



FEBRUARY 7, 2003

CIRCULAR NO. 4/03

TO MEMBERS OF THE ASSOCIATION

Dear Member:

BILLS OF LADING – DELIVERY OF CARGO – KOREA AND CHINA

Members will be aware that liability arising from delivery of cargo without production of an original bill of lading is not covered under Club Rules unless the Directors in a particular case decide otherwise.

Two years ago, Circular No. 2/01 of January 26, 2001 recommended revised wordings for Standard Form Letters of Indemnity and Bank Join In agreements for use by Members where requests are made to deliver cargo without production of original bills of lading.

Since then, a number of Clubs have reported problems in regard to the discharge and delivery of cargo at ports in the Republic of Korea and the People's Republic of China where, following discharge and pending collection by receivers, cargo is placed in a bonded warehouse or a customs-controlled holding area.

The purpose of this Circular is to remind Members:

- (i) that they should not deliver cargo without production of the original bill of lading unless no other option is available; and
- (ii) where they have no other option, they should only deliver cargo against a Standard Form Letter of Indemnity and Bank Join In agreement; and

specifically to provide additional guidance to protect Members discharging cargo at ports in the Republic of Korea and the People's Republic of China.

Korea

At ports in the Republic of Korea, cargoes are often discharged from vessels and placed in a bonded warehouse pending collection by the cargo owner. The bonded warehouse may be owned either by the consignee, a so-called "self-use" bonded warehouse, or by an independent company unrelated to the consignee.

In either case, it is the owner's responsibility to obtain an original bill of lading before delivering cargo. Under Korean law delivery occurs when control of cargo is effectively transferred from the carrier or his agent to some other party, except in the case of CY / CY cargo when delivery takes place on cargo leaving the container yard.

Accordingly, in the case of a “self-use” bonded warehouse, since control of cargo is effectively transferred when it leaves the carrier’s custody (usually at the ship’s side), delivery takes place at this point. In the case of an independent warehouse company, control of cargo is not transferred from the carrier until it leaves the warehouse – at which time delivery takes place.

In a number of cases, cargoes have been released from both independently-owned and self-use warehouses without production of an original bill of lading. In certain of these cases, although the consignee has taken delivery of cargo, it has not been the bill of lading holder. Subsequently, the bill of lading holder, usually a bank, has claimed against an owner when it has been unable either to obtain payment from the consignee, or to recover the goods themselves.

There are a number of steps a Member can take to provide protection in such circumstances:

- a. If the Member is asked to transfer control of, and accordingly deliver, cargo without first receiving the original bill of lading, this should only be done subject to the provision of a Standard Form Letter of Indemnity and Bank Join In agreement as referred to in **(ii)** above.
- b. A Member is not obliged to discharge cargo to a self-use warehouse. If there is an alternative, a Member can insist that cargo be discharged to an independently-owned warehouse. Alternatively, a Member may retain custody of cargo until production of the original bill of lading or until security is provided in accordance with **(ii)** above.
- c. Where a Member discharges cargo to an independently-owned warehouse, it is recommended that the Member contract with the independent warehouse owner on such terms as to prevent the warehouse from delivering cargo without production of the original bill of lading and/or the Member’s consent together with an undertaking to indemnify the Member should cargo in fact be delivered without production of the bill of lading and/or the Member’s consent.
- d. Where a “notify” party is named in the bill of lading (often the cargo owner or a bank), that party should be consulted before the Member transfers control of the cargo.

Members are also warned not to deliver cargo at Korean ports against the presentation of an original unendorsed bill of lading. In the past, Korean banks have been prepared to release an original unendorsed bill of lading to the local receiver in order to facilitate discharge and delivery while, at the same, time providing extended credit terms.

The Korean courts have found such delivery by a carrier to be wrongful. Members are therefore warned that liability arising from the delivery of cargo against an unendorsed bill of lading is not recoverable under Club Rules unless the Directors should decide otherwise.

China

At ports in the People’s Republic of China, cargoes are often discharged from vessels to customs-controlled warehouses or holding areas, pending collection by the cargo owner, against surrender of the original bill of lading. In a number of cases, forged bills of lading have been used to obtain delivery of cargo, probably with the knowledge of customs officials, agents’ clerks or employees of the terminal operators. In at least one case, a high level anti-corruption investigation was conducted resulting in a number of customs officials being arrested.

Since effective control over the cargo in ports in China is practically impossible following discharge, and rights of recourse against customs officials, ships agents and terminal operators are of questionable value, there are a number of steps a Member should take to reduce the risk of exposure:

- a. If a Member is asked to deliver cargo without first receiving the original bill of lading, this should only be done subject to the provision of a Standard Form of Letter Indemnity and Bank Join In agreement as referred to in **(ii)** above.
- b. A Member is not obliged to deliver cargo without production of the original bill of lading and may retain custody of the cargo until it is produced, or until security is provided in accordance with **(ii)** above. Furthermore, it may, in certain circumstances, be possible for a Member to apply to the courts for an appropriate order providing that cargo can only be released against production of the original bill of lading.
- c. Alternatively, a Member may consider discharging cargo into the custody of the customs authority with a protective agent or legal representative being instructed, subject to the terms referred to in paragraph **c.** in the section dealing with Korea, above. The Managers would also recommend that, where permitted, a lien be immediately placed on cargo to ensure that delivery does not take place without the payment of storage charges incurred.

These recommendations apply equally to shipowners and charterers. Both are advised not to accept any personal guarantees offered by a charterer or sub-charterer in exchange for allowing cargo to be discharged without production of the original bill of lading.

If any Member has further questions in regard to the above, or generally, the Managers will, as usual, be pleased to respond.

Yours faithfully,
Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB