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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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## 2021 保険年度 契約更改の御礼

### Appreciation for the 2021 Renewal



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組合員の皆さま、2021 保険年度の契約更改ありがとうございました。この紙面を借りて御礼を申し上げるとともに、更改結果をご報告申し上げます。

当組合の 2020 保険年度の外航船保険は、上半期に連続して発生した 2 件の 1 千万ドルを超える大型事故の発生や例年を上回るペースのプール分担金に加え、コロナ関連の支出も相まって 2019 年度に引き続き保険引受費用が保険料を上回る状態で推移しました。幸い、下半期は落ち着きを取り戻し、収支の逆転現象に歯止めがかかりました。一方、内航船保険は、5 千万円を超過する大型事故は 1 件にとどまり、過年度と比較すると落ち着いた一年でした。

I would like to express our deepest appreciation to all our Members for the 2021 policy year Renewal, and to report on the outcome of the Renewal.

Continuing from the 2019 policy year, the loss record for ocean-going vessels worsened significantly in the 2020 policy year, due to the impact of two large claims exceeding USD10 million, a higher burden of IG Pool contributions than in previous years, and COVID-19 related claims in the first half. The first six months of the year showed a deficit but fortunately, the claims trend calmed down in the second half, and there was a surplus for the whole year due to a good result in the second half.

On the other hand, our book of Japanese coastal vessels had only one large claim (more than JPY50 million) and a calmer year compared to previous years.

Given the claims trend as described above and having considered the various factors essential for the management of the Association, such as its Members' business environment and ensuring the soundness of its income and expenditure, the Association asked ocean-going vessels Members for a 10% general increase in pre-

このようなクレーム状況、組合員の皆さまを取り巻く厳しい事業環境、保険事業収支のバランス等の各要素を慎重に考慮し、2021 保険年度の外航船保険の保険料率につきましては、10%のジェネラル・インクリースと10年ぶりの標準免責金額の引上げを実施させていただきました。内航船保険の保険料率については、10年連続で据置きといたしました。

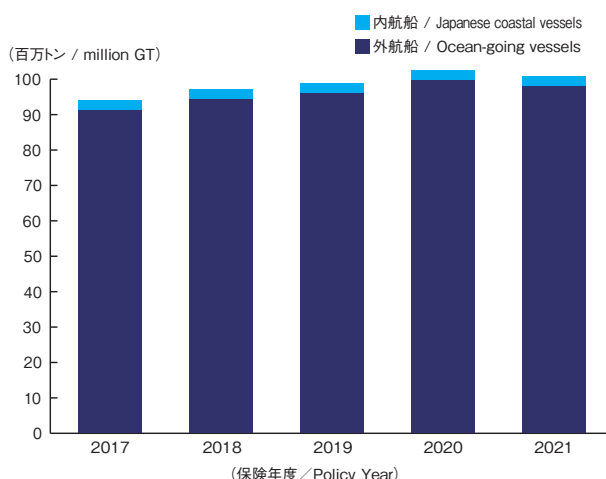
更改の結果、新保険年度のスタート時点（2021年2月20日）の外航船契約数は2,211隻、94.6百万トン（前年同期比1.6百万トン減）、内航船契約数は1,876隻、2.6百万トン（前年同期と同値）となりました。今更改は契約量の維持・拡大よりも収支改善に主眼を置き、保険成績に応じた成績調整をより厳格に行ったことから、外航船の一部のフリートで契約の流出がみられましたが、ほとんどの組合員の皆さまにご理解をいただき、目標としていた保険料水準を達成することができました。改めて、組合員の皆さまのご支援に御礼申し上げます。

今年度は収支改善と財務基盤の安定を目標とし、組合運営のさらなる効率化に努め、組合員の皆さまのニーズに適った有益で信頼され、競争力のある保険サービスを提供できるよう役職員一丸となって邁進してまいりますので、一層のご支援とご協力を賜りますようお願い申し上げます。

末筆ながら、新型コロナウイルスの猛威がなかなか収まらない不安な状況下、組合員の皆さま、ご家族のご健康をお祈りいたします。

#### ■ 加入トン数 / Entered Tonnage Development

(各保険年度期初時点 / as of commencement of each policy year)



miums and an increase of the standard deductible for the 2021 policy year. This was the first increase in the standard deductible for 10 years. For Japanese coastal vessels the 2021 renewal marks the 10th consecutive year that we have not asked for a general increase.

As a result, the Association has started the 2021 policy year (which began on 20 February 2021) with 2,211 vessels/94.6 million tons of ocean-going vessels (a decrease of approx. 1.6 million tons compared to the same period last year) and 1,876 vessels/2.6 million tons of Japanese coastal vessels (no change to the same period last year).

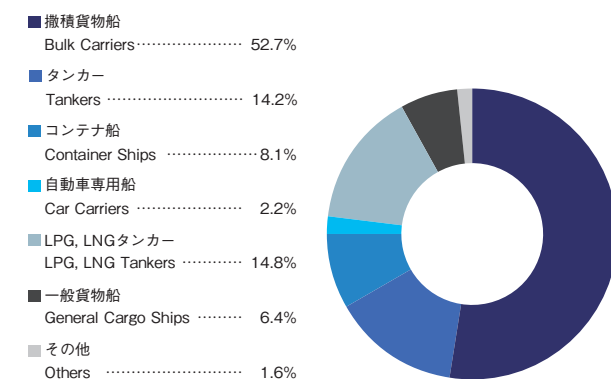
At this renewal, we focused on improving our finances rather than maintaining or increasing the volume of the entry. As a result of stricter rates adjustments based on the loss record of each fleet, there were some policy cancellations amongst ocean-going vessels. However, we were able to achieve our target premium level with the understanding of most of our Members. Once again, I would like to thank all of our Members for their support.

This year, we will strive to improve further the efficiency of our operations, with the aim of improving our income and financial stability. We will work together to provide helpful, reliable and competitive insurance services that meet the needs of our Members, and we would appreciate Members' continued support and cooperation in this.

In conclusion, I would like to express my sincere wishes for the health of Members and their families, as we all face a future made more uncertain than usual by COVID-19.

#### ■ 船種別トン数割合 / Entered Tonnage by Type

(2021保険年度期初時点 / as of commencement of the 2021 policy year)



【海の法律】

## 船荷証券(B/L)、傭船契約(C/P)上のさまざまな要請と補償状 (LOI) – その重要性と危険性 –

約束はどれも偽りと戯ればかり、それでも人は聞きたいものだけに耳を傾け、残りは無視するものだ  
 (「ボクサー」 ポール・サイモン)

### Significance and Risks associated with Various Requirements under Bills of Lading (B/L) and Charter Parties (C/P) and Letters of Indemnity (LOI)

Such are promises All lies and jest Still, a man hears what he wants to hear And disregards the rest (“The Boxer” Paul Simon)



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前回<sup>1</sup>は船荷証券 (B/L) の重要性ならびに B/L 提示無し<sup>2</sup>の貨物引渡および補償状 (Letter of Indemnity, LOI) の問題点を総論的に述べましたが、今回はより具体的な事例で、LOI の問題点を実務者にとってできるだけ平易に解説します。LOI は貨物引渡にだけでなく、B/L または傭船契約上のさまざまな事項について提出されますので、これらにも触れます。

なお、より専門的な論点については、[ジャパン P&I ニュースレター第 35 号](#) (2012 年 10 月発行) の拙論考 [Letter of Indemnity (LOI, 補償状) とその法的実務的諸問題] をご参照ください。

#### 1. 関係裁判例～先例と競馬の予想、信ずべし、信ずべからず

まず LOI 関係の判例を俯瞰しましょう。

**1.1.** LOI に関連して起こる紛議や求償は、実際には千に三つ、万に三つという低い確率でしか起こらないものです。また、紛議が起こっても裁判外で解決することが多く、裁判例として発表される事例は内外とも必ずしも多くないようです。私が直接間接に経験した事例では、高品質の化学品や高価な冷凍魚・果物等の

[In the previous edition](#), I wrote about the significance of Bills of Lading (B/L) and problems associated with the delivery of cargo without production of B/Ls and Letters of Indemnity (LOI) in general. In this edition, I would like to explain about the issues associated with LOIs by using case studies so that it is easier for practitioners to understand. Since LOIs are issued not only for a cargo delivery but also for various items under B/L and C/Ps, I will also touch on these points.

If you would like to understand in more detail, please refer to my article “the Letter of Indemnity (LOI) and its Legal and Practical Problems” which was published in [the Japan P&I Newsletter No. 35](#), October 2012.

#### 1. Relevant Court Precedents

Firstly, let's have an overview of the court precedents related to LOIs.

**1.1.** The likelihood of disputes and claims for indemnity under LOIs occurring is very low, and even if disputes occur, many of them are solved out of court, and therefore there are not many court precedents published in Japan and overseas. In the cases I have been directly or indirectly involved in the past, there were situations where claims amounting to several million US dollars were made against the delivery by LOI of chemicals of high quality and valuable refrigerated fishes, fruits and others. Also, there was a case where the B/L described the cargoes as brand new automobiles although they were actually used cars, and the Vessel was detained and subsequently, the order for confiscation of the Vessel was issued by the authorities in the Middle East. Both cases were not covered by P&I Insurance, and in the first case, the issuer of LOIs had no or little financial capability, and in the second case, no LOI was issued.

B/L 提示無し LOI 荷渡しで、数百万ドルのクレームがなされたことがあります。また B/L に中古車を新車と表示したため、中東で本船が拿捕され没収命令が出されたことがあります。いずれも P&I Club の保険てん補外で、前者の事例では LOI の発行者には資力がなく、後者では LOI 未発行で、各船主は深刻な問題となりました。したがって LOI をもらったから一安心、出して要望を通したから一安心と考えてはいけません。

ところで、最近では署名した LOI を実際には発行せず、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。この場合傭船者の権限者による適式な出状が実際になされたと認めるべきか否か紛争が起こりえますので、権限者により署名された LOI を PDF copy や Fax で取得する方法を採るのがより安全です。

**1.2.** 英国や日本の判決・仲裁例では、以下の事例がありますので参考にしてください。先例はもちろん非常に参考になりますが数が限られていること、実際の事例は事案によって内容・性質が異なりますので、参考にはしつつも、機械的な適用や盲信は避けるべきです。

**事例 1：C/P の LOI 条項の規定と実際に発行された LOI の文言が異なる場合の LOI の効力～二枚舌の人**  
C/P で LOI に関して規定しその下で LOI が発行されることがよくあります。その場合両者の規定の相違が紛争を起すことがあります。例えば C/P には LOI の効力期間の規定があるが、LOI にはない場合。

なお、LOI の期間については、定期傭船契約に LOI による貨物引渡が船主・本船の義務として規定される場合が多いですが、LOI を受け取るどのような場合も、国際 P&I グループ (IG) Form (LOI の有効期間規定無し—銀行保証用を除く) を使用すること、およびその旨を当該 C/P に規定しておくことがベターです。

IG Form には B/L original 全通が Carrier 側に引き渡された時点で保証状の責任は終了する旨規定されています。しかし、実務上 B/L original 全通の提出に非常に時間がかかりなかなか提出できないことが多く、LOI 発行者側が LOI の有効期間規定にこだわる場合がありますが、IG Form のとおりにしておく船主のリスク

Both Owners faced serious issues.

Nowadays, a simplified method of “issuing an LOI” is often applied such as by including LOI provisions of the C/P in an e-mail instead of issuing a LOI with an authorized signature. This may result in disputes about whether the LOI was issued by a person that had the proper powers to do so, and therefore, it is safer to obtain an LOI signed by the authorised person in PDF format or by fax.

**1.2.** The court and arbitration cases in England and Japan are listed below as a reference. While the precedents are of course very helpful, the number of cases is limited and each case was decided on specific facts so please use them as a guide and do not to automatically apply the same judgement.

**Case 1: The validity of an LOI where the provisions of the C/P about LOI Clause and actual LOI wordings issued are different. -a Double-tongued person**  
C/Ps often contains LOI clauses and the LOI is issued thereunder. In such cases, the difference between these two provisions often results in disputes. For example, there are provisions about the valid period of LOI in C/P, but no such provisions in the LOI. There are many cases where the LOI stipulates that the cargo delivery is the obligation of the Owners/Vessel in the Time Charter Party, but in all LOIs, it is recommended to stipulate in C/P the wording by the International Group of P&I Clubs (the IG), which is to have no provision about the valid period of LOI except for LOI for bank guarantee to minimise the Owners' risks.

In practice, Owners are frequently requested by Charterers to state the shore figures of cargo quantity rather than the Ship's figures on the B/L, and often there are cases of cargo shortage at the discharge port due to the nature of the cargo, such as defects of measurement at the discharge port, with no fault on the Vessel side. Therefore, in some cases, the C/P stipulates that Charterers shall indemnify Owners in respect of cargo shortage claims, while the LOI actually issued stipulates that Charterers shall cover all of the cargo claims.

In many cases, the effect of the LOI is construed according to the details of the case, the wordings used, and intentions of the parties, but it is necessary to pay attention to inconsistencies between the LOI issued and the C/P terms. For example, in the case of a discrepancy regarding the period of an LOI, it was judged not to be valid in accordance with LOI wordings, despite the

は低くなります。

他には船主が貨物の数量につき B/L に本船ではなく陸側の数字を記載するように傭船者に要請されたり、本船側の問題でなく貨物の性質や揚地の計測不備等による揚地での貨物の数量不足 (Cargo Shortage) が起こることが実務上よくあります。よって C/P はこの種の数量不足損害について傭船者は船主に補償すると規定することがありますが、傭船者が実際に発行した LOI は全ての Cargo Claims を Cover すると規定していました。

いずれの事案でも、LOI の効力等は、事案の内容、当該文言、当事者の意思等によって解釈されることが多いようですが、このような齟齬には注意が必要です。例えば上記 LOI の期間の相違の事案では、発行された LOI の期限は C/P の規定に拘わらず LOI の文言どおり期間無しと裁判で判断されました。しかし、上記 Cargo Claim 補償の事案では、LOI に Cargo Shortage 損害に制限する文言はありませんでしたが、C/P の規定どおり Cargo Shortage 損害の補償のみに限定されると判断されました。

#### 事例 2 : B/L 提示無しの LOI による貨物引渡し相手が、LOI 記載の当事者か否か～他人のそら似

B/L 提示無しの貨物引渡の場合、貨物引取に代理人等さまざまな利害関係者が出て来ることが多く、誰が正しい引渡対象者か？識別する問題や、貨物を渡した相手が LOI 上のそれではなかった等の問題がよく起こります。この点を受けて IG の推奨文言は、“X [引渡し相手名] or to such party as you believe to be or to represent X or to be acting on behalf of X” と、運送人側が引渡しすべき相手と信じる者（もちろん信じるにつき相当な理由は必要でしょう）であれば貨物を引渡しと改訂されました。Japan P&I Club の 2010 年 10 月 12 日付 [特別回報第 10-016 号](#) 「国際 PI グループによる補償状の標準書式 – B/L 引換えなしでの貨物引渡について」ご参照。

この論点は特に発展途上国で多く起こりがちです。例えば、貨物引渡が一旦港湾当局や通関当局を経由する場合引渡の有効性 = LOI 記載の引渡相手方に引渡したと言えるのか？という問題です。事案によっては有効な引渡とされない場合や、貨物が保税倉庫 / タンクの

validity period stipulated in C/P provisions. On the other hand, in a case involving cargo claim indemnification, although the LOI had no provision to limit, it was judged that claims will be limited to cargo shortage only, as per the C/P wording.

#### Case 2: The delivery to receiver of cargo with production of LOI but without production of B/L. -whether it is the person stated in LOI or not- A Third Person Resembling You More Than the Families

In cases involving cargo delivery without production of B/L there are often various parties involved such as agents claiming to take delivery of the cargo. This results in various issues, such as the issue of identifying who is the right person/entity for delivery, and the situation in which the person/entity to whom the cargo was delivered was not actually the party stated in the LOI. For that reason, the IG's recommended wordings were amended to stipulate “ X [name of the specific party] or to such party as you believe to be or to represent X or to be acting on behalf of X”, so that the Carrier may deliver the cargo to whom the Carrier believes as the person for delivery (although of course the Carrier needs to have a good reason to believe so)”. Please see the Japan P&I Club's circular [No.10-016](#), "INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY Delivery of cargo without production of Bills of Lading" dated 12 October 2010.

This issue often occurs in developing countries. For example, if the cargo delivery is via the port authorities or the customs authorities, whether we can say that the validity of the delivery = whether it can be the delivery to the person/entity stated in LOI.

Complicated issues occur in practice, such as where the delivery is not treated as valid and/or a case where the cargo becomes “missing” during the custody of the bonded warehouses/tanks. In principle, cargo delivery is based on D/O (Delivery Order) issued by the local agents, but as each port of each country has various delivery practices and local regulations, and in some places, the regulations in question are not well documented. Therefore, you need to ensure to check with local agents about the local practices and regulations.

#### Case 3: Whether an LOI is issued by the Cargo Receiver addressed to the Charterers can be enforced by the Owners; To Play Tennis, Borrowing a Racket from Others

For example, in practice there are cases where the Cargo

管理にある間に「紛失」する等実務的に複雑な問題が起りがちです。貨物引渡は、基本的に現地代理店が発行する D/O (Delivery Order) に基づく貨物の引渡とされていますが、各国各港で貨物の引渡実務や現地規則がいろいろあり、また当該規則が十分機能していない場合もありますので、各港の現地実務や規則等につき現地代理店等に問い合わせるなどして注意を要します。

### 事例 3：荷受人が傭船者宛に出した LOI を、船主が執行できるか否か～他人の禰で相撲を取る

例えば荷受人が傭船者に LOI を発行したが、傭船者は船主には自身の LOI を back to back に発行せず、荷受人の LOI を提出するのみで貨物引渡が行われる場合が実務上ありますが、船主が荷受人に対してその LOI を執行できるか？の問題が時々起こります。英国の場合には関係法規（いわゆる Rights of Third Parties 1999 Act）により執行可能な場合が多いようですが、発行された LOI の宛先には注意が必要です。

なお、貨物に関する C/P が複数ある場合、Charter Chain をたどって複数の LOI が発行されますが、C/P が多数ある場合荷受人や再傭船者等から中間傭船者の一部や全部をジャンプして船主へ直接発行されることがあります。その場合船主にとっては、誰が発行する LOI が信用力の点で意味があるか吟味する必要があります。通常は以下の理由他により、船主の直接の契約相手である Head 傭船者発行の LOI が好まれます。

B/L 提示無しでの LOI による貨物引渡で、B/L 所持人（通常は金融機関）が登場して来て紛議になるのは、貨物を受取った B/L 上の荷受人が倒産して金融機関に売買代金を支払うことができない場合が非常に多くあります。この場合荷受人と資本関係の無い傭船者等が LOI を発行している場合はまだ回収の可能性があります、荷受人が LOI を発行していると回収不能となりますので注意が必要です。

長い Charter Chain（当職は、リーマンショックの直前頃に 13 社の再傭船者が連なった案件を経験したことがあります）をたどって back to back の LOI が多数発行されている場合、船主から求償される傭船者は、再傭船者から回収するまで、再傭船者は再々傭船者か

Receiver issued an LOI to the Charterers, but the Charterers did not issue its own LOI to the Owners on a back to back basis and the cargo delivery is made only with production of LOI of the Receiver. In such cases, there is occasionally an issue as to whether the Owners can enforce such an LOI against the Receiver. In England, in many cases, it is possible to do so under the relevant law (The Rights of Third Parties Act 1999), but it is necessary to be careful about who is the addressee of LOI.

Where there are multiple Charter Parties concerning the cargo, multiple LOIs are issued in the charter chain, but there are cases where an LOI is issued by the Cargo Receiver or the Sub-Charterers directly to the Owners skipping all of the Intermediate Charterers. In such cases, it is necessary for the Owners to examine whose LOI has is to be preferred. Normally, the Owners prefer an LOI issued by the Head Charterers who are the direct contractual counterparty with the Owners for the following reasons.

In case of the cargo delivery without production of the B/Ls and with LOI, it ends up in dispute with the B/L holders (normally financial institutions) since in many cases, the Receiver has entered into bankruptcy and cannot make the payment to the financial institutions. In such cases, if the Charterers issue an LOI, it is still possible to collect payment, but if the Receiver issues an LOI, payment will not be recoverable Owners should be mindful of such a scenario.

In cases where many LOIs are issued on a back-to-back basis along a long Charter Chain (I experienced such a Charter Chain involving 13 Sub-Charterers just before the Lehman shock), the Charterers which receive the indemnity claim from the Owners may not settle the payment until the Sub-Charterers pay the Charterers' indemnity claim, and the Sub-Charterers may not do so unless and until the Sub-Sub-Charterers do so (and so on and so forth), Therefore, although the Owners have obtained an LOI, there is a risk that it will take considerable time to finally receive the actual payment.

### Case 4: Cargo delivery without production of B/L and the time limit for the B/L holder's claim for damages against the Carrier; Locking the Barn Door after the Horse is has bolted

In general, the time limit of 1 year is applied from the delivery of the cargo under the Hague Rules, but it

ら回収するまで（以下同じ）、求償に応じないことがあり、船主にとって折角 LOI を取得していても、現実の回収までには相当な時間が掛かることが多くなる危険もあります。

#### 事例 4：B/L 提示無しの貨物引渡と B/L 所持人の運送人への損害賠償請求権の時効～証文の出し遅れ

一般にはヘーブルールズ上の貨物引渡日から 1 年間の時効が適用されるとされていますが、適用法や裁判管轄によって相違が生じますので注意が必要です。また B/L にはヘーブルールズの適用が規定されていても、B/L に具体的に 1 年間の時効期間を規定しておくことは価値があります。この時効期間との関係もあって、LOI の有効期間を 1 年間とか短期間にするよう傭船者や荷主から船主は要請されることがしばしばあります。しかし、上述のとおり LOI には有効期間は規定しないようにすべきです。重要顧客の要請を入れて規定せざるをえない場合でも、5 年（日本の商事時効期間）もしくは 6 年（英国の時効期間）等の長期間を規定するのがベターで、短期間の有効期間は絶対避けるべきです。

次に私が直接間接に経験している LOI 事例の典型的なものを、いくつか挙げてみます。

## 2. 様々な具体事例～神は細部に宿る

船主は次のような傭船者や荷主の要請に、LOI を取得して応じる場合がよくあります。

### (1) B/L 記載事項に関して～武士に二言はない

**事例 A：B/L に記載すべき様々な事項につき、実際と相違する内容の記載（不実記載）要請**

例えば貨物の数量、状態、積地名、揚地名、本船積付位置、B/L の日付、運賃既払、運賃料率、特殊な裁判管轄や仲裁地

**事例 B：通常は B/L には記載しない事項の記載要請**

例えば貨物の商品名等詳細、品質、Spec、荷揚後の Transship、内陸輸送や引渡場所

**事例 C：通常は行わない荷役方法の要請**

例えば液体貨物の Commingle、貨物への添加物や水分の混入

should be noted that discrepancies may occur according to the applicable laws and the jurisdiction/country in questions. Even if the application of the Hague Rules is stipulated in the B/L, it is worthwhile to specifically stipulate about one year time limit in the B/L. Due to this time limit period, the Owners are frequently requested by the Charterers and the Cargo Interests to agree to provide for the valid period of LOI for a short period, such as 1 year. However, as stated above, the valid period should not be stipulated in LOI if the valid period has to be stipulated due to the request from important customer a longer time limit should be stipulated such as 5 years (the time limit in Japan for commercial matters) or 6 years (the time limit in England), and a shorter period should be absolutely avoided.

Next I have listed below some of the typical LOI cases which I have directly or indirectly experienced.

## 2. Various Specific Cases; The devil is in the Details

The Owners are often asked to agree to the following requests from the Charterers and the Cargo Interests in return for the provision of an LOI.

### (1) Matters to be Entered into B/L; You've Got Samurai Warriors' Words on them.

**Case A: Requests to state details of various matters to be entered into B/L that are different from the actual situation.**

For example, the quantity and conditions of the cargo, the name of the loading port and discharge port, stowage place in the Vessel, the date of B/L, freight already paid, freight rates, the place of special jurisdiction and arbitration.

**Case B: Requests for stating the matters that are not normally entered in B/L.**

For example, details of the commodity names/brands, the quality, specification of the cargo, Clean Onboard Notation, Transshipment after the discharge, inland transport and place of delivery and others.

**Case C: Requests for method of cargo operations that are not normally done.**

For example, commingling of liquid cargoes, mixture of additives and water to the cargo

**Case D: Requests for using of B/L Form/Terminal Form of the Charterers and the Cargo Interests instead of that of the Owners/Carrier.**

事例 D：船主 /Carrier の B/L Form でなく傭船者や荷主の B/L Form/Terminal Form の使用要請

事例 E：既に発行済みの B/L につき、記載事項の変更、削除、追加の要請

これには荷送人や荷受人、Notify Part の変更要請等もあります。

事例 F：既に発行済みの B/L につき、記載内容が異なるまたは分割した B/L 等新たな B/L (Split B/L, Switch B/L) の発行または二重発行、B/L 本船託送、B/L 紛失と再発行の要請

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 の発行要請。

一般に B/L に実際と相違する事項・内容を記載すると、そのことを知らない第三者には実際の事項や内容が正確であると主張できません（禁反言）。また不実または不正記載は、後述のように刑事罰や行政罰に該当するかもしれませんし、LOI は無効とされる場合があります。また LOI の執行には時間と費用が掛かります。なによりも LOI の発行者が資力難になり倒産すると、LOI は単なる紙切れとなります。なんでも LOI を取得すれば大丈夫だと LOI に軽々に頼らず、慎重に判断し処理することが肝要です。

## (2) 傭船契約に関して～信じる者は救われない

B/L の場合と重複するものが少なからずありますが、傭船契約上傭船契約に規定の無い、または既存の規定に反する船主・本船の行為が要請されることがあります。例えば、危険・禁止地域・港（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、Slow Steaming または Full Steaming、除外貨物・危険貨物の船積み、燃料油添加物添加、Off Spec 燃料油の使用、液体貨物の Commingle・添加剤水分等混入、傭船者関係者の本船乗船、傭船者機器等本船搭載、傭船者都合の離路、貨物の特殊な積付け・管理法、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 / タンク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

Case E: Requests for change, deletion and addition of the matters entered in B/L already issued. These include requests for changing the Shipper, the Consignee and the Notify Party.

Case F: Requests for issuance or double issuance of new B/L (Split B/L, Switch B/L) with different contents, split B/L, in respect of B/L already issued, carriage of B/L by the Vessel, missing of B/L and re-issuance of B/L.

Requests for issuance of copy, original or copy of Non-Negotiable B/L of B/L stating the changed matters.

In general, if the reality of the situation is different from what is actually stated in the B/L, this may mislead a bona fide third party who is not aware that the contents of the B/L are inaccurate. Also false or incorrect statements may fall under criminal and administrative sanctions as mentioned below. In certain circumstances an LOI may be found by the courts to be invalid and besides, to enforce an LOI takes time and money. Most importantly, if the issuer of LOI faces financial difficulties or go into bankruptcy, the LOI will be merely a piece of paper. It is vital not to lightly rely on obtaining an LOI, thinking that everything will be alright if LOI is obtained, but to carefully judge and accept one only when it is appropriate to do so.

## (2) As to Charter Parties; Those who Believe May not be Rescued

While there are many overlapped matters with B/L, acts of the Owners/Vessel which are not provided for in C/P or are contrary to the existing provisions of C/P are claimed.

Examples of requests vary but may include : Vessel's navigating/calling in dangerous/prohibited zones/ports (war, piracy, icebound, sanction area, excluded areas, unsafe ports), slow steaming or full steaming, shipments of excluded cargo/dangerous cargo, addition of fuel additives, use of off spec. fuel, commingling of liquid cargo, boarding of Charterers' persons, loading onboard of Charterers' machinery, deviation due to charterers' convenience, special stowage and management method of cargo, 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 B/L for segments outside the Owners' control, issuance of (Non-Objection) Certificate concerning the shipment and



Waybill 発行、Terminal B/L の発行等、要求はさまざまです。

定期傭船契約の場合、使用補償条項 (Employment & Indemnity Clause) 等で船主は保護・補償されることも多いですが、要請に従うべきかどうか？従うとしても適切な LOI 取得は、常に慎重に考慮する必要があります。

### 3. 注意点～取引は大切だが問題が生じると損をするのは結局船主側

このような要請が傭船者や荷主からなされる場合、船主・運送人は、まずどのような事情や理由でその様な B/L の記載変更その他が必要なのか？問いただすべきで ([Tell Me Why? の原則](#))、不合理なまたは疑義のある要請については、(LOI 提出の提案があったとしても) これを拒絶する英断が必要です。たとえ信用や資金のある傭船者や荷主であっても、問題が生じると船主は多大な不都合や損害を被り、最終解決までには手間も時間も費用も掛かります。しかも P&I Club はてん補できません。

特に事実と相違する B/L の記載は、単に民事 Claims で問題となるばかりではなく、各国刑法・行政法・現地法違反となるおそれがあり、罰金等の制裁だけでなく本船の長期滞船や没収その他の危険性もあります。また、このような要請に応じることが公序良俗等に反する場合、せっかく LOI を所得してもこれが無効とされる場合もあります。

船主が取引関係上の理由その他で傭船者や荷主の要請に応じる場合も、上記危険性を考慮するとともに、取得する LOI の発行者と文言等につき入念な検討が必要です。

LOI に関しては、紛議や求償が一旦起こると非常にマグニチュードの大きな紛議となりがちで、船社の屋台骨を揺るがすことにもなりかねません。上記のような危険は、前回ご紹介した「B/L を笑うものは B/L に泣く」という「格言」とともに、常に念頭におくべきです。

the loading, issuance of Sea Waybill instead of B/L and issuance of Terminal B/L.

In case of Time C/P, the Owners may be protected/indemnified by the Employment & Indemnity Clause, but it is necessary to always carefully consider whether to comply with the requests and to obtain a suitable LOI if appropriate.

### 3. Points to pay attention to –commercial relationships are important, but if problems occur, it is eventually the owners who will suffer loss.

Where such various requests are made by the Charterers and the Cargo Interests, the Owners/Carrier should make inquiries about the circumstances and reasons for such changes of the statements and others of ([The Rule of "Tell Me Why?"](#)) If the requests are unreasonable or questionable/doubtful, (even if a proposal for issuance of LOI is made), it is important to make a wise decision to refuse such requests. Even if they are reputable or well funded once problems occur, the Owners will suffer considerable inconvenience and losses, and the ultimate solution will take labour, time and costs. Moreover, there are many cases where the P&I Club will not be able to cover.

Specifically, statements in B/L that differ from the actual facts may not only result in civil claims, but also may result in breach of the criminal law and administrative law of each country/local area. There are also risks of not only sanctions of fines and others, but also long detention, confiscation and other measures against the Vessel. Besides, where to comply with such requests is contrary to the good moral and public order, even if the owners manage to obtain an LOI, it may be rendered invalid.

Where the Owners comply with the requests of the Charterers and the Cargo Interests for commercial reasons the above risks should be also considered and it is necessary to carefully consider the issuer, and the specific wordings of the LOI to be procured.

Since once disputes and indemnity claims occur, these have the potential to be of a very significant magnitude and to shake the fundamental base of shipping companies, the above-mentioned risks as well as the proverb introduced in the previous article that "Those who laugh at B/L cry by B/L." should be always be borne in mind.



**JAPAN P&I CLUB**  
**日本船主責任相互保険組合**

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