



September 2004

□ **Delivery of Cargo Under Straight Bills of Lading – New Developments**

Dear Sir / Madam,

In a number of cases over recent years, including several handled by this law firm, Chinese courts in their judgments took the view that since the straight bill of lading is not a document of title, the named consignee under the straight bill of lading is the party to whom the carrier undertakes to deliver the cargo and the shipper may thus not assign rights and obligations under the contract of carriage to any third party. Therefore so long as the cargo is delivered to that named consignee, the undertaking of the carrier should be regarded as accomplished and discharged under the contract of carriage.

According to our knowledge, the aforesaid judicial practice however intends to be negated. The Commission of Legislative Affairs of the Standing Committee of the National People's Congress, China's main legislative body, has reportedly suggested that China's courts should follow the view that the carrier should be surrendered the original bills of lading, whether straight or not, against delivery of the cargo to the consignee. If the goods are delivered without surrender of the bills of lading, the carrier should be held liable to the holders for damages. It has been our understanding that subsequent to this suggestion, certain maritime courts including the Guangzhou Maritime Court have already rendered civil judgments holding the carrier liable for delivery of cargo to the named consignee without being surrendered the original straight bill of lading.

On 17 September 2004, judges representing the Chinese Supreme Court and all the maritime and higher courts (as courts of appeal) came together in Qingdao to attend the Thirteenth National Seminar on Maritime Adjudication. One of the focal points of discussion was whether the carrier could deliver cargo without collecting the original straight bills of lading. A conclusion was reached that where the *Maritime Code of the People's Republic of China* is applicable, delivery of cargo under straight bills of lading should be against surrender of the original bills of lading, regardless of the nature and negotiability of straight bills.

The nature of a straight bill of lading has been controversial. The prevailing view among Chinese scholars, which has been repeatedly accepted and adopted by Chinese courts, was that pursuant to Article 79 of the *Maritime Code of the People's Republic of China*, a straight bill of lading is not negotiable, and therefore it is not a document of title but functions merely as a cargo receipt. The

counter-argument relies on Article 71 of the *Maritime Code* to opine that a bill of lading, whether straight or not, is a document of title so the carrier should always be obliged to deliver the cargo upon presentation of the original bill of lading.

It seems that this controversy has finally been settled, at least at the judiciary level. Although not yet confirmed in legislation of any sort, it is assumed that in current and future trials Chinese courts will make their judgments as per the above guidelines. Some bills of lading holders that lost lawsuits because the carrier was held not to be obligated to deliver against surrender of the original straight bills of lading, may apply for retrial within the two year time limit from the date when the court judgment became effective.

The Club and your Members are advised to make themselves aware of the abovementioned trend in China's judicial practice and act accordingly when trading to/from Chinese ports.

You are welcome to call or write to us for any query related to the topic discussed herein.

Yours faithfully,

Wang Jing
Managing Partner

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