would be entitled to make a claim.

In many jurisdictions it will be difficult for the carrier to defend the claim as in most cases; the carrier will not be able to contend that the goods were not loaded as described in the bill of lading. This will invariably be the case if the claim is brought under a negotiable bill of lading transferred to a third party.

The innocent transferee is reliant on the description of the goods when loaded in the bill of lading and is entitled to regard the description as conclusive evidence of their condition.

Conclusive evidence means it cannot be disputed even if there is evidence to the contrary.

II) - Loss of P&I cover : P&I cover may not be available as some club rules exclude cover for claims in certain circumstances where the description of the goods in the bill of lading is incorrect.

III) - Loss of the right to limit liability: The Company may lose its right to limit liability for a claim for cargo damage/shortage.

IV) - Loss of the right of indemnity from the charterer: The charter-party may state that the Master is to sign bills of lading as presented or even that he is to sign only clean bills of lading, i.e. without clausing which presents doubt as to the apparent good order and condition of the goods. However, there will probably be no recourse against the charterer for liability arising from signing bills of lading which inaccurately describe the cargo even though liability may stem from complying with such charter-party provisions. The

Master is under no obligation to sign bills of lading that inaccurately describe the cargo and he does so at his own peril.

V) - Criminal prosecution: There is the possibility that the Company and/or Master will be prosecuted for fraud.

► 2-Inserting Clauses on the B/L & LOIs (letters of indemnity):

Most bills of lading presented to the Master/his authorised agent for signature, contain the shipper's description of the goods. If this description is inaccurate the bills of lading will need to be claused before signing. The charterer and/or shipper may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for issuing bills of lading which are clean, i.e. without clausing, or issuing bills of lading which inaccurately describe the cargo. Such requests should be resisted due to the risks inherent in accepting such letters or undertaking. [See our previous KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-64-2013 (Clarification of some confused legal terms)]

► 3-Inserting dates on the B/L:

**Which date and the relevance:*

Most bills of lading are what are known as "shipped" bills of lading. This basically means that the bill of lading will be evidence of the cargo at the time of loading. The date inserted in the bill of lading will therefore be considered to be the date of shipment and this may have important implications. For example the value of the cargo in the sales contract will usually be based on the market value of the cargo on the date shown in the bill of lading.

Where "received for shipment" bills of lading are issued, these will usually either be returned to the carrier and replaced by "shipped" bills of lading or be made "shipped" bills of lading by inserting the name of the carrying ship and the date of shipment.

**Consequences of inaccuracy:*

It is very important that the bill of lading is signed and dated accurately to record the actual date on which the cargo was loaded. If the bill of lading is ante/post-dated there are serious consequences for the Company. They are exposed to claims from cargo interests and P&I cover may not be available for such claims as rules may exclude cover for claims in certain circumstances where the bill of lading is ante/post-dated.

Charterers and/or shippers may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for issuing ante/post-dated bills of lading. Such requests should be resisted due to the risks involved in accepting such letters or undertakings. [See our previous KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-64-2013 (Clarification of some confused legal terms)]

► 4-Incorporating the charter-party in the bill of lading:

The bill of lading, evidencing the terms of the contract of carriage, frequently ends up in the possession of somebody who is not the charterer. To ensure that the Company is not exposed to risks in excess of its charter-party obligations, and that the contract terms are uniform, the terms of the applicable charter-party should be incorporated in the bill of lading using appropriate wording on the face of the bill of lading.

General wordings, such as "other conditions as per charter-party" or "charter-party terms and conditions incorporated herein" are often insufficient to ensure proper incorporation. It is therefore recommended that the following or similar wording is used: "all terms, clauses, conditions and warranties including the arbitration, choice of law, time bar and time limitation clauses of the charter-party dated ... are hereby incorporated into this bill of lading".

It is very important that the correct charter-party date is inserted into this wording and confirmation of the date should be obtained from the Company.

► **5-Delivery of goods covered by a B/L:** Bills of lading are normally prepared in sets of three originals, which are returned to the shipper or his agent after signature. The ship should retain a non-negotiable copy to confirm that the bill of lading presented in exchange for delivery of the cargo is the same, endorsements aside, in all respects as that issued.

**Delivery under bills of lading which function as documents of title:*

Documents of title order and bearer bills of lading as well as straight bills of lading expressly stating that delivery shall only be made against presentation of an original bill of lading. The statement “One original bill of lading must be surrendered duly endorsed in exchange for the goods or delivery order” appears in a number of bill of lading forms and is an example of such an expression.

The Master is entitled and obliged to deliver the cargo at the destination to the first person presenting such an original bill of lading, unless the carrier, the Master or the ship’s agent is put on notice of some defect or dispute as to title of the person presenting the bill of lading. When the Company has agreed to discharge the goods at a destination other than that stated in the bill of lading or where there has been a serious dispute with the shipper over the clausing of the bills of lading, or in other unusual or suspicious circumstances, the Master should be exercise caution and ask the Company to make appropriate investigations to confirm the position before delivery.

Extra care is needed with order bills of lading because the bill of lading may have been transferred to/by a number of persons. Such transfers will be evidenced

by endorsements of which there may be several on the face and reverse of the bill of lading. The Master should ensure that delivery is made to the last valid endorsee presenting an original bill of lading. As for bearer bills of lading delivery should be made to the person presenting an original bill of lading.

Fraudulent bills of lading may exist, and it is therefore important that the Master thoroughly checks that the original bill of lading presented is genuine and that any endorsements appear genuine.

If delivery is made against fraudulent bills of lading it will be difficult for the Company to avoid liability. When suspicions are raised therefore, the Company should be asked to make appropriate investigation before delivery. Furthermore, for those straight bills of lading which require presentation and for order bills of lading, the Master should be fully satisfied that the person named as being entitled to delivery is the person presenting the bill of lading.

**Delivery under bills of lading not functioning as documents of title:*

Under a waybill the obligation is to deliver the goods either to the named consignee or to the shipper’s nominated recipient of the goods, providing that person is the named consignee or the nominated recipient. Presentation of the original waybill is not necessary. This being the case, the shipper is in control of the right to possession of the goods at all times, and he may direct the carrier to deliver the cargo to a person other than the consignee or even demand that the goods be delivered to the shipper/his representative. The carrier should comply with such a direction (which should be obtained in writing before delivery) even without presentation of an original waybill.

Delivery against straight bills of lading is the same as for waybills. The Master should, however, be aware that the laws of

some countries may permit straight bills of lading to be negotiated by endorsement. Therefore, if an endorsed straight bill of lading is presented for delivery, the Master should ask the Company to make appropriate investigations to confirm the position before delivery.

**Consequences of wrong-delivery or delivery without production of an original B/L:*

- ✓ Exposure to claims. The carrier is likely to be held fully liable for wrongful delivery of the cargo with the consequence of compensating the rightful cargo owner for the full value of the cargo – this could amount to a substantial sum.
- ✓ Loss of P&I cover

►6-Various problems which can arise concerning Delivery:

The Master should inform the Company immediately and seek instructions when:

- ✓ An original bill of lading is presented and another person demands delivery of the same cargo. In these circumstances the Master is on notice that there may be some defect or dispute as to title and should not discharge the cargo until he is authorised by the Company.
- ✓ An original bill of lading cannot be produced. The Master should be aware that, even if an original bill of lading cannot be produced, there may be certain circumstances in which he must nevertheless deliver the cargo. The law or custom of the place of discharge may require it, or in the circumstances it may be reasonable to do so. However, the Master should not act without the approval of the Company.