

18th December, 2000

Ref: Chans advice/01

To: Transport Industry Operators

Straight Bill of Lading

Can a carrier release cargo without production of original B/L? Judge William Waung says "Yes" if it is a straight B/L (i.e. it is consigned to a named consignee). Please see the attached extract from his Judgment dated 14/7/2000 (Admiralty Action No. 147-9 of 1993 in the High Court of the Hong Kong SAR).

To follow this latest legal development, we recommend for your reference only the following suggested changes to B/L:

1. This Bill of Lading, if consigned to order, is negotiable and constitutes title to the goods. The holder, by endorsement of this Bill of Lading, is entitled to receive or transfer the goods.
2. This Bill of Lading, if consigned to a named consignee, is not negotiable. The Carrier is entitled to deliver the goods to the named consignee without production of any original of this Bill of Lading.
3. If required by the Carrier, one original of this Bill of Lading must be surrendered duly endorsed in exchange for the goods. One of which being accomplished, the other(s) to be void.

The above judgment is just a case held by the High Court of the Hong Kong SAR. We think a lot of other courts in the world would still hold that a carrier should release cargo only upon production of its original B/L (including straight B/L). For prudence sake, therefore, we recommend carrier including NVOCC should continue to insist that consignee must produce one duly endorsed original of its B/L before releasing cargo to consignee even if it is a straight B/L.

If you have any questions or you would like to have a copy of the above Judgment, please feel free to contact us.

Simon Chan and Richard Chan

Coming from a strong transport background, the two Chans were respectively the heads of underwriting and claims/loss prevention at the Hong Kong regional office of the Through Transport Club or better known as the TT Club for more than 11 years. The Chans have ample experience in designing liability and property insurance for forwarders, logistic service providers, shipping companies, feeder operators, air cargo terminals, container terminals, container lessors in Greater China and Asia. Richard and Simon are now independent risk management advisors able to offer full array of risk management service packages available in the market, plus, objective advice using their well developed and popular risk management skills, to the best interests for operators in the transport fraternity. We are eager to answer whatever insurance needs you may have as a transport operator.

EXTRACT OF ADMIRALTY ACTION NO. 147-9 OF 1993, COURT OF FIRST INSTANCE OF THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Coram : The Hon. Mr. Justice Waung in Court
Date of Handing Down of Judgment : 14th July 2000

. . . STRAIGHT BILLS OR NOT

It is of course accepted by Mr. Fok for the Defendants that bills of lading are generally of the kind which are negotiable by indorsement and where therefore the original document is vital because negotiability (transferring to third parties by indorsement) as well as delivery depends on the production of such original document.

However Straight Bills are also very much known to the shipping world and the essence of Straight Bills is that they are not negotiable and the contractual mandate is to deliver to named consignee without the production of the original document. In Benjamin on Sale of Goods, 5th ed. at page 900 in describing the Straight Bills, it was said:-

"Two things follow from the fact that a document of this kind is not transferable by indorsement and delivery. First, the consignee (if in possession of the document) cannot, by purporting to transfer it in this way, impose on the carrier a legal obligation to deliver the goods to another person. Secondly, the shipper cannot oblige the carrier to deliver the goods to a different consignee from the one named merely by indorsing and delivering the bill to that other person; for under a straight bill the carrier is entitled and bound to deliver the goods to the originally named consignee without production of the bill, so that, when he deliver the goods, he may have no means of knowing of the purported transfer of the bill. This difficulty cannot arise in the case of an order bill, under which the goods are deliverable only on production of the bill." . . .

I conclude on this vital issue in favour of the Defendants and it therefore follows that the Action must be dismissed because the Plaintiff must fail in contract since there was no breach because the CAVN Bills were Straight Bills and the Plaintiff must also in tort because there would be no breach of duty of care since the duty of the carrier under the CAVN Bills was only to deliver to the named Consignee, Amaya. . . .

The conclusion I have reached is that the claim of the Plaintiff against the Defendants in each of the three Admiralty Actions fails in both contract and in tort. These Actions therefore must be dismissed with costs.