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Contracts of carriage and bills of lading An introduction

Introduction

Bills of lading are the cornerstone of nearly all contracts of carriage by sea. Once issued, a bill of lading: (1) acts as a receipt for the cargo shipped; (2) represents the contract of carriage between the receiver and carrier. The carrier is most commonly the shipowner, but often, and in the container trade especially, the carrier can be the time charterer.

For over 200 years, bills of lading have also been treated in law as: (3) a document of title to the goods in question and, in turn, a negotiable instrument. Property in the goods being transported on board a ship can be passed from one buyer to another whilst the sea carriage is still in progress, through an **endorsement** on the bill. A rule of law has developed over time to protect a carrier that potentially has no knowledge of such sales. Upon production of the original negotiable bill of lading, the carrier has sufficient proof of title and can legitimately deliver the cargo to the same bill of lading holder.

The legal issues surrounding bills of lading are vast, as are the international conventions which have been created by the shipping community. These international conventions, including the Hague¹ and Hague-Visby² Rules, and sometimes the Hamburg Rules³, codify the way disputes have traditionally been resolved between parties and protect the receivers of goods, who have historically found themselves subject to onerous contractual terms. The intention of this publication is not to deal with all of these issues, but instead to touch upon a few recurring topics which we believe will be of interest to our membership.

Club cover for cargo claims

The club's cover for cargo claims includes loss of, shortage of or damage to cargo. The club also covers financial loss or damage suffered by a third party arising as a result of the carriage. In line with the International Group (IG), the club only makes cover available for cargo liabilities arising under laws for the carriage of cargo, which are widely adopted internationally. Therefore, under standard unamended P&I insurance, cover for cargo liability is available

only to the extent that the member is, or would have been, liable under the provisions of the Hague or Hague-Visby Rules, or the Hamburg Rules, where these operate by the force of law. Additional liabilities assumed voluntarily by the member are not covered by the club, unless the board exercises its discretion.

Paperless trading

The ideology of the IG, and of the club, is to promote the use of paperless trading systems, also known as electronic bills of lading. A member's P&I cover is available to meet liabilities arising from any electronic bill of lading in so far as these liabilities would also have arisen under a traditional paper bill. If these liabilities arose because of an electronic bill beyond the liabilities attributed to that of the traditional paper bill, then cover is discretionary unless the electronic trading system has been approved by the IG. The three systems so far approved are:

- (a) essDOCS Exchange Ltd (essDOCS) (formerly known as Electronic Shipping Solutions (ESS)) DSUA 2009.3 and DSUA 2013.1 ('**essDOCS**');
- (b) Bolero International Ltd Rulebook/Operating Procedure 1999 ('**Bolero**'); and
- (c) **E-title**™ solution (The Electronic Title User Agreement – version 1.2)

[Several IG circulars and FAQs](#) have been published on the subject of paperless trading, which are well worth a read when it comes to this topic.

Rotterdam Rules

The Rotterdam Rules is an International Convention governing rights and obligations relating to the carriage of goods wholly or partly by sea. The Rules are designed to one day replace the Hague/Hague-Visby Rules, the Hamburg Rules and US COGSA; and aim to provide greater global uniformity in legal regimes governing the carriage of goods. They were sponsored by the UN and require formal ratification by 20 states before they can come into force. Currently, the Rotterdam Rules have been signed by 25 states, but only three⁴ have ratified them to date.



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The Rotterdam Rules maintain broadly the same type of liability regimes as the Hague/Hague Visby Rules and US COGSA, but put greater liability on the sea carrier because:

- there is no exemption from liability for ‘errors in navigation’;
- the sea carrier has a continuing obligation of seaworthiness during a cargo voyage; and
- the Rotterdam Rules contain higher limits of a carrier’s liability.

Initial enthusiasm for the Rotterdam Rules, evidenced by the number of signatures in 2009, suggested that wide ratification would take place. In the event, progress in ratification has been slow. Whilst supportive of the Rotterdam Rules, the IG and the club are against a regionalistic approach. If the Rotterdam Rules are to replace the Hague/Hague Visby Rules, the promulgation process needs to take place between governments, rather than through other initiatives.

Against that background, the IG, through the Pooling Agreement, and the club, through its unamended core P&I cover, do not encourage the early or voluntary adoption of the Rotterdam Rules. Members will be prejudicing their P&I cover if they voluntarily contract on such terms and, as a result may incur liabilities that would not have been incurred if the Hague/Hague-Visby Rules had applied. Such claims will be discretionary and for the club’s board to determine.

Blending vs. commingling

The words **commingling** and **blending** are used interchangeably by many, including seafarers. We consider the vast majority of operations we see in respect of liquid cargoes to be **commingling**, rather than **blending**, activities. In such circumstances, so long as the commingling process is carefully placed on the face of the bill, with sufficient detail, then a member’s P&I cover should meet any resulting cargo liability – subject to the club’s usual rules, terms and exclusions.

Commingling essentially means the operation of loading into the same cargo space parcels of the same product (usually liquid cargo) with the same specification, although from different sources, such as different shippers or ports, but without taking any other active steps in relation to the product/liquid cargo, other than to carry, discharge and deliver it.

Loading the same product with the same specification from different shore tanks, or barges or trucks, etc. from the same port, or the same single terminal, does not in the club’s view constitute commingling. Blending essentially means the same activity as commingling, but with additional activity in relation to the cargo in the form of mixing admixture of parcels with different specifications, or any activity that alters the original specification of the parcel or parcels going beyond merely loading them in the same cargo space.

Blending, on the other hand, is considered quite a rare occurrence on board a ship. If **blending** does occur and liabilities arise in relation to the cargo as a result, then P&I cover *may* not respond if the operation is considered imprudent or improper. Each proposed activity must be assessed on its own facts and technical advice by the club’s managers may well be sought before making a decision as to cover.

In reality, **blending** is usually dealt with contractually by the charterer who assumes all the risk for the activity, with the inclusion of an appropriately worded clause into the charter and/or with the provision of a letter of indemnity (‘LOI’). Of course, as with all things, an LOI is only as good as the signatory, thus countersignature by a bank is usually recommended. If a charterer has no P&I insurance or valuable assets then an LOI can quickly become worthless.

Claims handling

The club has over 50 qualified lawyers and barristers working in house, spread across London, Piraeus, New York, Singapore and Hong Kong. All of our claims handlers have considerable experience in handling cargo claims and the various bill of lading issues that arise in relation thereto. The club through its website, periodic Circulars, Bulletins and regular web alerts also keeps its members up to date on bill of lading and cargo claim issues.

The Standard Club is always on hand to assist. If in any doubt, the reader should contact the authors of this article or their usual club contact.

1. Dated 25 August 1924
2. Dated 23 February 1968
3. The full title of the convention is the United Nations Convention On the Carriage of Goods by Sea 1978
4. The States of Congo, Spain and Togo

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