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# Japan P&I Newsletter

## ジャパン P&I ニュースレター

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## ロスプリベンション活動の推進 ~事故防止・軽減に向けて~

### Enhancing Loss Prevention Activities to Help Avoid Accidents

平素は組合運営の格別のご支援を頂きまして誠にありがとうございます。

世界的な景気減速と海運市況低迷のなか、組合員の皆様におかれましては厳しい状況が続いていると拝察いたします。当組合においても、2007 保険年度以降 6,000 件超で推移していたクレーム件数が、2011 保険年度は免責金額増加もあって 5,000 件強に落ち着いているものの、ここ数年のクレーム大型化・高額化の傾向に変化は見られず、この結果、外航船保険においては 2012 保険年度更改にて 6 年連続の General Increase を行い、組合員の皆様には大変なご負担をお願いしました。このような状況を打破するため、当組合はロスプリベンション活動を最重要課題のひとつと位置づけ、更なる強化を図っています。

保険者としてのクレームサービスの根幹は、事故発生時に迅速かつ的確に対応し、クレームの合理的解

In the first place, we would like to express our deepest appreciation to all of our Members for giving their dedicated support to the club's management, although they are still facing difficulties under the current global economic slowdown and the decline in the maritime industry.

Turning our attention to claims records, whilst the



常務理事 大住仲司

Nakaji Ohsumi, Executive Director

決を行って保険金をお支払することです。事故によって被った経済的損失は保険金によりある程度回復することは可能ですが、失われた信用までは保険でカバーすることはできません。当たり前のことですが、事故を起こさないことが一番なのです。事故をできるだけ減らすことができれば、保険成績も良化し安定的な保険料のご提供にも繋がり、組合員皆様と当組合の双方にとって好ましい結果となります。組合員の皆様におかれては、日々安全運航を心掛けていと存じますが、当組合でも、各種ロスプリベンション活動を通じて、組合員の皆様と協働し事故防止・減少を目指して参ります。

ロスプリベンション活動は、損害調査部や契約部を含め、当組合全体として取り組んでいますが、その中心的な役割を担うのが、ロスプリベンション推進部（通称、ロスプリ部）です。本年4月には、船長経験者1名を含む2名を増強し、私を含めて7名体制で各種活動に取り組んでいます。現在、ロスプリ部には、船長、機関長経験者が各1名在籍しており、長年の海上経験をもとに現場に近い視点から組合員の皆様へご助言できるよう努めています。

では、ロスプリ部の具体的な活動内容をご紹介します。

これまでの事故を見てみると、同じような原因で発生したものや、未然に防ぐことができたであろうものが多々あることに気づきます。組合員ごとの事故履歴

number of claims each year has been more than 6,000 since the 2007 Policy Year, the number of claims for the 2011 Policy Year has dropped to only just over 5,000 as a result of increasing deductible amounts. Regrettably, no major change has been seen in the recent trend of occurrences of large claims; consequently the Club had to ask the Members of ocean-going vessels to share the financial burden by requesting the 6th General Increase at the renewal of the 2012 Policy Year. In order to overcome such severe circumstances, we have strengthened the promotion of loss prevention measures as one of our top priorities and are working together to enhance these activities.

It is crucial for an insurer to deal swiftly and appropriately with accidents when they occur, to seek rational solutions and to pay insurance money without delay as soon as a reasonable settlement is made. By this, it may be possible to mitigate financial losses to some degree, but the insurance money itself cannot restore the trust and reputation of the Members which may be lost/ damaged by the accidents. As a matter of course, it would be, needless to say, best if accidents could be avoided in the first place. If the number of accidents could be reduced as much as possible, the resulting improved loss records would enable us to provide stable insurance premiums, and such position would benefit both our Members and the Association. We fully understand that it is a matter of utmost concern to the Members always to maintain safe voyages. We, therefore, as the

Association, shall also contribute toward supporting Members so as to avoid accidents and reduce the number of claims by promoting loss prevention activities.

The Association as a whole is working together on loss prevention activities, including Claims Department and Underwriting Department staff – amongst others, the Loss Prevention and Ship Inspection Department (“the Department”) is playing a main role. Since this April, two new staff members have joined the Department; one used to be onboard as a Master Mariner. The Department now consists of seven staff members including this writer. At present, there is one Captain and one Chief Engineer in the Department, and together we seek to provide



ロスプリベンション推進部

左から：村川奈々、吉村良子、田中雄一、岡田卓三、山下悦治、阿部俊雄

Loss Prevention and Ship Inspection Dept.

left to right : Nana Murakawa, Ryoko Yoshimura, Yuichi Tanaka, Takuzo Okada, Etsuji Yamashita, Toshio Abe

をみても、大型事故、同種事故が続発しているものや特徴的な傾向が見られるものなどがあります。もし、これらの事故を減らすために有効な対策を取ることが出来れば、非常に有意義なものとなります。そこで本年度から組合員ごとの過去の事故を分析し、組合員と協働して再発防止策を講じる活動を開始しました。具体的には対象組合員を訪問し、船舶管理体制などにつきインタビューします。そしてインタビューの結果を検討し、それを踏まえた参考資料などをご提供して組合員が再発防止策を立案することをお手伝いさせて頂くものです。その後、当該組合員の事故履歴を継続してモニターし、再発防止策が有効に機能しているかどうかを検証して参ります。インタビューに際しては、船舶管理のご担当者などに時間を割いていただき、色々なお話を伺うこととなります。日々の業務でご多忙とは存じますが、本活動はロスプリベンションのために大変重要と考えていますので、何卒ご協力をよろしくお願い申し上げます。当組合としても、組合員皆様とともに事故防止・軽減に向けて努力して参ります。

組合の保険成績改善のためには、加入船舶の質を一定水準以上に保ち、事故防止・軽減を図ることも重要なことです。当組合では、新規加入船舶だけでなく既加入船舶のコンディションをチェックするため、毎年、船種・船齢をもとにコンディションサーベイの対象船を選定しています。コンディションサーベイは国際P&Iグループ共通フォームを用いて、当組合が委嘱したサーベイ機関により実施されます。サーベイでは、甲板上設備や機関室、貨物艙や関連機器、消火・安全設備等の状態などハード面のチェックだけでなく、各種証書類の確認、そして安全管理システムが適切に遂行されているかなどソフト面のチェックも行います。その範囲・項目は多岐に亘っており、P&I事故を未然に防ぐ観点から策定されていますので、船級協会やポートステートコントロール（PSC）などの検査と比べて内容が異なる部分もあります。

サーベイの結果、不良と判断された場合には、不具合の改善を勧告したり、場合によっては、その不具合に起因するクレームのカバーを制限することもあり得ると警告（Defect Warranty 付帯）したりすることもあります。また、改善勧告は直ちにクレームに結びつかない軽微なものであっても、今後の安全運航と事故防止の観点から勧告させて頂く場合があります。地道なサーベイの積み重ねが、加入船全体の質の維持・向

Members with hands-on advice based on the long on-board experience of our personnel.

We would like to introduce the Department's activities in detail.

A lot of accidents seem to have been caused by similar problems or could have been avoided beforehand. During a further review of the claim records for each fleet, we noticed that there are some distinctive trends, such as a continuous occurrence of large claim accidents or similar accidents. It would be meaningful to us if we obtained effective measures to prevent such accidents. Thus, as of this Policy Year, we have started to review and analyse the nature and cause of accidents which each Member has had, in order to act together with Members to develop preventive measures against a recurrence of accidents. To be specific, we will visit and interview our Members to review their management systems and policies, and then provide them with materials which could serve as useful references for developing preventive measures against accidents. Afterwards, we shall continue monitoring the Members' claim records to verify that these measures are valid. To allow the interviews, we would need to ask vessels' Managers to take some time out of their busy schedule. However, we believe this process is of great importance as part of our loss prevention activities and would deeply appreciate your kind understanding and cooperation. We aim to work together with our Members for loss prevention.

It is important to keep up the quality of the maintenance of entered vessels and to prevent accidents, as well as to alleviate damage if such accidents take place, in order to improve the Club's claim records. We check a ship's condition not only for those newly-entered, but also of the vessels already entered with the Association. For this, every year we choose a selection of vessels to undergo Condition Surveys, based on their type and age. Condition Surveys are carried out based on survey forms jointly developed and used by the International Group of P & I Clubs, and the surveys are conducted by competent surveyors who are designated by the Association. The survey allows us to check not only a ship's facilities, such as those on deck, in the engine room or in the cargo hold, or the fire control and lifesaving appliances, but also their management status – documents,

上に繋がり、事故を未然に防止することになります。

当組合ではこれまで各種セミナーを実施してまいりますが、昨年から海務経験者が講師となり海上経験をもとに、より実務に即した内容で解説を加えたロスプリベンションセミナーを開催し、参加者からは大変ご好評を頂いています。今年度は、東京だけでなく、神戸、今治、福岡でも開催します。また、事故防止・軽減に資するため、エキスパート、弁護士事務所やコレスポンデントなどと連携して、各種事故のメカニズムや対策などを纏めたロスプリベンション・ガイドを発行したり、その時々々のロスプリベンションに役立つ最新情報をメンバーにお届けする Japan P&I News を発行したりしています。組合員の皆様におかれましては、各種情報を社内でご活用頂くだけでなく、各船舶にもご送付頂き、是非とも事故防止にお役立て頂ければ幸いです。また、各種情報は当組合ホームページにも掲載され、随時閲覧することができます。メールマガジンにご登録頂くと新着情報を E メールにてご案内していますので、こちらをご活用下さい。

2010年4月より当組合の役職員が加入船舶を訪船して、直接、船長や乗組員に事故防止を呼び掛ける訪船活動を実施しています。本活動では、事故防止を呼び掛けるポスターを配布し船内への掲示をお願いするとともに、ロスプリベンション・ガイドや本船の事故

certificates and the SMS, and whether it is performed rightly. As seen from the above, the survey requirements extend across a wide range of various aspects. Our focus is on preventing accidents related to P&I matters, thus the survey may differ to the requirements of other inspections, such as those of Class or PSC (Port State Control).

When defects are found during Condition Surveys, we always recommend the Member to rectify them. In some cases, we warn the Members that we may restrict cover for claims caused by or contributed to by the defects (i.e. we may attach Defect Warranties). Moreover, we may ask for rectification even for minor defects, which would not directly lead to P & I claims, in order to ensure safe voyages and loss prevention. We believe that by making steady efforts we can lead our Members towards sustaining and improving the quality of the entered vessels' maintenance and prevention of accidents.

We have held various seminars in the past. Since last year we have been holding seminars given by experienced mariners so as to allow us to take a hands-on approach to the marine business. We are delighted with the positive feedback we have received from Members. In this Policy Year, we are planning to hold seminars not only in Tokyo but in Kobe, Imabari and Fukuoka as well. In addition, to contribute to the prevention of accidents and alleviation of any damage caused, we have co-operated with marine experts, law offices and Club correspondents in publishing Loss Prevention Bulletins. These bulletins discuss the mechanism of certain accidents and prevention-measures. In addition, through "Japan P&I News", we provide up-to-date information on loss prevention. We hope such information will be sent to Members' vessels and will be used not only on the shore side but on-board as useful measures for loss prevention. The information is also available on our Website. If you subscribe to our Website alert service, you will be notified of the updates by e-mail.

Since April 2010, we have been visiting our Members' vessels and campaigning directly to the crew on loss prevention. On board the vessels, we usually give posters to put up inside and explain to the personnel relevant information in the Loss Prevention Bulletin. We may also discuss the vessels' claim records with the

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**コンディションサーベイで頻繁に指摘を受ける箇所について**  
**Areas of concern frequently noted at Condition Surveys**

当組合では、乗組員に対する定期的な訪問と乗組員に対し、コンディションサーベイを実施しています。クレームの高まりを抑制し、ロス・プリベンション（技術）に精通する当組合では、サブスタンプドの訪問や乗組員との対話、コンディションサーベイを実施しています。

コンディションサーベイでは組合が承認した検査機関からサーベイヤーがアサインされ、乗組員の訓練、船荷役はもたらぬこと、危険物の搬送、各部のメンテナンス状況の検査、安全設備や乗組員のコンディションに基いて確認します。本サーベイは月別の訪問の確認はもたらぬこと、将来の乗組員に繋がると予想される乗組員の教育、それらの乗組員に教育して頂くことにより事故の発生を防ぎ、クレームコストを削減することを目的としています。そのため、乗組員等、乗組員のサーベイで指摘されたような問題でも、従前の乗組員からの報告から、改善防止まで頂く場合があります。

コンディションサーベイを実施した船舶の乗組員に何らかの改善をお願いしています。これらの改善報告のうち、繰り返し指摘された箇所や乗組員が改善を怠り繰り返した場合は、乗組員に注意を促します。

1. 係船設備等  
 係船設備は、乗組員の訓練のみならず、乗付した船舶の設備による入港時発生する乗組員と乗付船との衝突による乗組員や乗付船の損傷や乗組員による乗付船の損傷や乗組員による乗付船の損傷を防止するために重要です。し

2. Mooring arrangements  
 Accidents, including physical injuries to crew and loss of anchors during mooring operations, are caused by various factors: operational mistakes, distraction or loss of the lines,

ロスプリベンション・ガイド  
 Loss Prevention Bulletin

履歴などの各種資料を説明して、船長並びに乗組員のロスプリベンション活動へのご理解を深めて頂くとともに、事故防止への協力をお願いしています。

訪船活動は、事前に組合員のご了解を得て、多忙な船長や乗組員に迷惑が掛からないよう十分配慮して実施しています。本年度も春のキャンペーンで約30隻を訪船させて頂きました。秋のキャンペーンでも同程度の船舶を訪船させて頂きたいと考えておりますので、組合員皆様のご理解・ご協力をよろしくお願い申し上げます。

2012 保険年度は、現在まで幸い比較的穏やかなクレーム推移となっています。これも組合員皆様の安全運航への絶え間ない努力の賜物と考えています。当組合としましては、引き続きロスプリベンション活動を強力に推進し、組合員皆様と当組合とが Win-Win の関係を築くことができるよう、事故防止・軽減を目指して参ります。

最後になりましたが、組合員皆様の船舶の安全運航が確保され、無事故の日々が続くことを心より願っています。

常務理事 大住仲司

Master and crew and ask for their cooperation, as well. With regard to the ship visiting campaign, we ask for permission of the Members beforehand and we always pay careful attention not to interrupt the Master and crew's duties. During this Spring, we have visited about 30 vessels. We are planning to proceed further in the campaign during this autumn. We would be grateful for your kind cooperation.

The number of claims in the 2012 Policy Year is expected to remain on the lower side in comparison with the past. We trust this is due to the constant efforts of our Members to ensure safe voyages. The Association intends to proceed further with loss prevention activities; we aim to produce win-win outcomes for both our Members and us and to proceed further towards avoiding accidents and mitigating damage if accidents do take place.

Lastly, we sincerely hope that through the safe management and operation of all our entered vessels, Members will continue their safe navigation and avoid all disasters and negative incidents.

Nakaji Ohsumi, Executive Director



事故防止を呼び掛けるポスター / Posters for "Visiting Ships Campaign"

# Letter of Indemnity (LOI, 補償状) と その法的実務的諸問題

## The Letter of Indemnity (LOI) and its Legal and Practical Problems



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### 1. 総論 — 問題の所在と事前対応方法

#### 1) 問題の所在

船主は傭船者や貨物関係者等から契約上は船主に受け入れ義務のないまたは契約規定にはない傭船契約やB/L上の様々な要請を受け、Letter of Indemnity (LOI, 補償状)を受け取る代わりにこの要請に従う場合がしばしばあります。しかし船主には法的、実務的に多大なリスクが伴うので安易な受諾は慎むべきです。

B/Lは高額な物品の権利関係を表章し運送契約条項を定め貨物の量・状態等を記載する非常に重要な書類で、その内容を虚偽記載した場合は例えば日本法上刑法違反に該当する刑事犯となり得ますので、注意する必要があります。

後述のようにB/Lに事実とは相違する記載をすることにより蒙る船主の損害や迷惑は甚大なものになりうるが、一般にそれらの損害や結果の多くがP&I保険等保険カバーのらち外であり、仮にカバーの範囲内であっても被保険者の行為が反社会的、反公序良俗、刑法犯等の違法行為である場合はP&I保険等保険カバーがされず、船主が自腹で解決しなければならない問題となりますので特に注意する必要があります。

他方 Shippers や傭船者等からはL/Cの規定内容との関連、貨物の量や性状との関連、その他様々な理由に基づき、B/Lの記載事項につき、特に貨物のDescription等につき、様々な要請、修正、追加、新B/Lの発行その他の要求が来ます。

もちろん当該商取引の適切な遂行を図ったり、顧客や契約関係者の合理的な要請を受け入れることにより今後の取引の円滑な遂行や拡大等を図ることは当然です。しかし顧客や関係者の要求の中にはこれを軽々と受け入れるには問題のあるまたは受け入れると本船・船主に不都合や損害を与える可能性のある要求が種々含まれています。大切な顧

### 1. General – What Are The Problems? and Counter Measures to be Taken in Advance

#### (1) What are the Problems?

Ship Owners frequently receive from charterers, cargo interests and others requests under the charter parties and the bills of lading. While the Owners may have no obligation to comply with the request, they frequently do so in exchange for a letter of Indemnity (LOI). However, since complying may expose Owners to significant legal and practical risks, they should not agree to such requests lightly.

A bill of lading is a very important document / instrument. It is a document of title to valuable commodities, it provides evidence of the terms of the contract of carriage of goods and it states the quantity, condition and amount of the goods. False statements made in the bill could lead to criminal penalties, for example for a breach of the Criminal Law of Japan. Ship Owners should therefore be very cautious in deciding whether to agree to an LOI request.

As mentioned below, Ship Owners could sustain significant losses, damages and inconvenience as a result of making incorrect statements in the bill of lading. Many of these damages and losses would be outside the coverage of P&I and other insurances. Even where such loss or damage may usually be within such coverage, if the activities of the Member are anti-social, contrary to public policy or in violation of criminal and / or other laws, there will be no coverage under P&I or other insurances. In such a case Owners would have to satisfy any claims from out of their own pockets and therefore should take particular caution when in receipt of an LOI request from charterers and other interests.

Aside from requesting changes to statements on the face of the bill of lading, shippers, charterers and others frequently make other LOI-related demands, such as for the issuance of new bills of lading. Such demands may be made in connection with the terms of the Letter of Credit, the quantity, quality and conditions of the cargoes, and for other various reasons, particularly in respect of the description of the cargoes.

A Ship Owner will accept reasonable LOI-related requests from customers and contractual parties in order to ensure the smooth performance of current commercial contracts and to try to gain future business.

客や関係者の要請だからと軽々と受け入れると、単に他の利害関係者に迷惑や損害を与えるばかりでなく、本船・船主自体にも不都合や損害を与え、また単に民事的問題になるだけではなく、行政的・刑事的問題や行政制裁・刑事制裁の対象になりえ、過去そのような事案が時々起こりますので、最大限の注意をする必要があります。

更にかような損害等は LOI を取得しても十分補填できない種類のもが多々あり、また事案によっては LOI 自体も無効とされる可能性があります。特にこの種の問題は一旦発生すると非常に甚大な影響や被害を与えますので注意すべきです。

## 2) 事前対応方法— “Tell Me Why”

よって顧客・備船者・Shippers その他利害関係者から B/L の記載事項や備船契約の条項について何らかの要求が来た場合は、まず以下の措置を必ず取るべきです。

**A) 要請者に要求の理由や Background 事情を質問し説明させる。**

備船者等から何らかの要請が来た場合は、ビートルズの “Tell Me Why (you cried, and why you lied to me)” という佳作を思い出しましょう。要請者に要求の理由や Background 事情を “Why?” と必ず質問することが肝要です。質問する目的は、要求の理由や背景事情等を先方に説明できれば、通常それに応じることによるリスクの有無または軽重が相当程度判明することが多いからです。

**B) 説明を検討・吟味し、その説明に疑問がないか、理解が出来るか、不明不合理、違法または公序良俗違反となる恐れのある要因はないか検討する。**

自分ではよくわからない場合は同僚・上司に必ず聞き、部内での判断に危惧がある場合は法務部門や弁護士に聞くべきです。尚質問に対して要請者から満足なまたは納得いく説明がない場合は、「怪しい」案件として取り扱うべきです。

相手の要求や事情説明は、実務上よくありその要求の理由や事情が十分理解できる種類のものでまた実務上自社や同業他社もよく受け入れている事項もあります。例えば貨物の数量が Shore Figure と Ship Figure とで異なる場合や B/L の貨物の記載等を L/C の記載と一致させたいという場合です。

他方その理由や事情が理解できない場合、または要求に応じると自社や関係当事者に不当に不都合や損害を与える恐れがある場合や、関係者や関係当局に虚偽の事実を表示したり、これを欺罔することになる可能性がある場合があります。例えば積み地や揚げ地の名称を実際のそれとは違う港に変えるよう不合理な理由でまたは理由無しに求めること、貨物の数量や種類、性状につき非常に大きな差異の

However, many requests could cause problems for the ship owner and / or inconvenience for the vessel if the owner accepts them without thought. Thus if the Owners accept such requests lightly as they are made by important customers, inconvenience and loss / damages could be sustained by other parties concerned and the Vessel / the Owners themselves. Not only civil claims could arise but administrative problems and criminal sanctions could arise also. In fact in the past there occurred many such cases, and Owners should take maximum precautions before agreeing an LOI request.

Moreover, damages of many sorts cannot be sufficiently covered by an LOI and in some cases the LOI itself might be found to be invalid. In particular the Owners should take precautions as once problems occur, significant damages and losses may arise.

## (2) Counter Measures to be Taken in Advance- “Tell Me Why”

For the above reasons, the following steps should be taken without fail when the Owners receive an LOI-related request from customers, shippers or other parties in respect of statements/entries in the B/L and provisions of the charter party.

**(A) To put to the requestor inquiries about the reasons, background and circumstances of the request and let the requestor explain.**

Where Owners receive from the Charterers and others certain requests, please recall a good song of the Beatles, “Tell Me Why (you cried, and why you lied to me)”. It is important to ask “Why ?” about a request. The answer to such a question should reveal the presence or absence of the risks and degree thereof for Owners if they comply with the request.

**(B) To examine and inspect the explanation and to consider whether any further questions or doubts arise from the explanation, whether the explanation is well understandable, or whether there are any factors which are unclear, unreasonable, illegal or contrary to public policy.**

If the explanation is unclear or Owners still cannot decide whether it would be safe to accept the LOI request, they should consult with their legal department and/or outside lawyers. If Owners do not receive a satisfactory or understandable explanation from the requestor on your inquiries, Owners should treat this as a “suspicious” case.

An LOI-related request or the explanation thereof may be normal in practice and the reason for the request and/or explanation may be well understandable and have been frequently accepted by Owners and their competitors in practice. For example, where the cargo quantity differs between the shore figure and the ship figure or the requestor wishes the cargo entries/statements in the B/L to tally with those in the L/C.

On the other hand there are cases where the reasons or the circumstances explained cannot be well understood, where there is a possibility of inconvenience and damage being caused to Owners’ company and the parties concerned if the request is complied with, and/or where there is a possibility of falsely representing the facts to the parties and / or authorities concerned or of defrauding those. Examples of such requests include changing the name of the load or discharge port to one which is different from the actual one, making false statements in the bill of lading as to cargo quantity, description, quality and/or condition, and post-dating or back-dating the B/L date instead of using the actual date of completion of loading. If Owners accept such requests, their conduct may be in violation of the laws

ある記載をするよう求めること、B/Lの日付を実際の船積完了の日付から後または前にずらすこと、その他です。そのような要求を受け入れると、受荷主や船積み、荷揚げ港またはその他の地の関係当局、関係銀行、関係輸出入関係法その他関係適用法の違反となる場合があります。またかような要求の下、たとえLOIを一流会社から取得したとしても、本船・船主の権利擁護に役に立たない場合もありますので、要求を受け入れることは非常に慎重にすべきで、少なくとも法務又は弁護士に事前相談する体制が必要です。

以上は懸念するところもありますが、また実際に問題になるのは千三つ万三つの確率の世界のもので、一旦事件や問題が起こると下手をすると会社の屋台骨を揺るがすマグニチュードの事態にもなります。

## 2. 各論—要求事例と対処法

以下筆者がこれまでの長い経験で遭遇した事例の一部をご紹介します。

### 1) B/Lに関する要求

事例：Cargoの実際の数量等が正確にCheckできず Charterers/Shippers等の申告のみでB/Lに記載することがあります。またB/Lに記載すべき事項の内容に紛議がある場合、ある事項の記載やあるRemarkの記載または不記載について当事者の一方が正しいと考える内容とは異なる記載の要求されることがあります。

- (A) Cargo量：Cargo量の正確なCheckが困難又は不能なとき（例えばLogの数、Oilの量）、Charterers/Shippersの申告FigureをB/Lへ記載するよう要求される場合
- (B) Cargo Condition：Cargoの状態に紛議があるがCharterers/Shippersの言い分に説得されて/強いられて、妥協として又は時間がないので、Clean B/Lの発行を要求される場合（Foul B/L-Remark付B/Lを発行してもClean B/Lを要求するL/C条項との関係で銀行は受けつけない）
- (C) B/L日付、揚げ地等：B/L Date, Loading Port, Destination, Stowage位置を変更してB/Lに記載すること又は記載を変更したB/Lを新たに発行することを要求される場合
- (D) 貨物Spec. Commingle等：貨物荷揚げ前や揚げ後のTranshipや内陸輸送の記載、貨物のSpec.や品質、IMO Name, SCAC Code, L/C内容、特殊な裁判管轄や仲裁地の記載、貨物のCommingle、添加物や水分の混入、Clean on Board記載等を要求される場合
- (E) Freight：C/P上FreightはLoading完了後5日以内に支払いなどの合意がされるも、Freight Prepaid B/Lの

and regulations of relevant authorities at the load port, discharge port or elsewhere. If the LOI request relates to bankers, compliance may violate relevant export/import laws and regulations and other applicable laws. Even if on such a request, Owners obtain an LOI from a first class company, the rights and interests of Vessel/ Owners may not be protected. Owners should thus be very cautious about accepting such requests and be sure to know in advance the system of consulting with the legal department or outside lawyers in case of need.

The above can be excessively cautions and the probability that actual problems may occur may be very small but please do note that once a problem has occurred, the result could be very serious indeed, possibly significant enough to include the danger of shaking the foundation of Owners' company.

## 2. Specific Cases – Examples of Requests and Counter Measures to be Taken

The Writer hereunder discusses several examples which he has encountered in his long experience.

### (1) Requests Concerning Bills of Lading

#### Examples:

The actual quantity and condition of the cargo cannot be accurately checked and details may be entered in the B/L only with a declaration of the figures by the charterers/shippers and others. Besides where there is a case of a dispute over the contents of the items to be entered/stated in the B/L, the statement of a certain item, and/or entry or non-entry of a certain remark which differs from the contents which one party thinks to be accurate may be requested.

- (A) Cargo Quantity: Where checking of the cargo quantity accurately is difficult or impossible (for example number of logs, quantity of oils). Where the figure as declared by the charterers/shippers is requested by them to be stated in the B/L.
- (B) Cargo Condition: Where there is a dispute over the condition of the cargo and Owners are persuaded or forced to issue a Clean B/L because of time constraint for the ship. (If a claused bill of lading is issued, the bankers would not accept such in light of the terms of the L/C requiring a Clean B/L).
- (C) B/L Date, Destination and Others: Where entry/ statement of changed B/L date, loading port, destination and/or stowage position in the B/L or a request is made for a new B/L to be issued, to include such changed entries/statements as requested.
- (D) Cargo Specification, Commingling and Others: Where the entry/ statement of transshipment before or after the discharge of the cargo, inland transport, specification or quality of the cargo, IMO name, SCAC Code, contents of the L/C, special court jurisdiction or special place of arbitration, commingling of the cargo, mixture of additives or waters, "Clean on Board" bills may be requested.
- (E) Freight: Where the issue of a freight prepaid B/L is requested, whereas the C/P states that freight is payable, say within five days of completion of loading. Where the entry of the freight rate is requested.
- (F) Split B/L, Switch B/L and Others: Where a change of Consignees and/or the Notify Party, issuance of split B/L or switch B/L, or the B/L being carried onboard the Vessel are requested. Where issuance of the B/L by way of sending it to the place other than the loading place, or re-issuance of the B/L due to it becoming missing or lost is requested.



発行が要求される場合や Freight Rate の記載が要求される場合

(F) Split B/L Switch B/L 等：荷受人や Notify Party 変更、Split B/L Switch B/L 発行、B/L 本船託送等が要求される場合、積地以外への B/L の送付による発行、B/L Missing 又は Lost と再発行が要求される場合

(G) B/L 無しの貨物引渡：B/L Original 提示無しの貨物引渡、裏書き無し B/L での貨物引渡が要求される場合

以上に関しては変更事項記載の Original B/L の発行以外に、変更事項を記載した B/L のゼロックス Copy や Non-Negotiable B/L Original またはその Copy のみの提出を求められることもあります。また単に誤記の修正を求められることもあります。上記と同様の注意を払う必要がある。

## 2) 傭船契約に関する要求

事例：以下の事項等が要求される場合。

危険地域（戦争、海賊、結氷、制裁地域、除外地域、非安全港等）への本船航行、寄港禁止港寄港、Slow Steaming 又は Full Steaming、除外貨物・危険貨物の船積み、燃料油 Commingle 添加物添加、傭船者関係者本船乗船、傭船者機器託送品本船搭載、傭船者都合 Deviation、貨物特殊積付けとその管理方法、Tank/ Hold Cleaning 無しの船積み、雨中荷役、瀬取り Ship to Ship 等特別荷役、保税倉庫 /Tank 等特別場所への荷揚げ、Tank/ 船倉洗浄水等排出、積みまたは揚げ荷役の延期、船主支配外区間の Through B/L 発行、船舶や船積み等に関する (Non Objection) Certificate の発行、B/L の代わりに Seaway Bill 発行、Terminal B/L の発行等要求

## 3) リスク

B/L の記載事項が事実と相違しても善意の B/L Holder に原則として対抗できない。即ち Freight が未払いの事実、実際の貨物量・状態、貨物の損傷や Shortage 等を善意の受荷主に対抗できなくなる。

B/L 二重発行、B/L 回収が無効となる等の恐れがある。

P&I 保険 Cover 受けられなくなる恐れがある。

B/L の不実記載：各国刑法・行政法・現地法違反の恐れがある - 発展途上国地域の事案に特に要注意 - 本船の長期滞船や没収の危険がある。

B/L Date の先日付：例：売買価格との関係、受荷主が積み地または揚地の新税法の適用を逃れる目的で行われる。本船の差押等の Risk がある。

(G) Cargo Delivery Without B/L: Where cargo delivery is requested without production of the original B/L, or cargo delivery with production of a non-endorsed B/L.

With regard to the above, other than issuance of the original B/L with stating the changed items, production of a Xerox copy of the B/L with the entry/statement of the changed item, a Non-Negotiable B/L (original or its copy) may be requested or amendments of simple typos or mistaken entries may be requested. You should take similar precautions about those.

## (2) Requests Concerning Charter Parties

### Examples:

Where the following matters and others are requested. The Vessels navigating in dangerous zones (war, piracy, icebound, sanction area, excluded area, unsafe ports and others), calling in prohibited ports, slow steaming or full steaming, carrying shipments of excluded cargo/dangerous cargo, there has been commingling of fuel oils, addition of fuel additives, boarding the Vessel of charterers' persons, loading onboard of charterers' machinery etc., deviation due to charterers' convenience, stowage of special cargo and method of custody thereof, shipment without tank/hold cleaning, cargo operations during rainfall, special cargo operation by lighters, ship to ship and others, discharge at special places such as bonded warehouses/tanks, discharge of hold tank/hold cleaning waters, postponement of loading or discharge operations, issuance of Through Bills of Lading for segments outside the Owners' control, issuance of (Non-Objection) Certificate concerning the shipment and the loading etc., issuance of Sea Waybill instead of B/L.

## (3) Risks

Basically the entered/stated items in the B/L, if these differ from the actual facts, may not be valid or cannot be enforced against a bona fide B/L holder, namely the fact of non-payment of freight, the actual cargo quantity or condition, or loss of or damage to the cargo or shortage cannot be invoked to the bona fide Consignees.

There are risks of double issuance of the B/L and of the collected B/L being invalid.

There is a risk of non-coverage by P&I insurance.

False statements in the B/L: There is a risk of violating criminal laws, administrative laws and the local laws of each country - Particular caution is required in cases of developing countries/areas - There is a risk of long detention or confiscation of the Vessel.

Postdating/Backdating of B/L Date: Example, In relation to the sale and purchase price of cargo shipped, or for the purpose of the Consignees' attempt to evade tax at the loading or discharge place. There is a risk of arrest of the Vessel.

Change of Loading Place/Destination: Example: For the purpose of concealing export to or export from enemy countries. On some occasions the false statement may violate local laws and there is a risk of arrest of the cargo and Vessel.

Complying with charterers' requests may risk inconvenience and damage to the Vessel, crew, Owners, parties interested in the Vessel, cargo onboard and others and risks violating relevant laws, regulations and treaties.

## 3. Letter of Indemnity (LOI)

### (1) Purpose of LOI and its Validity

積地揚地の変更：例：敵対国等への輸出、敵対国からの輸入をごまかす目的で行われる。場合によっては不実記載が現地の法律に違反することがあり、貨物や本船の差押等 Risk がある。

備船者の要求に従うことで、本船・乗組員・船主・本船船主関係者・積載貨物等への不都合や損害の Risk、関係法令条約等違反の Risk がある。

### 3. Letter of Indemnity (LOI, 補償状)

#### 1) LOI の意義・有効性

これらの Risks を Charterers 等にヘッジするため適切な LOI を取得することが必要です（いわゆる "Single LOI" か Bank Guarantee）。国際 P&I Club Group が B/L 未着揚地変更の場合の推奨 Forms を発表しており参考になります。但し事案に適切な文言を検討する必要があります。

また LOI の合意事項が Illegal（違法）であったり Public Policy（公序）に反するような場合（例 B/L の不実記載が第三者を詐欺（Fraud）にかけるような場合）、LOI は Unenforceable（無効）と判断される恐れがあります（英国判例 Brown, Jenkinson v. Percy、例えば明らかな著しい欠陥包装なのにそのような Remark 無しの Clean B/L を出した場合）。しかし貨物の状態には関係当事者間に見解の相違もありえ、かような LOI が常に違法・無効とされるかまた英法以外の法が適用される場合でも同様に無効となるかは疑問で、何れにしろ各事案の事情をみるべきです。本船船長・乗組員は Cargo の状態が多少よくないと評価するが、この評価は間違いかもしれず、Shippers 等の主張に説得力があれば Clean B/L を純粋な意図で出すことがあり、この場合 LOI を無効と出来るか？の問題もあります。本来 Seller と Buyer 間の売買契約の問題を本船側の責任に押しつけている物品売買契約の現実や L/C 上の要求事項という問題もあり注意すべきです。

#### 2) B/L 未着と LOI

近時特に Oil/ 液体 Cargo 運送では B/L 原本提示無しの Cargo Delivery が通常の実務となっています。しかし Cargo Receivers が倒産して売買代金が支払われず Security（担保）として B/L を保有する銀行が現れる例のように、B/L 保有者が本船 / Owners / Carrier に貨物引渡を受けられない損害を Claim する Risk があります。基本的に Owners / Carrier は B/L 提示無しの貨物引渡に応じる必要はありませんが、取引上の必要からまたは本船の滞船を防ぐ意味からこれを行うことが実務上非常に多く、また C/P に B/L ではなく備船者の LOI で貨物を引渡す義務が合意されることがあります（これを行うこと自体は各国法上通常 Illegal ではありません、例えば英国判例 The "Sagano", The "Nemea", The "Sormovskiy 3086"）。

It is necessary to obtain a suitable LOI in order to shift those risks to the charterers and other parties (by way of so called "Single LOI" or Bank Guarantee). The International Group of P&I Clubs has published recommended forms in cases of non-arrival of B/L and change of destination and those are helpful, provided that you should consider wordings suitable to each case. It should also be remembered that delivery of cargo without production of an original bill of lading is likely to prejudice a Member's P&I cover. Such prejudice may occur even if Owners hold an LOI from charterers. Whether to deliver cargo without production of an original bill of lading is thus always a commercial decision for Ship Owners.

In cases where the provisions agreed in the LOI are illegal or contrary to public policy (Example, where false entries in the B/L defraud third parties), the LOI may be judged as unenforceable or invalid (the English case, Brown, Jenkinson v. Percy Dalton). An example is where the cargo is clearly damaged / defective, yet a Clean B/L is issued without any remark. However, there can be a difference of opinion on the cargo condition and it may be questionable whether such an LOI is always found to be illegal / unenforceable or whether it is likewise found to be invalid if law other than English law is applied. In any case the circumstances of each case should be examined. Where the Vessel's Master and crewmembers assess that the cargo condition was not good, such assessment may be wrong and a Clean B/L may be issued with genuine intentions if the Master finds the allegations of the Shippers and other parties were persuasive. In such a case, it is a question whether or not the LOI should be treated as invalid. We should also see the "reality" of sale and purchase agreements on commodities where cargo buyers and sellers may seek to make Owners responsible for certain matters under the Letter of Credit contract. The L/C sale contract is a completely separate to the contract of carriage contained in or evidenced by the Bill of Lading, and Ship Owners should be cautious about any attempt to make them liable for L/C matters.

#### (2) Non-Arrival of B/L and LOI

Nowadays, particularly in carriage of oil/liquid cargo it is common and normal practice to effect delivery of cargo without production of the original B/L. However, there is a risk that the B/L holders will file claims against the Vessel/the Owners/the Carrier for damages due to the non-delivery of the cargo. This may happen where cargo receivers become insolvent, the purchase price has not been paid and bankers holding the B/L as the security come to claim against the Vessel/the Owners/the Carrier. The Owners/the Carrier do not basically need to deliver the cargo without production of the B/L but in light of the commercial necessity or in order to avoid the Vessel's delay, cargo delivery without production of the B/L is very frequently done, even if this may prejudice P&I cover. Besides the C/P may stipulate for an agreement on the obligation to deliver the cargo by way of the charterers' LOI rather than the B/L (to conduct in such manners itself is not normally illegal under each law. For example, see the English cases the "Sagano", The "Nemea", The "Sormovskiy 3086").

The International Group of P&I Clubs publishes recommended forms for the cargo delivery by obtaining the LOI from the receivers/charterers. Nowadays it is recommended that caution should be also taken about confirmation of the identity of the party to whom the cargo is delivered and also about how the Ship Owners should approach the issuer of the LOI where the claim is filed to the Owners.

Recently a simple method of "LOI issuance" by way of e-mail invok-

Receiver/Charterers から LOI を取得し貨物を引渡す場合のため、国際 P&I Club Group の推奨 Form があります。近時は引渡す相手先の身元確認や B/L 保有者から Claim が来た場合の船主の LOI 発行者へのアプローチ方も注意するよう推奨されています。

また近時は C/P の LOI 条項の援用を E-Mail 等で行う簡易な「LOI 発行」方法が行われていますが、適正な出状が実際にされたと認められるべきかにつき紛争が起こりえますので、Signed LOI を Scan や Fax で取得する方法を奨めます。また C/P の LOI 条項も適切な文言が必要です。更に LOI の宛先やカバー関係者をどこまで含めるかとか LOI の Signer のタイトルの高さという問題もあります (B/L 無し of 貨物引渡しに関する英国判決 “The Bremen Max” は LOI にまつわる様々な論点を扱い参考になります)。

他方かような貨物引渡は B/L 保有者が現実に Claim して来た場合 Claim 額は一般に大きくなり、Risk は PI 保険の Cover の対象にもなりませんので LOI は確実な相手から適切な Form で取得する必要があります。

### 3) B/L 提示無しの引渡しと時効

Hague (Visby) Rules の 1 年の Time Limit が B/L Holders の Claim に適用されるかの論点があります。また B/L 裏面の 1 年間の時効条項の規定の有効性が争われた裁判事例があります。更に船積前又は荷揚後の事由の免責規定 (日本国際海上物品運送法 15 条) の適用が争われた裁判事例もあります [例えば日本国最高裁判決平 9.10.14 (海事法研究会誌 1998-8-No.145)]。この問題は船主がいつまで LOI を保有し Charterers 等に返還解除しないようすべきかの問題とも関わっています。

### 4) B/L の本船への託送

B/L 全通 (通常 Original 全 3 通が One Set として発行される) は原則としてその内 1 通が提出・回収されれば他の 2 通は無効となりそれを保有する者が貨物引渡を求めてきても無効です。しかし Shippers/Charterers が B/L Original 1 通を本船に託送し、かような B/L の提示による貨物引渡しを要請することがあります (これの変形として積み地での B/L 「提出・回収」の要請や揚げ地での B/L 署名発行の要請のパターンがあります)。これは通常予定された B/L の発行・裏書・提出・回収の方法を逸脱しているため、託送 B/L Original を単に 1 通回収しても、当該貨物引渡しは適正なもの認められないか他の B/L Originals が無効と認められない可能性があります。かような要請は拒否するか、取引上の理由でやむを得ない場合は LOI の取得と B/L 表面への 1 通の Original の託送に関する表示 (国際 P&I Club Group の推奨 Wording あり) を条件に要請に従う必要があります。

ing the LOI provisions of the C/P is being adopted but there may occur disputes over whether the proper issuance of LOI can be found to have been in fact made. It is recommended that Owners obtain the signed LOI by way of scan or fax. Moreover the LOI provisions of the C/P should be properly worded. Also there is a problem of how far the addressees of LOI and the parties to be covered by LOI should be included and how the higher title holder should be required for the signer of the LOI. (The English case the “Bremen Max” concerning cargo delivery without the B/L deals with various issues on the LOI and is helpful.)

On the other hand if Ship Owners do deliver cargo without an original bill of lading, the claim amount where the B/L holders actually file a claim could become very high and, since the risks are not covered by P&I insurance, an LOI should only be obtained from parties able to satisfy the LOI's terms in the proper form.

### (3) Cargo Delivery Without Production of the B/L and Time Bar

There is an issue of whether the one year time limit of the Hague (Visby) Rules is applicable to claims from the B/L Holders. There is a court case where the validity of the provision of the one year time limit on the reverse of the B/L was disputed. Also there is a court case where applicability of the exemption provisions to incidents which occurred prior to the shipment or after the discharge (Japan COGSA Article 15) was disputed (For example the judgment of the Supreme Court of Japan, the highest Court in Japan-1997.10.14 [Maritime Law Research Magazine 1998-8 No. 145]). This issue is also concerned with the issue of until when the LOI should be kept and should not be returned or cancelled to the charterers.

### (4) B/L Carried On Board the Vessel

Basically, all Bs/L (normally issued in three originals in total as one set) will be invalid if one original has been surrendered and collected. The other two originals will be invalid and the claim for the delivery of the cargo by the holders of the other B/Ls will be invalid. However on some occasions the shippers/ charterers' request that one B/L original should be retained and carried on board the Vessel and for the cargo delivery to be made against such B/L. (As the change of the above pattern, there are other patterns of the request for “surrender/ collection” of the B/L at the loading place and the request for signing and issuance of the B/L at the discharge place.) However, this method deviates from the method of issuing, endorsement, surrender and collection of the B/L normally planned, and if to simply collect the one original of the B/L retained and carried on board the Vessel, such delivery may not be found to be proper one and/or the other original B/Ls may not be found to be invalid. Thus Owners would be better off refusing such a request or if compelled for commercial reasons Owners should comply but only on condition of obtaining a suitable LOI and of putting the remark at the front leaf of the B/L in respect of one original B/L being detained on board the Vessel. (The International Group of P&I Clubs published the recommended wordings thereof.)

(Tsurusaki: Last but not least, I wish to mention with many thanks that my English translation of the original article written in Japanese has been excellently proof-read and brushed up thanks to the excellent assistance and suggestions of Mr. Tetsu Morita and Mr. Royston Deitch of Japan P&I Club, London Office. It has indeed transformed the article much better than the original Japanese version!)

# 人事のお知らせ / STAFF NEWS

## ◎人事異動 / Changes:

2012.5.1 / On 1 May 2012

今治支部長兼契約グループリーダー兼損害調査グループリーダー

**亀卦川 宏**

Hiroshi Kikegawa, Assistant General Manager, has been promoted to General Manager of Imabari Branch. He has also been appointed Assistant General Manager of Underwriting Group and Claims Group of the branch.



2012.7.23 / On 23 July 2012

損害調査部長

**沢辺 浩明**

Hiroaki Sawabe, General Manager, has been moved to Claims Department.



神戸支部損害調査グループリーダー

**加藤 哲**

Tetsu Kato, Assistant General Manager, has been moved to Claims Group of Kobe Branch.

損害調査部第3グループリーダー

**澤村 聡**

Satoshi Sawamura has been promoted to Assistant General Manager of Group III of Claims Department.

ロンドン駐在員事務所副所長

**森田 哲**

Tetsu Morita, Assistant General Manager, has been moved to London Liaison Office and has been appointed Deputy General Manager of the office.

2012.10.1 / On 1 October 2012

損害調査部長兼第4グループリーダー

**沢辺 浩明**

Hiroaki Sawabe, General Manager of Claims Department, has also been appointed Assistant General Manager of Group IV of the Department.

経理部長

**赤坂 裕章**

Hiroaki Akasaka, General Manager, has been moved to Accounting Department.



契約総括部業務グループリーダー

**上田 直樹**

Naoki Ueda, Assistant General Manager has been moved to Reinsurance Group of Underwriting Administration Department.

企画部企画グループリーダー

**中嶋 浩一郎**

Koichiro Nakajima, Assistant General Manager, has been moved to Planning Group of Planning Department.

## ◎よろしくお願ひします(新職員紹介) / Recent Arrivals:

2012.4.16 / On 16 April 2012

ロスプリベンション推進部・部長

**岡田 卓三**

Takuzo Okada – General Manager, Loss Prevention and Ship Inspection Department



損害調査部第2グループ主任

**井ノ久保 総一郎**

Soichiro Inokubo – Senior Staff, Group II, Claims Department



損害調査部第4グループ主任

**宍戸 昌樹**

Masaki Shishido – Senior Staff, Group IV, Claims Department



2012.5.1 / On 1 May 2012

契約部第2グループ

**荒川 兼六**

Kenroku Arakawa – Group II, Tokyo Underwriting Department

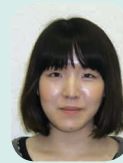


2012.6.12 / On 12 June 2012

契約部

**仲野 真由**

Mayu Nakano – Tokyo Underwriting Department



2012.7.1 / On 1 July 2012

損害調査部第3グループ・アシスタントマネージャー

**杉山 治子**

Haruko Sugiyama – Assistant Manager, Group III, Claims Department



2012.7.17 / On 17 July 2012

損害調査部第3グループ

**前川 淳**

Atsushi Maegawa – Group III, Claims Department



JAPAN P&I CLUB

日本船主責任相互保険組合

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