

Circular From NORTH

Date: 3 November 2021

## Risks Arising When Issuing Bills at the Discharge Port

**Since the start of the Covid-19 pandemic, shipowners and carriers have faced an increase in requests to issue bills of lading at the discharge port.**

Such requests by charterers introduce risks which need to be understood to limit exposure to cargo claims and delays.

### Place of issue

Customary practice is that a bill of lading is issued and released to the shipper at the load port, either by the Master or by the shipper or charterers (or their appointed agent) in accordance with the Master's Letter of Authority. The shipper then presents one original bill of lading to their bank to receive payment. Once payment is made, the bank releases it to the receiver.

Although the place of loading must be named on the bill of lading, it is not essential that a bill is issued at the load port. If the place of issue is not the load port, the place of issue is still important as it affects the compulsory application of the Hague, Hague-Visby or Hamburg Rules in the contract of carriage.

### Risks with issuing bills at the discharge port

While it is not unusual for bills of lading to be issued in places other than the load port, caution should be exercised when the place of issue is the discharge port.

This is because the agent at the discharge port is often appointed by the cargo receiver. So **by agreeing to authorise the charterer's agent to issue the bills of lading at the discharge port, the carrier may inadvertently bypass the shipper and facilitate the unauthorised release of the original bill of lading to the cargo receivers before they have paid the shipper for the goods.** They might also be preventing endorsement of the bill of lading by the shipper to allow lawful transfer of rights under the document to a new holder.

The reason behind the recent increase in such requests is the delayed arrival of the original bill at the discharge port due to alleged disruption in courier services. However, there is a risk that this practice may

be exploited to gain access to the goods without paying for them.

### **Mis-delivery and claims for delays**

As a consequence of this practice, shipowners and carriers have found themselves drawn into acrimonious disputes between the cargo sellers and receivers.

In one such case, the owner agreed to charterer's request that the receiver's agent issue the bills of lading. The agent then released the bills of lading to the cargo receivers and discharge commenced against presentation of that bill of lading. When the shipper became aware, they applied to the local court to stop delivery of the cargo as the receivers had yet to pay for the cargo.

The vessel was detained for a month at the discharge port while the local court considered the unpaid shipper's application. In addition, the lack of proper endorsement of a bill of lading issued in these circumstances can result in the carrier losing legal protection against a mis-delivery claim.

Under English law this risk exists for both straight and 'to order' bills of lading.

### **Making reasonable enquiries**

**A shipowner or carrier who is considering such a request by the charterer should firstly make enquiries to ensure the shipper is aware and has approved the issuance of the bills of lading at the discharge port.**

#### **Actions by the shipowner or carrier can include:**

- Seek confirmation that the shipper is aware and authorises both the issuance and release of the bill of lading at discharging port.
- Ask the charterer for the details of the agent at the discharge port and find out if this agent is in fact the receiver's agent. It is this agent that is most likely to expose a carrier to a claim from an unpaid shipper by short circuiting the process and authorising issue of a bill of lading to the receiver directly.
- It may be necessary to appoint a separate agent to issue the bills of lading on the owner's behalf at the discharge port, preferably in consultation with the shipper.
- The shipper should provide a Letter of Authorisation, confirming in writing that a named agent at the discharge port is authorised to issue and release the original bills of lading.
- If the shipper's agent is the same as the receiver's agent, then the shippers should clearly state that they are aware of this conflict.
- The Master's Letter of Authorisation to the charterer's agent to issue the bill of lading on their behalf should clarify that the bills be issued to the shipper or their nominated agent as per the shipper's Letter

of Authorisation.

- An implied and/or express indemnity against the charterer under the Master's Letter of Authority may not be preserved if the owner does not first seek to satisfy themselves of the shipper's knowledge.
- If a straight bill of lading or a bill of lading specifying the consignee as merely "to order" is to be issued, arrangements still need to be made for the shipper to endorse the bill of lading (either in blank or to a named consignee) after it has been issued.

Source of Information: The North P&I Club