

# **E-BILL OF LADING**

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# THREE FUNCTIONS OF BILL OF LADING

- Receipt of goods
- Evidence of the contract of carriage
- Document of title (negotiable)

# **SHORT HISTORY OF BILLS OF LADING**

# HARD COPY

- 11th century – First Book of Lading
- 14th century – First Bill of Lading - Genoa
- a special clerk responsible for keeping the registers of these goods,
- an incorrect entry in the register, they would cut off his right arm and mark his forehead with glowing iron
- Both show the importance of the trust into document.
- middle of the 13th century:

statutes of Marseille 1253-1255, Ancona 1397, or Genoa 1441 (Sessari from 1316 contains the document with the name pulizza, Italian name for BL; polizza di carico), the statute of Genoa named apodixia (Latin name for a BL). Other designations: French *connaissance*, German *Konnossement* and the Spanish *conoscimiento*.

Comparison with the trust with the Maghribi traders: Maghribi were using *in personam* trust mechanism. Genoese traders used *in rem* trust (the record).

- The L'Ordonnance de la Marine of 1681 implicitly established the BL function of a receipt (later confirmed in the Code de Commerce).
- Transferability - the second half of the 16th century (consignee was not known at the time of issuing the BL)
- the evidence of the content of the contract – also dated to the 16th century. (BLs of that time did usually did not contain contractual provisions. Some BLs contained provisions usually reserved for the charter-parties)
- Lickbarrow v Mason from the 18th century
- Newson v Thornton from the 19th century
- The Liverpool draft of the BL of 1882, the Hamburg Rules of Affreightment of 1885, the Harter act of 1893, the Hague Rules of 1924 the Visby Protocol of 1968, Hamburg Rules 1978, Rotterdam Rules 2008.

# EBILL OF LADING

- The Hamburg Rules 1978: the possibility of electronic signature of a BL.
- The CMI Rules for Electronic Bills of Lading 1990.
- UNCITRAL's Model Law on Electronic Commerce 1996 and later Model Law on Electronic Signatures
- Rotterdam Rules of 2009
- BIMCO adopted a standalone Electronic Bill of lading Clause in 2014
- UNCITRAL's Model Law on Electronic Transferable Records from 2017:
  - A. Two main principles: Functional equivalence & technological neutrality
  - B. Requirements of singularity and control
  - C. BL has to be: original & unique

**INTERNATIONAL GROUP OF P&I CLUBS  
REQUIREMENTS FOR  
ELECTRONIC TRADING SYSTEM PROVIDERS**

**Approval of system of electronic BL**

These requirements are for electronic trading system providers. They form the generic specifications for electronic trading system providers seeking International Group of P&I Clubs Approval.



# LEGAL CHALLENGES

1. The system must be able to accomplish a transfer of title, rights, and liabilities (endorsement as a matter of law).
2. There must be a signature provision whereby the parties agree that an electronic signature is a valid signature.
3. A mechanism is necessary whereby parties must agree not to dispute that the e-bill is a bill of lading.
4. A mechanism is necessary whereby users can sue and be sued.
5. The system must ensure that treaties, conventions, and national laws which ordinarily apply to a paper bill of lading are applicable as if the e-bill were a paper bill.



# LEGAL CHANLEGES

6. The operator/system provider must accept liability in case of system failure.
7. The system must allow for clausuing, accomplishment, and rejection of the e-bill.
8. There must be sufficient evidence of the terms of the contract of carriage.
9. The system must expressly exclude application of the Contracts (Rights of Third Parties) Act of 1999.
10. The operator or system provider must carry adequate limits of liability in their insurance to cover liabilities arising from system fault or failure of any nature.

# AVAILABLE EBL SERVICES WITH IG P&I APPROVAL

- The Bolero electronic version of paper with the use of legal rulebook and technology that can replicate the functions of the traditional paper BL.
- essDOCS the company offers the BL a system called CargoDocs eB/Ls. CargoDocs is a web-based platform. The digitalization, creation and approval of electronic original documents: through DocHub and the exchange and legal transfer via DocEx.
- e-title solution: provides contractual validity through a multilateral agreement to title transfers. Title transfers are made possible by peer-to-peer technology.
- The edoxOnline provides the industry with a collaborative digital platform to streamline the issuance of shipping and commercial documents.
- WAVE: distributed ledger network using blockchain technology to enable the parties in carriage and sales contract to issue, exchange, and sign different documents. They do not use a central server or registry.
- The CargoX created the first blockchain eBL in history. The CargoX platform enables blockchain document transfer (BDT), and the company aims to build digital trust between trading companies in a mistrusting digital environment.

# LEGAL CHALLENGES

There are different players from different background that use the bill of lading and all have to agree to dematerialised BL.

Question: who is entitled to demand the original (only the beneficiary of receiving of cargo and then the issuer upon the delivery of cargo).

The functions of BL and different players in different contracts and legal relations.

## 1. B2B:

- parties of contract of carriage (issuer to shipper, shipper to next the beneficiary or of consignee),
- Parties of contract of sale (seller to bank for LC),
- Shipper or seller to insurance company.

## 2. B2A:

- Exporter or importer to customs office

## **contract of carriage**

shipper

carrier

consignee

BL

## **contract of sale**

seller (sellers bank)

LC

(buyer's bank) buyer

exporter

importer

# LEGAL CHALLENGES

- Should the providers of eBL platforms ensure "Know your customer" (KYC) of the issuer of eBL?
- Is it possible to achieve functional equivalence of the paper BL with eBL?
- Is an eBL valid document?
- What should the holder of an eBL do if authorities in certain country do not accept eBLs?
- Interoperability of eBL providers?

**THANK YOU**