



## Claims Guides

# Bills of Lading 1 - Functions of a Bill of Lading

Owners' obligations regarding the receipt, carriage and delivery of the cargo are closely related with the functions of the bills of lading. Below is a general overview of the functions of bills of lading from an English law perspective.

Bills of lading have three main functions, as follows:

### **Evidence of the contract of carriage**

The bill of lading is evidence of the contract of carriage, it is not the contract of carriage itself. That contract between the carrier and the shipper is created when the goods are loaded on board the ship and will therefore already exist before the bill of lading is issued. If the cargo were to be damaged before issuing the bill of lading, the shipper will be able to claim under the contract of carriage as if the bill had been issued. As between a carrier and a consignee, the bill of lading will be the actual contract of carriage.

The contractual carrier under the bill of lading may be the physical carrier (ship owner or demise charterer) or another party (such as the charterer, or sub charterer).

### **Receipt of the goods by the carrier**

The bill of lading records the date on which the full quantity of goods were received by the carrier, evidence of the apparent condition and quantity of the goods on receipt including marks, number, quantity or weight (the "figures"), place of issue and the load and discharge port(s).

English law incorporates the Hague-Visby Rules ("HVR") by the Carriage of Goods by Sea Act 1992. Article III Rule IV of the HVR provides that the figures on the bill of lading will be conclusive evidence between the carrier and a third party receiver (who has been transferred the bill of lading in good faith).

It is therefore important for the owner or charterer member that the bills of lading are issued to describe accurately the goods received on board. It is also important that a record is made of the cargo condition at the time of receipt by the carrier – for example, if the goods were loaded in good condition but damaged shortly afterwards by rain, the bill of lading should be issued clean.

Sometimes the bill of lading will not be claused but will have reference to a survey report. This will not be sufficient for the purposes of protecting the carrier and the surveyor's comments will not be deemed as incorporated into the bill of lading, unless the survey report is attached to all the bills of lading and the pages are numbered so that they form part of the bill of lading together with the bill of lading number stamped on the report.



## Bill of lading as a document of title

The rightful holder of a bill of lading has the right to take possession and delivery of the goods upon surrender of an original bill of lading. This means a bill of lading is different to other transport documents, such as straight bill, which cannot be transferred, or a sea waybill, where only proof of identification is required to take delivery. The HVR does not apply to sea waybills.

It should be noted that the right to take delivery of the goods under a bill of lading (which the ship owner is concerned about) is not the same as taking ownership of the goods. Ownership is determined by the sale contracts (to which the contractual carrier is unlikely to be a party).

Sometimes a cargo claimant demands delivery of the goods at a discharge port under a bill of lading and it turns out they are only a party to a sale contract, which determines they may be the owner of the goods, but they are not the consignee under the original bill of lading. In such a case, a party who only has a right under a sale contract but is not the lawful holder of a bill of lading is not entitled to take delivery of the goods.

## The relationship between charterparty and bills of lading

The bill of lading functions are important to bear in mind whenever a charterer is asking the master to do something regarding delivery of goods and changing details on the bills of lading in exchange for a letter of indemnity (LOI).

The master must think not only about the owners' obligations under the charter party, but also the carrier's separate obligations to cargo interests under the contract of carriage and whether charterers' orders could result in a cargo claim.

## Potential liability as a physical carrier under the bill of lading

The ship owner's primary concern is not the sale contract, but his liability under the contract of carriage as the physical and/or contractual carrier. In some jurisdictions a physical carrier may be held jointly liable as the contractual carrier even if the bill of lading is issued naming charterers or another party as the contractual carrier.

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