



MITIGATING RISK

ORIGINAL BILL OF LADING

- RETAINED ON BOARD

Issues surrounding an 'Original Bill of Lading retained on board' a chartered vessel.


the
charterers
P&I club

An international team of reputable, dedicated and knowledgeable marine insurance professionals, proud of delivering high quality insurance products and advisory services to companies that charter vessels to carry cargo by sea.

Managed by

the MECO group
a MARKEL company



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BILL OF LADING

A detailed list of a ship's cargo in the form of a receipt given by the master of the ship to the person consigning the goods.



SCENARIO

Typically, the commercial practice is intended to overcome the difficulty of the vessel reaching the discharge port before the original bills of lading reach the Receiver through the usual international banking system.



THE COMMERCIAL ARRANGEMENT WORKS IN THE FOLLOWING WAY

01

Ship Releases Bill to Shipper

The *Ship* releases original bills to the *Shipper* at the load port in accordance with the *Mate's* receipts for cargo loaded.

02

Shipper Delivers Bill to Master

The *Shipper* then delivers an original bill back to the *Master* with instructions to retain this original Bill of Lading on board the vessel for the duration of the voyage and deliver it to a nominated *Receiver* at the discharge port.

03

Master Delivers Bill to Receiver

The *Master* retains this original bill on board and delivers it to the nominated *Receiver* on arrival at the discharge port.

04

Receiver Presents Bill to Master

The nominated *Receiver* then presents the original bill back to the *Master* in exchange for delivery of the cargo.

ISSUES

The Bill of Lading carried on board might have the name of the nominated Receiver as Consignee or it might be 'to order' in which case the nominated Receiver would obtain legal title by having the bill endorsed to him by the Shipper. In either scenario the identity of the nominated Receiver needs to be clearly established in order to avoid any risk of delivery of the goods to the wrong person.

01

In the event of mis-delivery the Master could face legal consequences and Owners/Carriers might well breach the terms of their P&I Cover.

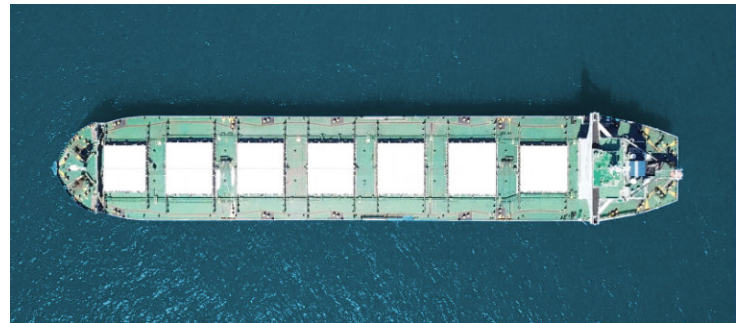
Inevitably, Charterers could also face liability to the extent that they instructed the Master to deliver to their (or Shippers) nominated Receiver and are required to indemnify the Master under the terms of a charter party, Bill of Lading or related agreement.

02

The scope for fraud/accidental mis-delivery cannot be understated.

Owners' P&I Clubs do not approve of Masters carrying original bills of lading on board. They also recommend (where commercial reasons dictate that the practice occurs) that specific endorsements are added to the original bills of lading, for example as below:

One original Bill of Lading held on board against which delivery of cargo may occur in accordance with instructions received from shipper/charterer.



03

Significantly transferring the mis-delivery risk to the shipper/charterer and creating a right to indemnity.

Such an endorsement on all sets of the original bills will have the effect of significantly transferring the mis-delivery risk to the shipper/charterer and creating a right to indemnity if the Carrier under the Bill of Lading is pursued by the legal holder of an original Bill of Lading.

04

Additional measures are often insisted upon by the Master.

These measures including agreement with the charterer and shipper that the Master is not responsible for confirming the correct identity of the nominated Receiver as named by the Shipper. Specific letters of indemnity / guarantees may also be required of the charter and /or shipper.

THE CLUB'S POSITION

Clause 13 of the Charterers Club Cover outlines certain limitations on cover and includes limitation where cargo is delivered without production of original bills of lading or where mis-delivery or cargo occurs.

Specific contractual indemnities given by the charterer would also be subject to cover limitation, for example, letters of indemnity and/or specific arrangements with Owners regarding 'original bills of lading carried on board'.



Assureds should check with their Club Contact before agreeing/incurred liability under arrangements for original bills of lading to be carried on board the vessel.

RISK ASSESSMENT CHECKLIST



All simple and practical risk management efforts to avoid and/or mitigate the risk of mis-delivery of cargo to the wrong person should be considered.



This checklist forms a guide to what could be considered best practice for retaining a Bill of Lading on board. The scenario wouldn't work where cargo is sold or traded but could be used extensively where a charterer owns and controls the cargo being shipped.



Identify an individual rather than a company (or agent) as the nominated Receiver.



Agree a mechanism for the nominated individual to provide conclusive proof of identity to the Master. Make the Master's task easier by requiring clear and certain proof of identity (photo id with proven pedigree would be useful – driver's license /passport etc).



Where sets of original bills of lading are involved (one of which is on board) exercise strict control over the extant sets so scope for fraudulent activity is excluded.



Use Waybills where appropriate although issues of correct identification of the Receiver still apply.



Check that Banking arrangements are not prejudiced by any specific 'Bill of Lading retained on board the vessel' endorsements on original bills of lading.



Pre agree a viable 'Bill of Lading to be retained on board the vessel' arrangement when the vessel is fixed / chartered so that ad hoc solutions are unnecessary. These ad hoc arrangements are often unduly onerous to charterers.



Ensure that bills of lading and Charter party are aligned so that Shippers /Receivers are bound by the agreed 'original bills carried on board' arrangement. Otherwise charterers could be unduly exposed without counter responsibility from cargo interests.



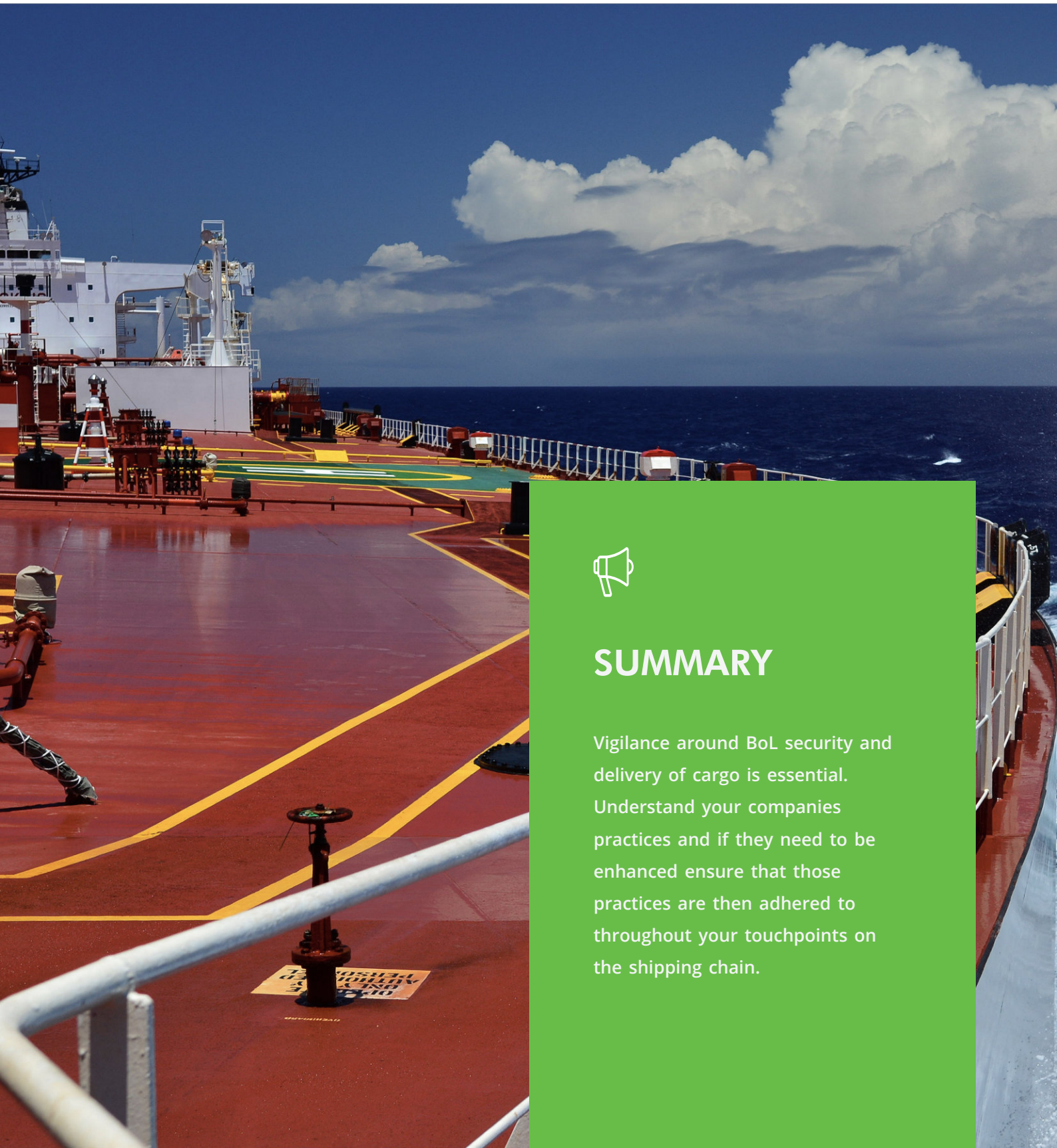
Take particular care if the cargo is not a sole cargo on the ship.



Understand the scope and limitations of Charterers liability insurance coverage



In the real world, the practice is only really suitable where the shipper and receiver are closely aligned, indeed even may be the same company or have a long standing trading relationship and have control over the cargo.



SUMMARY

Vigilance around BoL security and delivery of cargo is essential. Understand your companies practices and if they need to be enhanced ensure that those practices are then adhered to throughout your touchpoints on the shipping chain.

CONTACT US

Charterers or others requesting further information are invited to contact us.



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