



JAPAN P&I NEWS

To the Members

Risks arising from cargo delivery without production of original Bills of Lading

Although delivery of cargo without production of original bills of lading is a prevalent practice in international trade, it is a risky way for the Owners/Carrier. In the last few months, we have seen several disputes in which vessels were placed under arrest as a consequence of cargo delivery without production of original bills of lading. In this article, we share two cases which were recently reported to the Club to remind the Members of the significant risks involved with this practice.

Vessel A

The owners delivered the cargo without production of original bills of lading at the discharge port in China against the charterers' Letter of Indemnity ("LOI"). After the cargo was delivered, the consignee collected somehow only one of the original bills of lading from the bank which had opened a Letter of Credit in respect of the cargo, and provided it to the owners' agent.

The bank, however, commenced legal proceedings against the owners before one year anniversary, which is the time limit of claims from the bills of lading holders ruled on the governing law on the bills of lading, and arrested Vessel A based on the two original bills of lading it held.

The owners called upon the head charterers to procure release of the vessel by providing bail or security pursuant to the LOI, but they refused on the grounds that their voyage charterers, who provided a similarly-worded LOI, declined to provide bail or security. In order to obtain the release of the vessel, the owners issued a surety bond by depositing a large amount in cash. The litigation is still ongoing in China.

According to the lawyers' advice, even if the owners argue in the arrest proceedings that the two remaining bills of lading became null and void because one original bill of lading was collected by the owners, the Chinese courts would refuse to uphold the owners' argument because the cargo was at the time delivered without production of any original bills of lading.

Although charterers' LOI may ultimately afford legal and financial protection to the owners for the loss and damage incurred, the owners have incurred significant costs in defending this misdelivery claim in the first instance.

Vessel B

The owners obtained an LOI from the charterers and delivered the cargo at the discharge port in Singapore without production of original bills of lading. The consignee went insolvent without paying for the cargo. A local bank, which possessed the original bills of lading, demanded delivery of cargo from the owners. As the cargo was held under the custody of trustee, release and deliver of the cargo became difficult.

To avoid arrest of the vessel and her sister vessels, the owners had to cancel their port calls at Singapore and demanded the charterers to put up a security to the bank.

After lengthy negotiations between the owners' and the charterers' lawyers, the charterers finally agreed to handle the matter, and eventually settled the claim with the bank.

Although the charterers agreed to deal with the misdelivery claim, the owners incurred significant losses and costs as a result of cancelling planned calls at Singapore, and dealing with the lawyers representing the bank and the charterers (The owners are seeking recovery of the legal costs from the charterers).

Our Views

Carrier owes a duty of delivering cargoes to the bona fide holder of the bill of lading who lawfully holds the right to demand delivery of the goods. In order to avoid misdelivery of cargo, the owners should carefully verify the identities of the parties taking delivery of cargo and ensure that ALL original bills of lading are collected after the cargo has been delivered.

It is also important to keep in mind that an LOI obtained from the charterers will not guarantee legal protection. Where an LOI is provided without bank guarantee, it is only as good and safe as the party that issues it, and to the extent that party is willing and able to honour it. As the spread of Covid-19 pandemic has the potential to cause significant and unprecedented disruption to the businesses of the charterers and cargo interests, the owners are advised to be particularly more vigilant about the risks associated with cargo delivery without production of original bills of lading. This is even more so in cases where the charterers have obtained an LOI on the identical terms from the voyage charterers.

Given these risks, the owners/carrier are not recommended to accept delivering cargo without obtaining the original bills of lading. If it is impossible to refuse the charterers' request, the Members should carefully consider the involved risks and also bear in mind that the P&I cover, in certain circumstances, may be prejudiced.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association