

The Most Common B/L Related Problems and Recommendations for Carriers

The bill of lading is a valuable document signed to confirm that the cargo has been received before loading or at the port of loading for transportation. This document shows the relationship between the shipper and the carrier. The most common problems with the bill of lading are summarized in the following article;



1 - In cases where it is requested to sign a clean bill of lading in return of the loading of damaged or defective cargo brought to the loading port;

If the cargo brought to the port of loading is requested to be loaded to the vessel in damaged or defective condition and the shipper insists to the master that the remark "clean on board" is written on the bill of lading, although the cargo is defective, the master must refuse to load the cargo in the specified condition, or approve the loading, provided that the exact condition of the cargo is written on the bill of lading.

The master is obliged to put the remarks indicating the exact condition of the cargo loaded in his capacity as the agent of the carrier. In carriage operations subject to a letter of credit, banks do not want a "remark" to be lodged on the bill of lading and since they request issuance of a "clean" bill of lading pursuant to the L/C requirements, they may request stating clean loading on the bill of loading although defective cargo is loaded by presenting a LOI to the master or the carrier. Most of the time, when the vessel arrives at the port of discharge, we witness the arrest of the same based on the claim that the damaged cargo is delivered as the cargo receiver is not aware of the letter of indemnity issue between the carrier and the shipper. When the ship is arrested, both the charterer and the shipper often disappear and the carrier is left alone with such problems. In such cases, declaring that the cargo known to be not clean actually is considered to be clean by accepting a LOI is considered as a kind of fraud.

P&I insurers shall not cover any damages to be incurred by the carrier in any liability arising from the shipments where such LOIs are accepted by the carrier. The carrier will have to deal with the legal proceedings to be initiated by the cargo receivers on his own or he will have to convince the shipper / charterer to protect himself.



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II - In cases where it is requested to deliver the cargo at the discharge port without presenting the original bill of lading;

In some cases, delays may occur in the presentation of the original bill of lading in the event of the sale of the cargo more than once by changing hands and problems generally occur due to this delay. In some cases, the bill of lading may be lost for various reasons. The receiver of the cargo may claim that the bill of lading has been lost, stolen or there has been a delay in arriving at the destination port. In these cases, the risk of delivering the cargo to a wrong counterparty or fraud may be encountered.

Although it is not recommended to deliver the transported cargo to the buyer without presenting the original bill of lading, such delivery is a procedure applied in international trade. In case of delays in the chain of delivery of the documents and selling the cargo when it is in transit, the original bills of lading usually does not arrive at the destination port when the vessel arrives at the port of discharge.

When such circumstances occur, the shipper agrees to deliver the cargo, assuming that a Letter of Indemnity (LOI) shall be received from the charterer or receiver. In many cases, no problem is encountered in delivering the cargo in this way. However, although the parties are familiar with this practice, in some cases continuity may cause indifference. Therefore, it is necessary to remember the risks of the said delivery method and to act with prudence in order to minimize these risks.

The first danger that may arise from the delivery of the cargo carried without the original bill of lading is the delivery of the cargo to the wrong receiver. When the bill of lading is presented to the master at the discharge port, it serves as a key for the delivery of the cargo. In the absence of this key, the Letter of Indemnity (LOI) shall not absolve the carrier from the liability that may arise from the delivery of the cargo to the wrong receiver.

The lawful holder of the bill of lading may sue the owner of the vessel for the delivery of the cargo to the wrong receiver and at this stage, the ship owner will have to resolve the matter at his own discretion without support of P&I insurer.

When these circumstances are encountered, the best way is not to start discharge until the original bill of lading is presented. If there is no provision in the "Charter Party" the owner of the vessel cannot be obliged to deliver the cargo without the original documents. However, in these cases, due to the commercial reasons, the ship owner may agree to deliver the cargo with a Letter of Indemnity without presentation of the original bill of lading. If there is

such a provision in the Charter Party, it may not be claimed that no delivery shall be made without the presentation of the original B/L although the party requesting to take delivery of the cargo is not the beneficiary receiver and the ship-owner does not feel safe.

What could be the reasons behind late delivery of the original bill of lading to the discharge port? One of the reasons may be the delays in the bank and another is the bank's holding of the original bill of lading until the seller receives payment under the letter of credit sales.

As a result, our recommendation is that the master should be careful in identifying the party appeared to receive the cargo, carefully record all the information of the person arriving to take the delivery and ensure that the details of this person are the information on the Letter of Indemnity or not to perform the delivery without making sure that such person is the same person notified by the charterer. As a matter of fact, the prudent ship owners try to obtain this information before the ship arrives at the port and to ensure their checking in advance.

The second danger that may be encountered in delivering the cargo without submitting the original bill of lading is related to the insurance coverage. It should be well known that the problems that the owner may face due to the delivery of the transported cargo without the original bill of lading will not be covered by the P&I insurer.

The third danger may be the problems arising from the failure of the owner, who gives consent for to the delivery of the cargo with a Letter of Indemnity without submitting the original bill of lading, to pay attention to the contents of the Letter of Indemnity offered by the charterer. For example, while a standard Letter of Indemnity states "Allows discharging of cargo", in some cases, this Letter of Indemnity may have been amended and states "Allows the delivery of cargo". The discharge and delivery of the cargo actually correspond to two different processes. An action may be brought in the future against the owner, who performed the delivery of the cargo despite of the indication allowing the discharge of the cargo only, based on the claim that the cargo has been delivered to wrong receiver and the vessel may be arrested at any port by the actual receiver of the cargo.

The delivery of the cargo without the original bill of lading is a method applied in practice. However, P&I insurance coverage will not be applied for the risks that may arise from this delivery method and the carrier will be deprived of the support of the insurer in such cases.

