



June 2018

## Contracts of carriage and bills of lading

# Who is the carrier?

### Introduction

When faced with a cargo claim, one of the first things to consider is the identity of the contractual carrier under the relevant bill of lading. If you are not the carrier, this can be a very easy defence to a claim.

Identifying the carrier may seem simple, especially if an in-house bill of lading is used which displays the company name or if the bill is signed by or on behalf of the master. However, further investigation into the terms of the contract is always necessary to truly establish who the carrier is.

### Charterer's authority to present/issue

Under most charterparties, the charterer will have the express right to present bills of lading to the master for signature. Bills of lading issued and signed by the master (as agent of the shipowner) in this way will likely mean that the owner is deemed to be the carrier under the contract of carriage. Where charterers have this right, the charterer or its agent may even sign the bills themselves with the same result, so long as they indicate in the signature box that they are signing on behalf of the master and the owner.

It is not, though, uncommon for the parties to intend that the charterer should fulfil the role of the contractual carrier, and the charterparty or the bill of lading may make express provisions for this. However, whether or not the charterer will be held as the carrier at law will depend on the construction of the terms of the bill of lading as a whole.

It should also be noted that, in some jurisdictions, the local law does not recognise the concept of a charterer's bill, even though the bill may be signed by the charterer in its own capacity. If this is the case, it is likely that the owner will be held liable in the local court for any cargo claim. It is worth bearing this in mind as the only recourse for an owner against a charterer in this situation is to bring an indemnity claim against the charterer under the charterparty. The indemnity claim against the charterer is more likely to succeed if the charterparty contains an express indemnity provision making the charterer liable to indemnify the owner in the event that the owner is held liable for cargo damage by the third-party bill of lading holder.

### Demise clause

In order for a charterer to avoid any liability as carrier, notwithstanding the fact that bills are issued on the charterer's form, the charterer may seek to include a demise clause on the back of the bill which transfers liability to the shipowner. A common example would be:

*'If the ship is not owned by or chartered by demise to the company or line by whom the bill of lading is issued...this bill of lading shall take effect only as a contract with the owner or demise Charterer as the case may be...who shall be under no personal liability whatsoever in respect thereof.'*

Caution must be used when relying on demise clauses as they are not enforceable in all jurisdictions. This is because such a clause does not clearly identify the party issuing the bill, leading to a lack of certainty for the cargo claimant when making a claim against the carrier.



**Jamie Green**  
Claims Director  
T: +44 20 7680 5611  
M: +44 7500 121 706  
E: jamie.l.green@ctplc.com



**Torbjorn Claesson**  
Senior Claims Executive  
T: +44 20 3320 2290  
E: torbjorn.claesson@ctplc.com



### Discover more

For details of our range of industry expertise visit [www.standard-club.com](http://www.standard-club.com)

[@StandardPandi](https://twitter.com/StandardPandi)

[in The Standard P&I Club](https://www.linkedin.com/company/the-standard-p-i-club)



### Identity of the carrier clause

To avoid uncertainty, the charterer may insist on including an express clause identifying in unequivocal terms that the owner is the carrier under the bills of lading:

*'The contract evidenced by this bill of lading is between the merchant and the owner of the vessel named herein and it is therefore agreed that said shipowner only shall be liable for any damage or loss due to any breach or non-performance of any obligation arising out of the contract of carriage.'*

However, even where an identity of the carrier clause exists, it does not mean per se that the owner will be deemed to be the carrier. This is demonstrated by the leading House of Lords – *The Starsin*<sup>1</sup>.

### Starsin

In *The Starsin*, the charterer was held to be the carrier under the bill of lading despite the fact that the bill contained both a demise clause and an identity of the carrier clause identifying the owner as the contractual carrier. The decisive point was the fact that the bill was signed by the charterers' agent who was described as 'The Carrier' in the signature box on the face of the bill. This took precedence over the typed standard wording on the reverse.

### Warning to members

Members should take care over how bills of lading are issued, as the identity of the carrier will be assessed objectively in line with how a reasonable person would read the bill, regardless of the parties' intentions. Crucially, the wording in the signature box on the face of the bill will likely take precedence over any standard typed clauses on the reverse of the bill and it is this which will ultimately dictate who is liable for cargo claims.

**This article intends to provide general guidance on the issues arising. It is not intended to provide legal advice in relation to any specific query. The law is also not static. If in doubt, The Standard Club is always on hand to assist.**

<sup>1</sup> [2003] 1 Lloyd's Rep 571

This information is published on behalf of The Standard Club Ltd by the managers' London agents:

**Charles Taylor & Co. Limited**  
The Minster Building, 21 Mincing Lane,  
London EC3R 7AG  
Registered in England No. 02561548

Telephone: +44 20 3320 8888  
Emergency mobile: +44 7932 113573  
Email: [pandi.london@ctplc.com](mailto:pandi.london@ctplc.com)  
Website: [www.standard-club.com](http://www.standard-club.com)

Authorised and regulated by the  
Financial Conduct Authority  
FRN 785106

The information and commentary herein are not intended to amount to legal or technical advice to any person in general or about a specific case. Every effort is made to make them accurate and up to date. However, no responsibility is assumed for their accuracy nor for the views or opinions expressed, nor for any consequence of or reliance on them. You are advised to seek specific legal or technical advice from your usual advisers about any specific matter.

The Standard Club Ltd is regulated by the Bermuda Monetary Authority.