

Bill of lading
(13 & 20/6/2005)

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To: Transport Industry Operators

21 April 2005

Seminar

Bill of lading

The bill of lading is very important to the shipping industry as well as the international trade. It is the best evidence of the contract of carriage. It contains the contract terms between the carrier, the shipper and consignee governing the rights and obligations of the parties. It is also a document of title to the goods. This gives the confidence to the seller and buyer to trust each other in the international sale of goods. On one hand, the seller knows that the goods will not be released until it receives the payment of the cargo value. On the other hand, the buyer knows that it has the goods to take delivery after it makes payment for the cargo value.

As part of our transport risk management services to the transport industry, we will hold a seminar about the basics of the bill of lading. We will use Negotiable FIATA Multimodal Transport Bill of Lading (ICC Publication 481) as an example to examine the important functions and the common clauses of the bill of lading. The details are as follows:

1. Date : Monday, 13 June 2005 (3:30pm – 5:30pm)
2. Venue : The Hong Kong General Chamber of Commerce - Theatre, 22/F., United Centre, 95 Queensway, Hong Kong.
3. Speaker : Mr Richard Chan
4. Language : Cantonese
5. Fee : HK\$150 per person
6. Outline : carrier's receipt of goods
: best evidence of contract of carriage
: document of title to goods
: carrier's identity
: shipper's responsibility on cargo details and packing
: carrier's liability for cargo loss, damage or delay
: paramount clause of Hague Rules 1924 or Hague Visby Rules 1968
: carrier's liability limitation of 666.67SDR/package or 2 SDR/kg whichever is the higher for cargo loss or damage
: carrier's liability limitation of twice the freight for cargo delay
: Himalaya clause benefiting carrier's servants, agents or subcontractors
: liberty to carry
: freight without set off
: general lien
: general average indemnity and security
: 6-day cargo loss/damage notice
: 9-month suit time limit
: law and court of carrier's place of business

Please fill in the attached enrollment form and send it to us with your cheque for payment of the attendance fee.

Yours faithfully

For and on behalf of

SUN MOBILITY INSURANCE AND CLAIMS SERVICES LIMITED



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CTIB A MEMBER OF THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

To: Transport Industry Operators

7 May 2005

Seminar

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1. Date : Monday, 20 June 2005 (3:30pm – 5:30pm)
2. Venue : Theatre - 22/F., United Centre, 95 Queensway, Hong Kong.
3. Speaker : Mr Richard Chan
4. Language : Cantonese
5. Fee : HK\$150 per person
6. Outline :
 - carrier's receipt of goods
 - best evidence of contract of carriage
 - document of title to goods
 - carrier's identity
 - shipper's responsibility on cargo details and packing
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Simon Chan
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Seminars – 13 & 20 June 2005

Bill of Lading

B/L functions

The Bill of Lading usually has three functions. It is a *receipt* of the goods by the carrier, the best evidence of the *contract of carriage* and a *document of title* to the goods.

FIATA B/L

Let us now look at the *Negotiable FIATA Multimodal Transport Bill of Lading* (ICC Publication 481) as an example to examine the functions and common clauses of the bill of lading.

Contract of Carriage

The goods and instructions are accepted and dealt with subject to the terms and conditions on the front and back pages.

Receipt of goods

Taken in charge by the carrier in apparent good order and condition, unless otherwise noted herein, at the place of receipt for transport and delivery as mentioned in the B/L.

Document of title

One of the original of the Bill of Lading must be *surrendered* duly endorsed in exchange for the delivery of the goods. After one of the original Bill of Lading has been accomplished, any other originals of the Bill of Lading will be void.

Negotiability

The negotiable bill of lading constitutes *title to the goods* and the holder, by endorsement of the bill of lading, can receive or transfer the goods.



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Definition of carrier

The freight forwarder under the Bill of Lading is the Multimodal Transport Operator who assumes the role of the *carrier* to undertake to carry the goods from the place of receipt/port of loading to port of discharge/place of delivery by one or more than one mode of transport.

Definition of merchant

Merchant means the shipper, consignee, holder of the bill of lading and owner of the goods.

Shipper's obligations

The shipper is responsible to provide the carrier with all the *particulars* relating to the nature, marks, number, weight, volume, quantity and dangerous character of the goods. The shipper shall indemnify the carrier against all losses, damage and expenses resulting from any inaccuracy or inadequacy of such particulars.

Defective/insufficient packing

The carrier shall not be liable for any loss, damage or expense caused by *defective or insufficient packing* of the goods.

Carrier's obligations

The carrier shall be liable for loss, damage or delay of the goods while the goods are *in its charge*, unless the carrier proves that there is no fault or neglect of its own, its servants, agents or subcontractors.

Paramount Clause

According to the *paramount clauses* of the bill of lading, the *Hague Rules* 25 Aug. 1924 (or the Hague-Visby Rules 23 Feb. 1968 if enacted in the country of shipment) shall apply to all carriage of goods on deck or under deck by sea and by inland waterways. The Carriage Of Goods by Sea Act of the USA (COGSA) shall apply to carriage of goods by sea on deck or under deck if compulsorily applicable to the bill of lading.



Carrier's liability limitation

Compensation for loss or damage of the goods shall be in market value of the goods at the place and time they are or should have been delivered. The carrier shall in no event be liable for more than *666.67 SDR per package or 2 SDR per kg* of gross weight of the goods lost or damaged *whichever is the higher*, unless the shipper have declared the value of the goods on the bill of lading before the carrier has taken the goods in his charge. 1 SDR is about US\$1.5. The liability of the carrier under COGSA where applicable shall not exceed US\$500 per package. The carrier's liability for delay, or consequential loss or damage shall be limited to *twice the freight* under the bill of lading. The carrier cannot limit liability if the loss, damage or delay resulted from a personal act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Contract / tort

The bill of lading terms apply to all claims *in contract or in tort* against the carrier.

Himalaya clause

The bill of lading conditions apply whenever claims in contract or in tort are made against *any servant, agent or subcontractor of the carrier*. However, if the loss, damage of the goods resulted from a personal act or omission of such persons done with intent to cause damage, or recklessly and with knowledge that damage would probably result, such persons cannot rely on the bill lading terms to limit liability.

Liberty to carry

Without notice to the merchant, the carrier has the *liberty to carry* the goods on or under deck and to choose or substitute the means, route and procedure in the handling, stowage, storage and transportation of the goods.



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Cargo delivery

The goods should be deemed to be delivered when the goods have been at such place at which the carrier is entitled to call upon the merchant to take delivery. The carrier can store the goods at the sole risks of the merchant, and the carrier's liability shall cease. The cost of such storage shall be paid by the merchant.

Freight charges

Freight shall be paid in cash without any reduction of any claim, counter claim or set off. Freight shall be considered as earned by the carrier when the goods have been taken in his charge and not to be returned in any event. Despite the acceptance by the carrier of instructions to collect freight, charges or other expenses from any other person, the merchant shall remain responsible for such money.

General Lien

The carrier shall have a *lien* on the goods and any document relating thereto for any amount due at any time to the carrier from the merchant.

General average

The merchant shall indemnify the carrier in respect of any claim of a *general average* nature and shall provide such security as may be required by the carrier.

Notice time limit

Unless *notice* of loss or damage to the goods is given in writing by the consignee to the carrier when the goods are delivered or unless the notice is given within *six consecutive days* after the delivery if the loss or damage is not apparent, such delivery is prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.



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Suit time limit

The carrier shall be discharged of all liability unless *suit* is brought within *nine months* after the delivery of the goods or the date when the goods should have been delivered.

Invalidity

If any clause is held to be invalid, the *validity* of the bill of lading and the remaining clauses shall not be affected.

Law and jurisdiction

Actions against the carrier may be instituted only in the place where the carrier has his place of business as stated on the front of the bill of lading and shall be decided according to the *law* of that country.

Richard K. W. Chan (richardchan@sun-mobility.com)

13/6/2005 & 20/6/2005

Director

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Multi-modal transportation involves far more complicated liability regime than port-to-port or airport-to-airport carriage. Pure international sea or air transport often affords better protection by international conventions. Conversely, multi-modal transport entails a variety of operational risk elements on top when the cargo is in- transit warehouse and during overland delivery. Fortunately, these risks are controllable but not without deliberate efforts. Sun-Mobility is the popular risk managers of many multi-modal operators providing professional assistance in liability insurance, contract advice, claims handling, and as a matter of fact risk consultant for their staff around-the-clock.