



PRACTICAL GUIDE

BILLS OF LADING

Original bill of lading travelling with the ship

Executive summary

- The risk of misdelivery is increased if delivery takes place against an original bill of lading carried in the ship's mail.
- Bills of lading should be claused with a warning that one original is in the ship's mail.
- A Letter of Indemnity (LOI) or contractual agreement for transportation only can be sought, but will not provide complete protection against misdelivery claims.
- P&I cover can be prejudiced if delivery is given against an original bill of lading carried in the ship's mail.

A. Who is this guide intended for?

This article is written with the member, in-house claims teams or legal counsel in mind and anyone else involved in carrying an original bill of lading on board.

For an explanation of the legal framework, we refer the reader to the Club's publication '*In Focus: Original bill of lading travelling with the ship*' and recommend that the two articles be read and considered together.

B. Why carrying an original bill of lading on board might be a problem

An original bill of lading is a document of title entitling the holder to demand delivery of the cargo the bill of lading represents.

Bills of lading are usually produced in sets of three identical originals. The danger associated with the carrier carrying one of the original bills of lading in the ship's mail, is that at the discharge port the Master is obliged to put the original bill of lading into the hands of a person who will receive the cargo. If the Master passes the original bill of lading, and thereafter the cargo, to the wrong party, a claim for misdelivery of the entire cargo may follow.

Usually the original bills of lading would be transferred to the receiver by the shipper, whether directly or through a chain of intermediary buyers and banks, and the Master would not be concerned in checking that the party presenting an original bill of lading at the port of discharge was lawfully entitled to hold the bill of lading, or to confirm the identity of the person claiming to represent that party. The mere fact that a party holds an original bill of lading, presents

it to the Master and demands delivery of the cargo, is sufficient, under normal circumstances, for the Master to deliver the cargo to that party.

However, where a bill of lading has been carried in the ship's mail, the Master must first pass the original bill of lading to the party claiming to be entitled to it, before receiving it back in exchange for the cargo. As two other original bills of lading will be in circulation, and as the Master will not be privy to any transactions relating to the cargo, he is not well-placed to judge whether the party at the discharge port, which claims to be entitled to the original bill of lading, is so entitled. The risk of passing the original bill of lading to the wrong party, and of misdelivering the cargo, is therefore increased where an original bill of lading has been carried in the ship's mail.

In view of this risk, since July 1990, all the International Group Clubs have warned against the practice of carrying an original bill of lading on board in the ship's mail.

C. Clausing the original bills of lading

Nevertheless, despite the risks, requests for bills of lading to be carried in the ship's mail continue to arise. Such requests are largely made for logistical convenience. As the bill of lading travels with the cargo to the port of discharge, there is certainty that it will be available at the discharge port, alongside the cargo, upon arrival. This is perceived to be a convenience and to avoid delays caused by the original bills of lading being held up elsewhere. However, the practice will often create more problems than it solves, and it is not advisable to transport an original bill of lading in this way.

If members wish, despite the risks, to comply with such requests, each original bill of lading in the set issued must be clearly claused on its face as follows:

'One original Bill of Lading retained on board against which Bill delivery of cargo may properly be made on instructions received from shipper/Charterers'.

This will act as a warning to anybody considering acquiring the original bills of lading not on board the ship, or providing credit against them, and may therefore minimise the likelihood of a complicated scenario arising on delivery, with multiple parties demanding delivery of the cargo. However, although it may help to reduce risk, it is important to emphasise that this wording will not protect the carrier from a claim for misdelivery if the cargo is indeed misdelivered.

D. Letter of Indemnity

If an original bill of lading is to be carried in the ship's mail, it is recommended additionally that members:

- Request a LOI from the shipper, Charterer and/or receiver (preferably from all parties).
- Before delivery, ask the shipper, and any subsequent holders of the other two bills of lading, to confirm who the proper receiver is, and ask why the other two bills of lading have not been presented.
- Strictly follow all instructions given by the shipper, or subsequent holders of the other two bills of lading.
- Carefully check the identity of the person who presents themselves at the discharge port saying they represent the receiver.

Preferably, the LOI should be worded in such a way that members will deliver the original bill of lading carried on board to a party and person identified by the shipper, or subsequent holders of the other two bills of lading. That way, the risk of incorrectly identifying the person to whom the original bill of lading and cargo are delivered will be on the shipper, or subsequent holder of the bill of lading, rather than the members.

E. Agreement for transportation only

The carrier should also try to agree, where an original bill of lading is to be carried in the ship's mail, that the carrier's role is limited to transportation of the bill of lading only, and that the carrier bears no responsibility for identifying the correct receiver or confirming the identity of the person claiming to represent the receiver at the port of discharge. A contractual agreement of this nature may offer some protection against a misdelivery claim, but this will depend on the circumstances of each case and should not be regarded as any guarantee of protection.

F. P&I cover

For any liabilities arising from misdelivery against a bill of lading travelling with the ship, the Club will consider whether, in the circumstances, the case qualifies for cover under Rule 4 Cargo Liabilities.

If cover is not provided pursuant to Rule 4, it remains only for the member to apply for compensation under the Omnibus Rule, Rule 19, which gives the Club absolute discretion to compensate a member for claims not otherwise covered by the P&I Rules.