



PRACTICAL GUIDE

BILLS OF LADING

Clausing bills of lading

Executive summary

- 'Clean' bills of lading or Mate's Receipts should not be issued if the cargo contains observable defects on loading.
- Failing to clause bills of lading may prejudice the P&I cover.
- A charterparty requirement to sign bills of lading 'as presented' does not remove the carrier's obligation to accurately record the apparent order and condition of the cargo on loading.

A. Who is this guide intended for?

This guide is written with the Master, member, in-house claims team or legal counsel in mind, or whoever else is part of the process of issuing/signing the bills of lading.

For additional comments, we refer the reader to the Club's publication *'In Focus: Clausing bills of lading'*

B. What is 'clausing' the bill of lading?

Clausing a bill of lading is the process of inserting written remarks on the bill of lading regarding the quality or condition of the cargo that existed on loading the cargo on board the ship.

C. What is a bill of lading called which is not claused?

A bill of lading that does not contain any remarks (and is therefore not claused) is called a 'clean' bill of lading.

D. Why do shippers sometimes ask for clean bills of lading to be issued, even though the cargo is damaged upon loading?

If the sale of the cargo is financed using Letters of Credit, the Letters of Credit may require that 'clean' bills of lading are issued. If claused bills of lading are issued, the seller of the cargo may not get paid. This is one reason why shippers sometimes ask for clean bills of lading to be issued, even though the cargo is damaged on loading.

E. Should 'clean' bills of lading be issued if the cargo is damaged upon loading?

The Master must insist on clausing any bill of lading where damage or contamination has been observed on the cargo on loading. Clean bills of lading are therefore not to be issued even if the shipper so requires.

If, nonetheless, it becomes a commercial necessity to issue clean bills of lading, this should only be done after due consideration

of the risks involved – and, preferably, accompanied by a Letter of Indemnity (LOI) - but see comments on P&I cover implications of accepting an LOI overleaf.

F. P&I cover - failing to clause the bills of lading

If bills of lading are not claused – when they should have been claused – this may prejudice P&I cover. This means that there may not be any insurance cover for any cargo claim.

G. Issuing 'clean' bills of lading against a LOI

Issuing 'clean' bills of lading in return for a LOI where the cargo is damaged will not reinstate P&I cover. Instead, the LOI will act as a replacement for P&I cover.

If clean bills of lading are issued against an LOI, it is essential that the creditworthiness of the party giving the LOI is considered by the carrier.

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

H. Signing bills of lading 'as presented'

Some charterparties require that the Master signs bills of lading 'as presented' by charterers. A requirement to sign bills of lading 'as presented' does not, however, remove the Master's overriding obligation to accurately record the apparent order and condition of the cargo in the bills of lading.

If the cargo is damaged prior to loading, the Master must, therefore, clause the bills of lading – even though bills of lading are to be signed 'as presented'.

I. What type of remarks are to be used when clausing bills of lading?

- **Full remarks** - remarks should be specific and added in full, setting out the defects noted. Mere reference to a survey report should be avoided where possible.

- **Load survey remarks** - where the remarks noted in the loading survey are too extensive to include on the bill, a clear reference should be made to the survey report. The surveyor's remarks in respect of clausing should be attached e.g. 'Remarks as per Survey Marine's report dated XX.XX.XX as attached.'

J. When should the Master refuse to sign a bill of lading?

The Master should refuse to sign any bill that:

- Incorrectly states the date on which the cargo in question was shipped on board.
- Incorrectly states the port of loading.
- Obviously misdescribes the cargo: its colour; form; quantity or condition.

The Master should also refuse to sign any bill which does not state these details at all.

K. Risk of Mate's Receipts

A 'Clean on board' remark on the Mate's Receipt is only to be inserted if the cargo is without defects.

If there are apparent defects with the cargo, these must be recorded in the Mate's Receipts. The reason is that charterparty terms can require that bills of lading are issued in 'strict conformity' with Mate's Receipts. It is therefore important that the apparent order and condition of the cargo is recorded in the Mate's Receipts.