



BILLS OF LADING

Clausing bills of lading

Executive summary

- ‘Clausing’ a bill of lading is the act of inserting written remarks about the apparent order and condition of the cargo on loading.
- If the cargo is only subsequently damaged on the ship, the bills of lading will need to be issued ‘clean’.
- If there are apparent defects on the cargo on loading, the bills of lading must be claused.
- The Master is not expected to be an expert, just observant: if it looks like bulk sugar but smells like salt, the Master is on notice.

- Mate’s Receipts with a ‘Clean on board’ remark are not to be issued if the cargo is apparently damaged prior to loading.
- Failing to accurately clause a bill of lading may well prejudice P&I cover.

A. Who is this article intended for?

This article is written with the Master, member, in-house claims team or legal counsel in mind, or whoever else is part of the process of issuing/signing the bills of lading.

For an explanation of the practical aspects, we refer the reader to the Club’s publication *‘Practical Guide: Clausing bills of lading’*.

B. What is ‘clausing’ the bill of lading?

Clausing a bill of lading is the process of inserting written remarks on the bill of lading regarding the quality or condition of the cargo on loading.

Example

The MV TSC is to load 650 steel coils. 250 of the steel coils are wet and rust stained on loading. Since 250 steel coils contain defects – being wet and rust stained – the Master must clause the bills of lading by inserting a remark about the condition of the cargo.

The bills of lading may therefore describe the cargo along the below lines (with the yellow highlighted part being the claused remarks

regarding the condition of the cargo):

'250 steel coils – **Wet and rust stained on shipment**'

C. What is the purpose of clausing the bills of lading?

The purpose of clausing the bills of lading is to evidence the apparent condition of the cargo damage on loading and before the carrier assumes responsibility to care for the cargo. The carrier will not then be liable for that cargo defect/damage.

If the bills of lading are not appropriately claused, it is likely that the carrier will be held liable for the pre-shipment cargo damage – even though the carrier did not actually cause the damage.

This is one reason why it is crucial that bills of lading are claused where the cargo contains defects prior to loading.

D. Are there cases where the bills of lading are not to be claused?

The obligation to clause bills of lading relates to any pre-shipment cargo damage. It follows that the bills of lading are not to be claused in respect of cargo damage that is caused after the carrier has taken over custody of the cargo.

Example 1: Contamination of oil cargo caused by previous cargo

MV TSC loads a cargo of vegetable oil. Upon taking the first foot sample it is discovered that the sample is dark in colour. Following an investigation, it is concluded that the vegetable oil cargo has been contaminated by the previous cargo carried by the ship. Since the vegetable oil was not contaminated when it was received by ship – but contaminated on board the ship – the bills of lading are not to be claused with a remark such as 'off-spec'.

Where there is no ambiguity as to the cause of the contamination, it may be advisable that the bills of lading contain an annotation that the cargo was contaminated on board:

'First foot quantity apparently contaminated on board and consolidated in tank 3P'

Example 2: Cargo damaged by fire on board the ship

MV TSC loads a cargo of wheat. When the cargo is received by the ship, it is sound and with no defects. Before the bills of lading are issued, a small, localised fire breaks out in the cargo hold – damaging 30 MTs of cargo. As the cargo was received in sound condition and only subsequently damaged by a fire on board, the bills should be remarked to reflect this. A remark on the bills such as:

'Received clean on board but approximately 30 MTs subsequently damaged in a fire and by extinguishing water on board'

would ensure that the bills are issued as 'clean' bills and would not constitute clausing the bills of lading since the remark accurately records that the cargo was in sound condition on receipt. That, at least, is the position under English law.

E. Legal background

Under the Hague-Visby Rules, the carrier is obliged to record accurately the quantity and condition of the cargo on loading in the bill of lading. Exactly what needs to be recorded in the bill of lading is set out in Article III, Rule 3 of the Hague-Visby Rules.

(i) Hague-Visby Rules, Article III, Rule 3

The Hague-Visby Rules, Article III, Rule 3 provides as follows:

'After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.'

(ii) Implications on the carrier

The obligations under Article III, Rule 3 have important implications on the carrier. Firstly, the Master must not set out on the bill of lading any marks, number,

quantity or weight which the Master reasonably believes are inaccurate. Secondly, the obligation is to state on the bill of lading the 'apparent' order and condition of the cargo. The word 'apparent' in this context means observable to the Master upon a reasonable examination of the goods. This could be that the damage is visible, but could equally relate to the smell of the cargo (e.g. not smelling 'off'). That is, the Master is obliged to state the observable condition of the cargo, once he has conducted a reasonable inspection of the cargo - but is not obliged to set out a condition of the cargo which is not observable upon reasonable inspection.

Even where the Hague-Visby Rules do not apply, the Master is, nonetheless, obliged by a duty to future holders of the bill of lading (owed in tort) to verify the apparent condition of the goods before signing the bills of lading.

Example: 'Apparent order and condition'

If a chemical cargo is off-spec on water – a parameter which is not visible – the Master is not obliged to undertake an investigation into the chemical composition of the cargo in order to state the true condition of the cargo on the bill of lading.

Conversely, if the chemical cargo is instead off-spec on colour - e.g. being cloudy in appearance instead of transparent – then this is a parameter which is observable. Consequently, the cloudy appearance must be stated in the bill of lading.

F. When can a Master either refuse to sign or insist on clausing a bill of lading?

The bill of lading performs a number of functions. One of these is to accurately record:

- The date and place of receipt of the cargo on board.
- The description of the cargo.
- The quantity.
- The apparent condition on receipt.

The bill of lading will often end up in the hands of a third party and that third party will expect to be able to rely on the information stated in the bill.

Where the bill of lading presented for signature fails to accurately describe the position in one or more of the respects listed above, the Master would be acting contrary to his obligations if he were to sign it, and it follows that in those circumstances the Master may refuse to sign or insist on clausing the bill of lading.

That all sounds straightforward and as a basic, guiding principle, it is. Situations arise, however, which may cause the Master to question whether he is obliged to sign the bill of lading 'as presented' by the shipper or not.

G. Impact of the time charterparty

Often in a time charterparty scenario, where the Charterers have the commercial operation and exploitation of the vessel, the Master is expressly obliged to sign the bills of lading 'as presented'. That will impact on whether the Master is bound or not to sign the bills of lading that are presented. To an extent, where the terms of the contract of carriage embodied in the bill of lading are more onerous than the terms agreed in the time charterparty, the Master cannot object to signing the bills of lading and Owners are obliged to rely on the indemnity of the Charterer which might be implied, if not expressly stated, in the charterparty.

The Master is, nevertheless, always obliged not to misstate any information included in the bills of lading. This is easier to adhere to when it concerns details such as the date the cargo was loaded on board or the name of the port at which the cargo was loaded. Ensuring that no misstatements are made on the bills of lading can become more complicated in respect of the description of the cargo and the quantity received.

For a start, the Master might not have the opportunity to ascertain the quantity or quality of the cargo. This can be for a number of reasons, including:

- The cargo may be stowed in sealed containers with no opportunity for the Master to inspect.
- The level of knowledge or analysis required to ascertain the true condition or quantity of the cargo is beyond that expected of a competent Master.
- The custom of the port may be that shore scale quantities – which the Master has no way of independently verifying from the ship - are always the figures inserted in the bills of lading.

H. When should the Master refuse to sign a bill of lading?

The Master should refuse to sign any bill that:

- Incorrectly states, or does not state, the date on which loading of the cargo was completed.
- Incorrectly states, or does not state, the port of loading.
- Obviously misdescribes the cargo: its colour, form, quantity or condition, or does not describe the cargo

at all. Sometimes the governing charterparty will provide for shore figures always to be inserted in the bills, in exchange for an express indemnity from the Charterers.

I. What type of remarks are to be used when clausing bills of lading?

As mentioned above, the Master must insist on clausing any bill of lading where damage or contamination has been observed on the cargo on loading.

Remarks should be added in full, setting out the defects noted. General reference to e.g. 'a loadport survey' should be avoided where possible.

Where the remarks noted in the pre-loading survey are too extensive to fit on the bill, then a specific reference should be made to the survey report and the surveyor's remarks in respect of clausing should be attached. e.g. 'Remarks as per Survey Marine's report dated XX.XX.XX as per the attached.'

I. Bills strictly in accordance with the Mate's Receipts

Often a governing time charterparty will provide for the Master to authorise Charterers or their agents to issue bills of lading on his behalf. Frequently this is on condition that the bills of lading are issued 'strictly in accordance with the Mate's Receipts'. Attempts by Charterers to have additional remarks and comments added on the Mate's Receipts (so that the Charterer can then claim that the bills of lading reflect the Mate's Receipts in accordance with the authority given to the Charterer under the charterparty) should be resisted. The Mate's Receipts should not refer to other contract of carriage terms such as 'freight prepaid'. They should acknowledge receipt of cargo only.

Example

The time charterparty provides that Charterers are authorised to issue bills of lading on the Owner's behalf – provided that the bills of lading are issued 'strictly in accordance with the Mate's Receipts'.

Before loading a cargo of steel plates, the Master observes that the steel plates are scratched and have rust stains. Upon issuing of the Mate's Receipt, Charterers ask that the Master adds a remark 'Clean on board' on the Mate's Receipt. Since the steel plates are scratched and have rust stains, the bills of lading must be claused with a remark about the scratches and rust stains.

If the Master agrees with Charterers to issue a Mate's Receipt with a remark 'Clean on board', the bills of lading issued on Owner's behalf will be marked 'Clean on board', even though the cargo contained pre-existing damage upon loading. It is for this reason, in this case, the Master must refuse to issue a Mate's Receipt containing the remark 'Clean on board' as requested, and should instead issue a Mate's Receipt with a remark recording that the steel plates are scratched and have rust stains.

J. What are the implications on the P&I cover if the carrier fails to clause the bills of lading?

For P&I cover to remain intact, it is critical that the cargo is accurately described. The obligation to accurately describe the cargo in the bill of lading includes the obligation to record any apparent pre-shipment defect or damage. A failure to accurately clause a bill of lading with any pre-shipment defect will lead to the P&I cover being prejudiced under Rule 4, Section 3(b). The result of this is that there will not be any insurance cover for a claim that relates to the pre-shipment defect.