



BILL OF LADING



BILL Of LADING

Bills of lading are at the core of international trade. By nature, they involve sellers, buyers and carriers who are often located in different countries but share various rights and obligations. This course assists participants to identify problems that have arisen in the past in the courts or by arbitration and to minimize the effect of similar problems they may experience during their professional careers. Participants will also be introduced to international rules and legislation, their effect on the carriage of goods by sea and how they have been interpreted by judges and arbitrators in the past.



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Topics covered:

- the bill of lading as a receipt
- who is the legal carrier under the bill of lading?
- the bill of lading as a contract of carriage
- the problems caused by negotiating bills of lading
- the protection of third parties
- combined and through transport bills of lading
- the importance of international regulation
- which is the governing contract of carriage?
- the bill of lading as a document of title
- remedies for claims
- letters of indemnity
- switch bills of lading
- comingling of cargoes.



Fig 1

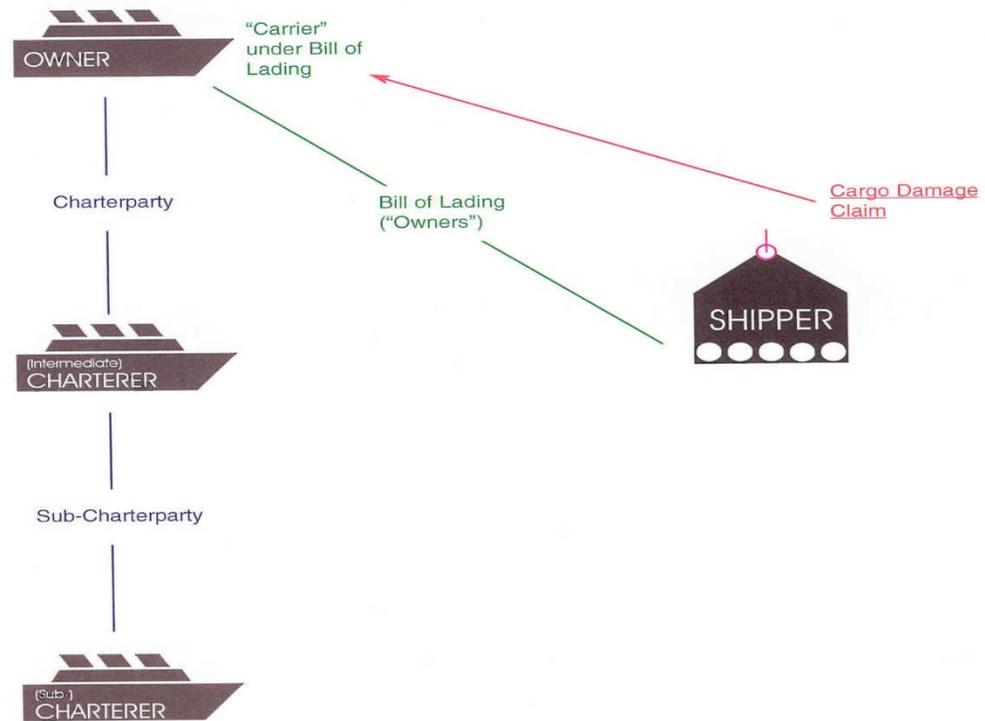




Fig 2

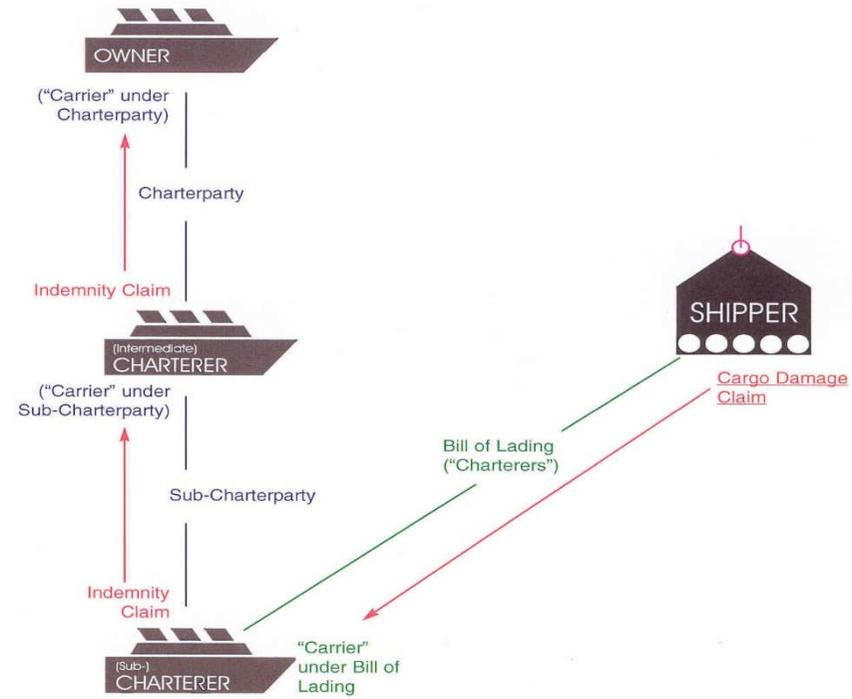




Fig 3

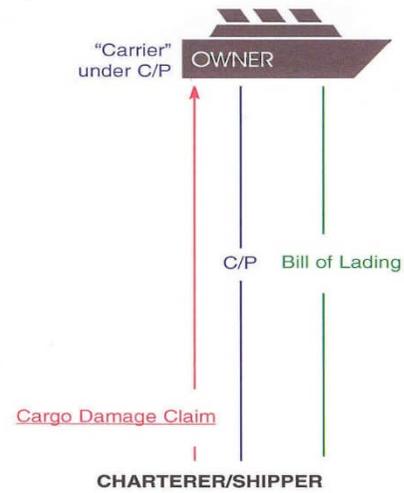
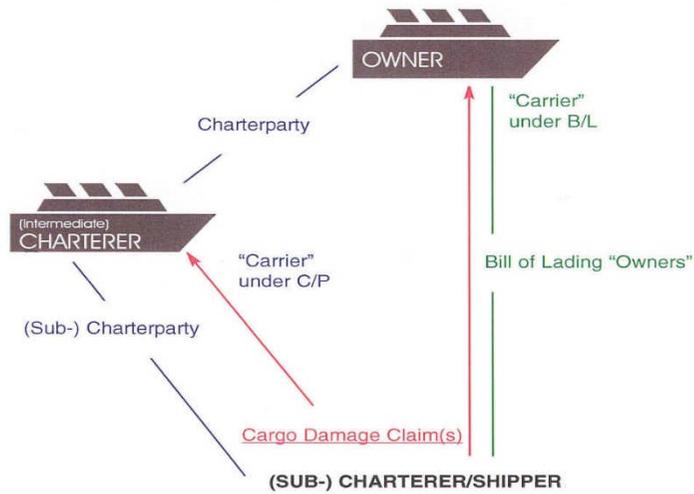




Fig 4





BILL Of LADING

PART 1



BILL Of LADING

Bill of Lading

It is a document issued by the shipping company or its agent acknowledging the goods mentioned there in, on board the carrying vessel, in apparent good order and condition unless otherwise indicated there in, for shipment to the consignee on terms and conditions as agreed upon as to their carriage. It is a document of title to the goods described in it.

As per bill of lading Act 1856 it is the transport document of the bills which is applicable to a carriage of goods solely by sea. Bill of lading is a quasi negotiable instrument شبه صك قابل للتداول.



BILL Of LADING

Bill of Lading means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

The bill of lading is more important than the charter party because the negotiable bill of lading gives the right to receive the goods.

In fact the charter party is only a contract of affreightment that only represents the hire of tonnage space.



BILL Of LADING

Particulars of Bill of lading

- i. Name of the shipper, consignee and notify party with address.
- ii. The name of the carrying ship.
- iii. Evidence that the goods have been loaded on board.
- iv. The port of shipment and discharge.
- v. The shipment dates.
- vi. Amount of freight paid or unpaid.
- vii. Shipping marks etc.



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Different kinds of B/L

Clean B/L: A bill of lading which acknowledges the receipt of the goods on board the carrying vessel in **apparent good order and condition** and does not indicate any defective condition of the goods or packages is called a clean Bill of lading.



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Claused B/L: A Bill of lading which expressly declares a **defective condition** of the goods and/or packages is called a claused B/L.

Combined B/L: When a B/L **covers different mode of transport** say, ship, Train, Truck etc, it is called combined Bill of lading. Transshipment is normally allowed under combined B/L.

Through B/L: A through bill of lading is one which **covers the entire voyage** from the port of shipment to the port of destination. If not prohibited, transshipment and several mode of transports is allowed under through Bill of lading.



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Straight B/L: Bill of lading issued to the name of a **certain party** and which **cannot be transferred by endorsement** is called straight B/L.

Charter Party B/L: It is a B/L of **non liner vessel**. Charter party is a contract between the ship owners and the charterer. Referring this contract when a B/L is issued it is called charter party B/L. It covers the whole voyages in **issuers own direction and risk**.

- a) **Time charter:** If the ship is chartered for a **particular time**, then it is called Time chartered.
- b) **Voyage charter:** If the ship is chartered for a **particular voyage** then it is voyage Charter.



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Mate's Receipt: It is issued by the agent of the shipping company receiving the goods for shipment by a specified vessel.

Forwarder Cargo Receipt (FCR): It is a receipt issued by the Forwarding Agent acknowledging receipt of the goods.



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Other Common “Labels” for Bills of Lading



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Combined Transport/Multimodal Transport/House to House bill;

a bill of lading that covers not only carriage of cargo on an ocean going vessel but all or other stages and/or forms of carriage, e.g. carriage of the cargo by rail, road or barge from the shipper's premises to an ocean port of shipment, from that port to an ocean port of discharge and from that port of discharge by rail, road or barge to the consignee's premises. The issuer of such a bill of lading generally accepts primary responsibility as carrier for all stages and forms of carriage.

Cover bill; a bill of lading issued by one carrier to another carrier that has arranged for cargo shut out from its own vessel to be shipped on the issuing carrier's vessel.



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Feeder/Service/Cover bill;

a bill of lading issued by a sub-carrier to the main carrier under a combined transport or through bill of lading, which covers only the stage and form of carriage performed by the sub-carrier, e.g. carriage by barge of parcels of cargo either from inland ports or from smaller or more remote coastal ports to a principal coastal port served by a combined transport liner service operator. (Feeder bills of lading generally are of concern only to main carriers and sub-carriers and do not affect the relations between main carriers and shippers or consignees that are evidenced or created by the related combined transport or through bills of lading.)



BILL Of LADING

Freight Forwarder's/House bill;

generally, a document with the effect of a cargo delivery order issued to a shipper of cargo by a freight forwarder, which thereafter arranges, usually as agent for the shipper, for shipment of the cargo under a combined transport or ocean bill of lading. (However, regard must be had to the substance and not merely to the title or form of a document and a freight forwarder's bill of lading might on its true construction be a fully transferable bill of lading and not merely a cargo delivery order; see, *Sonicare International Ltd. v East Anglia Freight Terminal Ltd. et al.* [1997] 2 Lloyd's Rep. 48.)



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Liner bill; a bill of lading issued by a particular shipping line that offers a regular, scheduled service between specified load and discharge ports.

Ocean/Port to Port bill; the “classic” marine bill of lading, which covers ocean port to ocean port carriage of cargo on a single ocean-going vessel and no other stage or form of carriage.

Owner’s bill; a bill of lading by virtue of which the owner of a vessel is the contractual carrier.

Received for Shipment bill; a bill of lading containing an acknowledgement by the carrier that the cargo covered has been received by it, e.g. at a container yard, for shipment on board a vessel. (A “received for shipment” bill of lading can be, and often is, converted to a “shipped” bill of lading by subsequent notation acknowledging that the cargo covered has been shipped on board a vessel.)



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Shipped/Shipped on Board/On Board bill; a bill of lading containing an acknowledgement by the carrier that the cargo covered has been loaded on board a vessel.

Ship's Delivery Order; an undertaking given by a carrier, pursuant to a contract for the carriage by sea of the cargo to which the undertaking relates, to the person so identified, to deliver that cargo to a person identified therein (i.e. not a bill of lading; see, the Carriage of Goods by Sea Act 1992, section 1(4)). SDOs generally are issued when the shipper of a bulk cargo covered by a single bill of lading wishes to split the bulk cargo and to deliver distinct parcels to a number of consignees. SDOs will be issued to avoid problems potentially faced in procuring the surrender of the initial original bill of lading and issuing a number of different original bills of lading in substitution; see, *SIAT v Tradax* [1978] 2 Lloyd's Rep. 470 @ 493.



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Short Form bill; a bill of lading with fairly standard face format, but which includes a clause that incorporates the carrier's standard conditions, and with a blank reverse, e.g. BIMCO's Blank Back Bill.

Spent bill; a bill of lading that has been discharged by virtue of a qualitatively complete delivery by the carrier, to the person entitled to it, of the cargo that it covers and thus has ceased to be transferable; see, [The Delfini \[1990\] 1 Lloyd's Rep. 252 @ 269 per Mustill J. and \[1988\] 2 Lloyd's Rep. 599](#). (However, a bill of lading that is spent prior to its transfer can still operate to transfer rights against a carrier, under the [Carriage of Goods by Sea Act 1992, section 2\(2\)](#), provided that the transfer occurs by virtue of a transaction effected pursuant to arrangements made before the bill of lading became spent or as a result of its rejection to the transferee, also pursuant to arrangements made before the bill of lading became spent, by another person.)



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Straight bill;

a bill of lading that is not transferable by either delivery or indorsement and delivery, e.g. because it is marked “not negotiable” or is not made out to “bearer”, to “order” or to “assigns”. Straight bills of lading are used, for example, for “in house” shipments between divisions of large multinationals or when it is known for certain, prior to shipment of the cargo, that the intended consignee will not sell the cargo on. (A straight bill of lading is properly characterised as a bill of lading but, because it lacks the characteristic of transferability, does not operate as a document of title and is not treated as a bill of lading for purposes of the [Carriage of Goods by Sea Act 1992](#); see, [section 1\(2\)](#)). Since a straight bill of lading is not a document of title, it does not attract the mandatory application of the [Hague-Visby Rules](#) as a matter of English law; see, [Carriage of Goods by Sea Act 1971, section 1\(2\)](#). A straight bill of lading can, however, fall within the definition of “[sea waybill](#)” adopted for purposes of the [Carriage of Goods by Sea Act 1992](#); see, [section 1\(3\)](#). The principal difference between transferable and straight bills of lading, for purposes of the 1992 Act, thus is that the conclusive evidence provision of [section 4](#) of the 1992 Act does not apply to straight bills of lading.)



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Switch bill;

a replacement bill of lading issued at the request of a consignee seller to replace the original bill of lading issued to that seller's supplier as shipper, so as to show the consignee seller as shipper and its own sub-purchaser as consignee. Such bills of lading are intended to keep the identity of the supplier from the sub-purchaser and thus to prevent future direct dealings between the supplier and the sub-purchaser. (Such bills of lading are, however, problematic, particularly if issued by charterers rather than owners; see *The Atlas* [1996] 1 Lloyd's Rep. 642. For example, a charterer does not have apparent or ostensible authority to issue a second set of bills of lading on behalf of the disponent owner or owner of the vessel, which therefore will not to be treated as the contractual carrier under a switch bill of lading. Further, a switch bill of lading almost invariably will contain a statement of fact, as to the identity of the shipper of the cargo, that is known to the issuer to be inaccurate and the switch bill of lading thus can **constitute a fraud** on the consignee and/or contain a **fraudulent misrepresentation**. Any indemnity offered to the issuer by a seller requesting a switch bill of lading thus could be **unenforceable for illegality**; see, *Brown Jenkinson v Percy Dalton* [1957] 2 QB 621.)



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Through bill;

a bill of lading covering more than one stage (or, sometimes, more than one form) of carriage. Through bills of lading differ from combined transport bills of lading in that the separate stages and/or forms of carriage, including distinct stages of ocean carriage, generally are intended to be undertaken **by two or more successive carriers** as primary carrier. Obvious characteristics are wide **liberties to trans-ship** and purported restrictions on the liabilities of each carrier to the stage of carriage that it performs.



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What is an airway bill?

An air waybill (AWB) or air consignment note is a receipt issued by an international airline for goods and an evidence of the contract of carriage, but it is not a document of title to the goods. Hence, the air waybill is non-negotiable.

What is the difference between MAWB and Hawb?

MAWB is Master airway bill issued by main carrier of goods on receipt of goods from a freight forwarder to deliver at destination as per agreed terms. **HAWB** means House airway bill issued by a freight forwarder on receipt of goods from shipper agreeing to deliver goods at destination.



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Airwaybill(AWB)

Definition

Type of bill of lading that serves as a (1) receipt of goods by an airline (carrier) and (2) as a contract of carriage between the shipper and the carrier. It includes (a) conditions of carriage that define (among other terms and conditions) the carrier's limits of liability and claims procedures, (b) a description of the goods, and (c) applicable charges. The airline industry has adopted a standard format for AWB which is used throughout the world for both domestic and international traffic. Unlike a bill of lading, an AWB is a non-negotiable instrument, does not specify on which flight the shipment will be sent, or when it will reach its destination.

Read more: <http://www.businessdictionary.com/definition/air-waybill-AWB.html>



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A **Bill of Lading** is a document issued by or on behalf of the actual Sea-Carrier of goods to the person (**usually called the Shipper**) with whom he/she has contracted to transport the goods.

A Bill of Lading has THREE functions:

- (i) A **Receipt** for the Goods Shipped;
- (i) Evidence of the **Contract** of Carriage; and
- (i) A Document of **Title**.



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Receipt for Goods

A bill of lading

- a) Describes the Goods,
- b) States their Quantity &
- c) States their Condition.

Bills certifying that the goods have been **properly loaded** on board are known as "**on board**" bills of lading. If there is a dispute: the statement on the bill is considered prima facie evidence that the goods were received by the carrier as described on the bill.



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As long as the bill has not been negotiated to a third party the carrier can introduce proof to rebut **دحض** this evidence. The carrier is barred from introducing evidence to contradict the bill of lading once it has been negotiated.

If a **discrepancy is noted on the face** of the bill it is called a “**claused**” bill of lading. Claused bills are normally unacceptable to third parties.

Note: a notation as to a discrepancy may only be made on the bill at the time the goods are loaded. Later notations have no effect: the bill will be treated as if it were "**clean.**"



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Contract of Carriage

A bill of lading is an evidence of the contract of carriage between the shipper and the carrier. Remember: It is **NOT** the Contract of Carriage. Contract of Carriage takes place ‘between the shipper and the carrier’ before the goods are brought to and loaded on the ship.

Once the goods are loaded on board the ship, a receipt is issued for receiving the goods by the carrier to the shipper as long as the bill has not been negotiated to a third party either the shipper or the carrier can introduce proof to rebut this evidence.



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Document of Title

- **Title** means **OWNERSHIP**

A person rightfully in possession of a bill of lading has title and is entitled to possess, use, and dispose of the goods that the bill represents.

Bills of Lading can be classified into:

- (i) **NEGOTIABLE** Bill of Lading: or an “order bill”.
- (i) **NON-NEGOTIABLE** Bill of Lading: a straight consigned bill, which is deliverable to the named consignee only, who has no right to transfer.

NEGOTIABLE means Transferrable.



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International Rules for Bills of Lading Sea Carriage Conventions:

- HR: Hague Rules 1924 – COGSA 1924
- HVR: Hague – Visby Rules 1968- (Brussels Protocol of 1968) (and SDR Protocol of 1979) – COGSA 1971
- Hamburg Rules 1978
- Rotterdam Rules 2009 - United Nations Convention on Contracts for The International Carriage of Goods Wholly or Partly by Sea



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- United Nations Commission on International Trade Law (UNCITRAL)
- Pursuit of Harmonization السعي إلى تحقيق المواءمة
 - Lack of a universal system:
 - Hague Rules – 1924
 - Visby Protocol – 1968
 - Hamburg Rules - 1978
 - Domestic gap-filling legislation and Regional attempts
 - Achieve a **global** regime

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (**Rotterdam Rules**)



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Main Innovations

- **Scope of Application: Contractual approach**
 - **Hague and Hague-Visby:** Bill of Lading
 - **Hamburg:** Contracts of carriage by sea
 - **Rotterdam:** ALL Contracts of carriage with an international sea leg
- **Scope of Application: Door-to-Door Transport**
 - **Hague and Hague-Visby:** Tackle to tackle
 - **Hamburg:** Port to port
 - **Rotterdam:** Door to door
 - Limited network principle (Art. 26)
 - Art. 82 – International conventions governing the carriage of goods by other modes of transport



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- **Electronic Commerce**

- **Hague, Hague-Visby and Hamburg: No electronic commerce provisions**
- **Rotterdam: Provides legal infrastructure for e-commerce (Chapter 3)**



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- **Containerisation**

- **Hague-Visby and Hamburg:** Limited to “container clause” in the per package limitation provision
- **Rotterdam:**
 - Door to door contracts of carriage
 - Due diligence obligation extends to carrier-provided containers (Art. 14(c))
 - Qualifying clause provision takes into account that carrier usually has no opportunity to inspect goods inside a container (Art. 40)
 - Shipper packing its own container must do so properly and carefully (Art. 27(3))
 - Containers carried on deck subject to same regime as containers carried below deck (Art. 25)



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- **Time for Suit**

- **Hague, Hague-Visby:** One year for cargo claimant to file before time-barred
- **Hamburg:** Two years
- **Rotterdam:** Two years

- **Jurisdiction and Arbitration**

- **Hague, Hague-Visby:** No specific rules
- **Hamburg:** Specific provisions
- **Rotterdam:** Opt-in chapters (Art. 91 declaration)



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English law relating to Bills of Lading

- Historically we had the **Bills of Lading Act 1855**
- This was **repealed by** the Carriage of Goods by Sea Act 1992 (COGSA 92)

Current legal framework in England for the rights and duties of the carrier:

- Article 1(2) **COGSA 1971** giving the force of law to the HVR. HVR is appended to the Act.



BILL Of LADING

CARRIAGE OF GOODS BY SEA ACT 1992 (COGSA 92)

- Applies to bills of lading, sea waybills and ships' delivery orders (issued on or after 16.9.92).
- Does not, despite its title, revoke COGSA 71 or The Hague-Visby Rules.

Repeals the *Bill of Lading Act 1855* and makes fundamental changes to the law regarding title to sue (i.e. who has the right to sue the Carrier and who the Carrier can sue for freight and demurrage).

It does not affect the Carrier's obligations and immunities respecting the carriage of goods, except that the B/L is no longer conclusive evidence against the Carrier of the goods shipped.



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Liabilities under “COGSA 92”

COGSA 92 lays down guidelines establishing when liability under a B/L, SW/B or SDO will be transferred to a party who is not an original party to the contract of carriage (i.e. a transferee). [See fig 1,2,3,4](#)

The party who takes or demands delivery of the goods to which a B/L, SW/B or SDO relate becomes subject to the same liabilities as the original shipper.

If delivery is demanded before the B/L is transferred (e.g. under a Letter of Indemnity), once the B/L is transferred the holder becomes subject to the same liabilities (i.e. the obligation to pay freight, port charges, demurrage, etc.) as the previous holder.



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Liabilities are not imposed on 3rd parties who take up shipping documents with no intention of demanding delivery or making a claim under the contract of carriage, e.g. banks taking up the documents as security.

- The case of *Grant v Norway (1851)* involved a master who had signed a B/L for 12 bales of wool which were not in fact shipped. It was **held** that the carrier was not liable to the receivers as the master did not have authority to sign the B/L for goods which were not on board.

COGSA 92 overturned that decision. A B/L which represents that goods have been shipped on board or received for shipment will be conclusive evidence of such shipment against the carrier in the hands of a lawful holder of the B/L, providing the BIL was signed by the master or someone with the authority of the master.

This rule will not apply, however if the B/L has not been transferred.



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Common Carrier

Three types of common carriers:

A **conference line** is an association of sea going carriers who have joined together to offer common freight rates over scheduled routes.

An **independent line** is a carrier with its own rate schedule and operates over scheduled routes.

A **tramp vessel** has its own rate schedule, but it does not operate on established routes.



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Carriage of goods by sea is subject to the usual rules of contract. The parties to the contract are the **CARRIER** and the **CHARTERER**, who may be either the **shipper** or the **receiver**. These contracts are governed by agreed rules of liability.



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Common Law Liabilities

The carrier has certain duties at common law:

First, deliver the goods in the same condition as they were shipped. This is non-delegable إجبارية, but there are four exceptions:

Act of God

Act of War.

Loss or damage caused by inherent vice

Loss from jettison via general average



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The carrier

has an **ABSOLUTE** المطلقة duty to provide a seaworthy ship.

This is discharged at the time of shipment, but it may be shown later that this duty had not been discharged. Even if a defect was latent الكامنة and that was the cause of the loss, the carrier would probably be held liable



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Carrier has a duty to proceed without unjustifiable deviation.
The carrier is liable for any subsequent loss; and

Finally, the carrier must complete the voyage with reasonable dispatch. If there is un due delay the carrier may be liable unless it can be shown that this was caused by an excepted peril.



BILL Of LADING

PART 2



BILL Of LADING

SIGNING BILLS OF LADING

1. One of the most important functions of a bill of lading is that it provides information as to the **description of the goods**, **the condition of the goods**, the quantity of the goods, the loading port and date of shipment, the discharge port, **the name of the ship**, whether **freight** has been paid and the terms of carriage. As these functions are essential to trade it is important that information given in a bill of lading is accurate. **Failure to ensure accuracy can give rise to liability of the shipowner.**



BILL Of LADING

2. The essential rule is that in no circumstances, other than those described at next slide should the master sign a document which he knows to be untrue, or which he believes may be untrue, or where he has not given careful thought to the facts contained in it.

3. The following matters are important. If the master cannot contact the shipowner or obtain guidance from it, the following general principles should be applied.



BILL Of LADING

- (a) The master must ensure that the information on the bill of lading agrees with that on the **mate's receipt(s)**.
- (b) The master must check the facts about the cargo. It would be unusual for the master or the ship's agent to prepare the bill of lading. The bill of lading is usually prepared by the shipper or the shipper's agent. It is accordingly essential for the master to check the information about the cargo in the bill of lading. The master will not know all of the facts about the cargo that appear on the bill of lading which **he is being asked to sign**.
- (c) The master must check the facts about the voyage. If the place or date of loading is incorrect, or if the discharge port is outside the charterparty range, the master should refuse to sign.
- (d) It is recognised that refusal to sign is not always safe or practical. Where in this practical guidance the master is advised to refuse to sign, he should refer to owner/and or P&I for guidance.



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Information in the bill of lading

4. This section deals with ways of describing the cargo and the voyage. It is intended to give the master guidance where he is unable to obtain guidance from the shipowners. It may also assist the master in identifying what is a usual and what is an unusual situation.

- (a) Some of the information in the bill of lading is within the master's knowledge, for example the **port of shipment**, the **date of completion** of loading of **the parcel described** in the bill of lading or the **date of issue of the bill of lading**. If these facts are not correct the **master** should **refuse to sign the bill of lading**.
- (b) Some information in the bill of lading may not be within the precise knowledge of the master, for example the **quantity or weight** or **the actual condition** of the goods loaded. The following rules may assist.



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Quantity

- (i) The master should if possible add the words ‘**shipper’s figures**’ or ‘**shore figures**’ to any statement as to quantity or weight on the bill of lading.
- (ii) If the master does not know the weight or quantity loaded (because there has been no opportunity for a tally or an accurate draught survey) then the words ‘weight and quantity unknown’ should be written alongside the figure.
- (iii) If the ship has its own figures and these differ from those in the bill of lading, then the ship’s figures should be written alongside the shipper’s figures and/or the words ‘weight and quantity unknown’ added.
- (iv) If in situation (iii) the master is not permitted to add the ship’s figures and if the difference between the shipper’s figures and the ship’s figures is more than could reasonable be explained by the practical imprecision of draught surveys or tallying then the master should refuse to sign the bill of lading. If the difference is small he should follow (ii) above.



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Condition

- 1- Usually the master only knows the apparent condition of the cargo. Accordingly if he can see no apparent problem with the goods when loaded he should mark the bill of lading 'received in apparent good order and condition'.
- 2- If the master can see that the goods are damaged in some way then he should say so. A more difficult question is where the master thinks that the goods may be defective or substandard, for example because they appear dirty, mixed with foreign particles or debris, or are discoloured or odourous. If such comments are appropriate he should do his best to explain in ordinary language in writing on the face of the bill of lading what he believes is wrong with the condition of the cargo. If he requires to add an additional sheet of paper then he should state (in writing on the bill of lading) how many sheets of paper are attached to each bill of lading. He should seek guidance from the P&I club or its local correspondent or agent or from a surveyor as to the precise wording to be used.



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3- It is always useful to describe the nature of the packaging of goods, for example ‘in paper bags’ or ‘in polythene sacks’. If these are torn or damaged the bill of lading should say so, such as ‘about 457 bags torn’. If only a rough estimate can be made of the quantity damaged, however, this should be stated, for example ‘about 10% torn’ or ‘about 5000 bags damaged’. Whether it is on the basis of a tally or estimate, the master must have evidence to support his remarks.

4- Special clauses are often used, for example for timber or steel cargoes, and if possible the shipowner or the P&I club correspondent should be consulted.

5- If in situation (2) or (3), the master is not permitted to add comments which accurately describe apparent defects in the goods or packing, he should refuse to sign the bill of lading.



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Quantity and condition

The words 'weight, measure, quantity, condition, contents and value unknown' are useful and desirable words to add to a bill of lading if they are not already part of the printed form.

Quality

The master need not describe the quality of the cargo .



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For the avoidance of doubt the master should place his signature and/or the ship's stamp at the foot of the bill of lading only.

Freight / hire / demurrage / liens

The master may be worried that a bill of lading presented to him does not give the shipowner sufficient protection in terms of freight, hire or demurrage, or liens for any of those, or he may be worried about other terms of carriage.

These are all matters for the shipowner or its P&I club to consider. The master should always check with the shipowner's managers as to whether they requires protective terms to be added, but leave the decision to them.

If it is impossible to get guidance from the shipowner then!!!



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Charterparty bills of lading

Wherever there is a reference to a charterparty in the printed form of a bill of lading (for example in the Gencon Charterparty), the master should check with the shipowner as to the date of the charterparty to be inserted in the bill of lading .

Deck cargo

Except in purpose-built container ships or in special trades where cargo is customarily carried on deck, carriage of cargo on deck should always be checked with the shipowner. Where cargo is carried on deck it is essential to state on the face of the bill of lading that cargo is being carried on deck. It is for the master to check with the shipowner and for the shipowner to ensure that such carriage is permissible.



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How many bills of lading to be signed

The master should check with the shipper and with the charterparty. He should also check the terms of the bills of lading themselves as they may show the number to be issued. There is no general rule as to what number should or must be issued for a parcel of cargo.



BILL Of LADING

Blending / co-mingling of oil cargoes

- (a) Oil cargoes are unusual in that charterers and traders may wish to co-mingle cargoes shipped from different ports on different dates, and often with different specifications.
- (b) If cargoes shipped from separate ports, on separate dates and/or of separate origins are co-mingled, then complications arise as to the accurate description of the port of shipment, date of shipment and type of cargo in the bills of lading. Further problem may arise at the discharge port if the cargo mixed in the tanks no longer resembles the cargo described in one or more of the original bills of lading.
- (c) Wherever there is co-mingling of cargo shipped on different dates from different ports and of different types, it is essential that the shipowner's instructions are obtained before bills of lading are issued. If the shipowner's instructions cannot be obtained the master should refuse to sign and should explain his reasons for doing so by reference to (b) above.



BILL Of LADING

Letter of indemnity “LOI”

It is not for a master to agree to sign a bill of lading in return for a letter of indemnity. That is for the shipowner to decide. If the shipowner cannot be contacted then the master should refuse to sign. It is better for the master to follow the steps at next slide than to accept a letter of indemnity without the shipowner’s authority.



BILL Of LADING

Refusal to sign

In circumstances where the master feels that he should refuse to sign a bill of lading he should seek guidance from the shipowner or from the P&I club or its correspondent. If no guidance can be obtained, the following general principles should be applied.

If the refusal of the master to sign a document is met with physical threats or coercion against the ship or her master or crew, then the master should sign the document. When the vessel has sailed and upon reaching a position of safety, the master (or the shipowner, if it is now in contact with the master) may give notice of protest to all parties and authorities concerned to the effect that the document has been signed under duress and the shipowner and the master consider themselves not bound by the master's signature. (Of course thought must be given as to whether the ship, master or may sister ship is likely to return to this dangerous regime).



BILL Of LADING

Sometimes legal pressure will be exerted on the master to sign. The most common example will be where the ship is operating under a charterparty. The charterparty may list the master's obligations with regard to signing bills of lading. For example he may have to sign bills of lading 'as presented'. This and similar expressions do not mean that the master must sign any bill of lading whatever its terms. The master can refuse to sign a bill of lading 'as presented' if it

- (i) contains facts about the cargo which are incorrect and which cannot be satisfactorily dealt with by following the steps in the section entitled 'Information in the bill of lading' (paragraph iv)
- (ii) contains facts about the voyage which are incorrect or names discharge ports outside the charterparty range
- (iii) says that deck cargo is being carried under deck
- (iv) contains terms which the charterparty expressly prohibits in the bill of lading.



BILL Of LADING

However, if the master is required by the charterparty to sign bills of lading ‘as presented’ he should not refuse to sign a bill of lading simply because it is marked, for example ‘liner out’, or because it contains some foreign jurisdiction clause. These are not facts but terms of the shipper’s or charterer's trade. They are matters for the shipowner to argue about with the Charterer if necessary. If the master is requested to sign ‘freight pre-paid’ bills of lading his position is slightly less clear and reference should be made to charterparty agreement.

Sometimes commercial pressure will be exerted on the master to sign in circumstances where he should, as advised above, refuse to sign. It is for the shipowner to make commercial decisions in response to such pressure. The shipowner may wish to negotiate, take the commercial risk or accept a letter of indemnity. The master, however, does not have these options. He should maintain his refusal to sign. Delay to the vessel or other consequences of threats made by the shipper or Charterer may then perhaps be avoided by the following steps.



BILL Of LADING

The master should sign the document in the form that he is prepared to give. For example, in the case of a bill of lading where the quantity or description of the cargo is in dispute, the master should sign a bill of lading showing the quantity or description which he considers to be accurate. The bill of lading should be left with the ship's agent (and a protecting agent appointed for this purpose if possible). Notice can then be given that a bill of lading for the cargo has been signed and issued and is available for collection.

Alternatively, the master should give notice that he has given authority to the ship's protecting agent to sign bills of lading on his behalf subject to instructions and approval from the shipowner when available.

The master should not sign bills of lading in blank.

Where any person coming on board insists that the master takes delivery of a document from them he should mark it **'for receipt only'**.



BILL Of LADING

P&I club cover

All the commentary in previous slides are important to the shipowner because signing a document, and in particular a bill of lading, which contains incorrect information can expose the ship to liabilities which it would not otherwise face.

In addition to facing those liabilities, the shipowner may lose the protection of its P&I insurance if inaccurate bills of lading are signed and expose the shipowner to increased liability.



BILL Of LADING

DELIVERING THE CARGO AT DISCHARGE PORT:

The master can deliver the cargo to the holder of a 'bearer' bill of lading. If a bill of lading shows a named consignee or named endorsee the person demanding delivery of the cargo must provide some evidence that it is the person identified in the bill of lading. As the bill of lading would usually be presented through the shipowner's or the time Charterers' agents which are local to and familiar with the discharge port, the master probably need only be worried about identification of the person demanding delivery if the master has actual reason for believing there has been fraud, that the bill of lading may have been stolen, that the person is not entitled to claim the goods, or if he has been notified of a competing claim for the goods.

The problems which usually arise are where

- (a) no bill of lading is available at the discharge port
- (b) delivery of cargo is requested at a port which is not the named discharge port.



BILL Of LADING

In the absence of clear guidance from the shipowners or the local P&I correspondent, the master should take note of the following points.

- (a) The unavailability of a bill of lading at the discharge port is not the master's problem. It is the problem of the buyers and sellers of the cargo.
- (b) The master should not agree to discharge the cargo against a letter of indemnity (unless the shipowner has expressly agreed to this).
- (c) Delay to the vessel while waiting for the bill of lading will usually be paid for under the charterparty in the form of hire or demurrage (or as part of the laytime which has been paid for in the freight payment). Even if the vessel is threatened with the cost of the delay, that threat should not justify delivery of the cargo without production of the bill of lading or at the wrong port.
- (d) Delivery without production of the bill of lading, or at the wrong port, will be a breach of the terms of the shipowner's P&I insurance and there will be no insurance if in consequence a claim is subsequently brought by the 'true' cargo owner.
- (e) In some jurisdictions the cargo can be discharged (at the named discharge port) into the custody of the port or a private warehouse where it will remain under the legal control of the master until the bill of lading has been produced. The master should investigate this, if possible through the P&I correspondent.



BILL Of LADING

Specific issues

Letters of indemnity

The giving of letters of indemnity in return for delivery of cargo at the wrong discharge port or without production of the original bill of lading is not wrong, nor is it unusual. It is, however, a matter for the shipowner to decide upon. It is a commercial decision for it to make and one which it will make taking into consideration the fact that it may have no P&I cover as a consequence of doing so.

Recommended standard letters of indemnity are included in the appendices. These standard forms show counter-signature by a bank. Banks are rarely prepared to sign an indemnity for unquantified amounts. Frequently, therefore, the letter is accepted without a bank's counter-signature. Alternatively, a limit (e.g. 200% of the value of the cargo) is placed on the bank's liability under the letter. Again, these are commercial decisions for the shipowner to take.



BILL Of LADING

Photocopy or faxed bills of lading

Sometimes the master is asked to deliver against a copy or faxed bill of lading, the original being unavailable. Unless special arrangements have been made in writing by the shipowner to accept such a bill of lading, delivery should be refused. The usual rule is that delivery shall be given against presentation of at least one original bill of lading.

Multiple originals

Bills of lading are often issued in sets of three or four originals. The bill of lading will usually provide on its face that production of any one of those originals will be acceptable. At the same time, the other originals are considered to be void and cancelled.



BILL Of LADING

Retention of the original bill of lading

The master should retain the original bill of lading against which cargo has been delivered. However, originals are sometimes required by local officials or customs and in those circumstances the master should ensure that he (or his agent) is allowed to see the original bill of lading and that he is allowed to retain a photocopy of the front and reverse side of the original. This should, if possible, be certified by the receiver or his agent as follows: ‘This is certified to be a true copy of the original bill of lading which is now accomplished’.



BILL Of LADING

More than one person demanding delivery of the cargo

This situation may arise where

- (a) no bills of lading are available at the discharge port
- (b) more than one set of bills of lading has been placed in circulation, all or some of which are unauthorized
- (c) the original shipper has parted with the bills of lading and is asserting that the holder has not complied with its obligations under the sale contract, for example it has somehow acquired the bills of lading without making payment.

Each of the situations places the master (and the shipowner) in a very difficult position and can give rise to complex legal issues and may involve complex commercial and legal solutions. The best advice that can be given to the master, if he cannot obtain guidance from the shipowner,



BILL Of LADING

Change of destination during voyage

Sometimes the master may be asked to change destination during the voyage and to proceed to a discharge port other than that named in the bill of lading. That is a matter for the shipowner to give instructions upon. In the absence of clear guidance from the shipowner or the local P&I correspondent, the master should take note of the following.

- (a) Even if the governing charterparty gives a range of discharge ports, once a bill of lading has been issued naming a discharge port, that destination should be treated as if written into the charterparty.
- (b) So far as the bill of lading holder is concerned, the diversion of the vessel to a different discharge port will be a deviation, the consequences of which can be serious for the carrier.
- (c) Promises by a party seeking to change the destination (be it Charterer, shipper or receiver) that it holds all of the original bills of lading or that the parties holding the bills of lading have agreed to the change, may at best be meaningless and at worst untrue. If such parties are genuinely in a position to make proper arrangements for the change of destination, then they should be in a position to provide a letter of indemnity (see (d) below) including an undertaking for the return of all the original bills of lading.
- (d) As stated at paragraphs 18 and 19, the provision of letters of indemnity in return for delivery of cargo at a different destination is not unusual. However, the standard wording for a change of destination letter of indemnity expressly provides for the return of all of the original bills of lading and any letter of indemnity which omits this fundamental provision should be regarded as inadequate and rejected.



BILL Of LADING

BILL OF LADING

TO BE USED WITH CHARTER-PARTIES

CODE NAME: *CONGENBILL*

EDITION 1994

ADOPTED BY

THE BALTIC AND INTERNATIONAL MARITIME COUNCIL (BIMCO)



BILL Of LADING

Conditions of Carriage

(1) All terms and conditions, liberties and exceptions of the Carter Party, dated as overleaf, including the Law and Arbitration clause, are herewith incorporated.

(2) General paramount Clause.

(a) *The Hague contained in the International Convention* of the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment, shall apply to this Bill of Lading. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

(b) *Trades where Hague-visby Rules apply.*

In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968-the Hague- Visby Rules - apply compulsorily, the provisions of the respective legislation shall apply to this Bill of Lading.

(c) *The carrier shall in no case be responsible for loss of or damage to the cargo*, howsoever arising prior to loading into and after discharge from the Vessel or while the cargo is in the charge of another Carrier, nor in respect of deck cargo or live animals.



BILL Of LADING

(3) General Average.

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994, or any subsequent modification thereof, in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or

Crew. The Charterers, Shippers and Consignees expressly renounce the Belgian Commercial Code, Part II, Art. 148.

(4) New Jason Clause.

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether

due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the cargo, shippers,

consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If salvaging vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said vessel or vessels belonged to strangers. Such deposit as the carrier, or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the carrier before delivery.



BILL Of LADING

5) Both -to- Blame Collision Clause.

If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act , neglect or default of the Master , Mariner , Pilot or the servant of the carrier in the navigation or in the management of the Vessel , the owners of the cargo carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to , or any claim whatsoever of the owners of said cargo , paid or payable by the other or non - carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to the colliding vessels or objects are at fault in respect of a collision or contact.

For particulars of cargo, freight, destination , etc., see overleaf.

CODE NAME: "CONGENBILL" . EDITION 1994

Shipper

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

B/L NO.

Reference No.

Consignee

Notify address

Vessel

Port of loading

Port of discharge

Shipper's description of goods

Gross weight



(of which on deck at Shipper's risk; the carrier not being responsible for loss or damage howsoever arising)

Freight payable as per CHARTER-PARTY dated FREIGHT ADVANCE. Received on account of freight: Time used for loading..... days..... hours.	<p style="text-align: center;">S H I P P E D</p> at the Port of Loading in apparent good order and condition on board the vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above. Weight , measure , quality , quantity , condition , contents and value unknown. IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void. FOR CONDITIONS OF CARRIAGE SEE OVERLEAF
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Freight payable at	Place and date issue
Number of original Bs/L	Signature

C.15 Printed and sold by Witherby & company limited,32/36 Aylesbury Street, LONDON E.C.1K 0E.L. Tel.No. 01/1 251 5341 FAX No. 01/1 251 1296 by authority of The Baltic and International Maritime council. (BIMCO),Copenhagen.

Capt. Issa Awad



BILL Of LADING

ENDS

THANKS FOR LISTENING