

Fraudulent bills of lading

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In the normal course of events the seller of a cargo ('the shipper') delivers the cargo to the sea carrier at the port of loading, and the sea carrier issues a bill of lading to the shipper. The shipper then sends the original bill to the buyer of the cargo ('consignee'). The consignee presents the original bill to the carrier, at the port of unloading, who in return issues a delivery order to enable the consignee to collect the cargo from the port.

Sometimes this process is done through a 'forwarder' who works as a mediator between the cargo interests (the shipper and the consignee) on one side and the sea carrier on the other. The forwarder is deemed to be the carrier in terms of its relationship with the cargo interests and it can issue what are known as 'house bills of lading' against receiving the cargo from the shipper. It will also often receive the original bill of lading from the sea carrier.

Fraudulent bills of lading

Unfortunately the complicated process involved in shipping cargo and the number of entities involved can be taken advantage of by fraudsters. One way in which they seek to do so is by creating fraudulent bills of lading. These cover theft of cargo through forged documents; theft of cargo through other fraudulent means; and the improper use of documents.

1. Theft of cargo through forged documents:

In this instance, the fraudster fabricates a bill of lading in an attempt to impersonate the consignee, and so receives the cargo from the carrier. When the bill is issued in favour of the bearer (i.e. not to a specific person) the fraudster may try to obtain and fabricate the bill so as to claim the right of delivery. When the bill is 'to order' (i.e. in the name of a specific person and transferable) he might fabricate the bill and an endorsement from the consignee to himself. When the rightful consignee asks the carrier for the delivery of the cargo and presents the original bill, the carrier will explain that it delivered the cargo against genuine original bills, having already been duped by the counterfeit bill presented by the fraudster.

The courts in the UAE always consider that the carrier controls the form, signature and issuance of the bills of lading and so is best placed to prevent delivery of cargo against production of fraudulent bills (although the courts do acknowledge that it is common for carriers to delegate these functions to their agents). The carrier will usually therefore be liable to the consignee for the loss of the cargo.

How to avoid this kind of forgery? Here are four possible ways:

i. Up to date copy of the bills of lading: the carrier needs something to compare potential fakes with. It is difficult for the fraudster to keep up with changes in the bill of lading, so by reissuing the bills with updates fraudsters will be caught out.

ii. Making sure that the bill is printed on the right paper. Colour, density, and even texture should be checked. If the paper doesn't match up, then you are likely dealing with a fake.

iii. Making sure there are no obvious spelling mistakes. A lot of faked bills are not standardized documents,

and are not seen by as many sets of eyes as the real bill. That means fewer people have reviewed them to notice errors and spelling mistakes can often be found.

iv. Watermark: This is a very helpful way to check the authenticity of the bill. If the original bill has a watermark, then the bill which is presented on delivery should also carry the watermark.

2. Thefts of cargo through other fraudulent means

Other fraudulent methods used by criminals can involve conspiracies between the consignee and the forwarder.

For example, a shipper enters into a sales agreement with a consignee for the sale of certain cargo. The condition of payment is documents against payment whereby the consignee's banker should deliver the documents of the shipments, including the house bills of lading issued by the forwarder, against the payment of the price of the shipment.

The shipper has delivered the cargo to the forwarder and the latter issues the house bills of lading. In return the forwarder receives the bill of lading from the sea carrier and keeps it. The consignee has not paid the price of the cargo, so the bank has not delivered the house original bills to it.

However, the forwarder presents the sea carrier's bills to the sea carrier's agent and obtains the delivery orders. The forwarder then gives these to the consignee who then presents them to receive the cargo without presenting the original house bills of lading. This results in the consignee receiving the cargo without making payment to the shipper.

How to avoid this kind of fraud? Avoid relying on two bills of lading when delivering cargo against documents. If possible, rely on the ocean bill of lading rather than the house bill issued by the forwarder.

3. Improper use of documents

In some instances, the carrier and the shipper misuse the bill of lading and the victim here could be the consignee or the authorities. Examples include:

i. Mis-dating: this is a manipulation of the date when the cargo was loaded onto the ship. Pre-dating a bill by more than a day constitutes fraud. Any damage to the cargo will then not be attributed to the long-time voyage, also sometimes the shippers want to fulfill the timing obligations under the letter of credit.

ii. Incorrect description of cargo: this may be an incorrect description of the quality, quantity, or condition of the cargo onboard. The most common "mistake" is declaring the cargo 'clean on board', meaning undamaged, when the cargo is in fact damaged.

iii. Under deck bills of lading for cargo shipped on deck: cargo claimed as "shipped under deck", when they were actually shipped above decks. Cargo on deck is more exposed to the elements and so is less good for sensitive cargo.

iv. Incorrect port of loading: the bill shows the wrong port of loading for the cargo. Mostly this is used to avoid boycotts, import quotas, and other restrictions on trade between specific countries, and usually happens at waypoints along the transit route.

v. Inaccuracy in the particulars of the cargo: sometimes the shipper gives false particulars of the cargo as the exact weight so as to defraud the consignee. The shipper can however be held liable for any inaccuracy in the particulars provided by him concerning the cargo and which have been written on the bill. If the weight provided is less than the actual weight, the shipper will be responsible for this even if it occurred by an accident that took place during the loading and unloading operations. Also, the carrier will not be responsible for loss or damage sustained by the cargo if the shipper has deliberately stated false particulars on the bill of lading relating to the nature or value of the cargo.

How to notice and avoid the improper use of documents? Check the other documents of the shipment to ascertain the correct dates and information (for example, the mates receipt; survey report; and legalized certificate of origin which will state the exact port of loading).

Unfortunately the presence of fraudsters during the shipping process can never be removed, but as explained above there are a number of ways to detect and avoid them, and parties involved must remain vigilant at all times.