

BILLS OF LADING COMMERCIAL FUNCTION

NORTH
SERVICE, STRENGTH, QUALITY



LOSS PREVENTION GUIDES

BILLS OF LADING

A GUIDE TO
GOOD PRACTICE
Second Edition

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P&I Association

NORTH OF ENGLAND P&I ASSOCIATION

BILLS OF LADING – COMMERCIAL FUNCTION



Why are they commercially important?

Ship Owner

- Getting paid

Seller

- Proof that goods in apparent good order and condition on board
- Clean bill allows seller to get paid

Buyer

- Clean bill tells buyer (and his bank) that he is going to get what he contracted to buy and that goods are on their way
- Bill allows buyer to collect goods from the ship



BILLS OF LADING – COMMERCIAL FUNCTION



...and to achieve all of this the bill of lading is performing three distinct legal functions



BILLS OF LADING – LEGAL FUNCTIONS



3 functions of a bill of lading

- Document of title to cargo
- Evidence of or the actual contract of carriage
- Evidence of receipt of cargo

BILLS OF LADING – LEGAL FUNCTIONS



- Document of title to cargo
- Goods should only be released against production of one of the original bills of lading

Golden Rule 1

- Remember that someone somewhere has the bill

BILLS OF LADING – LEGAL FUNCTIONS



- Evidence of or the actual contract of carriage
- In the hands of the shipper or charterer the bill of lading is evidence of the contract of carriage
- In the hands of a third party the bill of lading can be considered as the actual contract of carriage

Golden Rule 2

- **Keep your promise**

BILLS OF LADING – LEGAL FUNCTIONS



- Evidence of receipt of cargo
- Evidence as to the nature, quantity and apparent order and condition of the cargo on shipment
 - Prima facie evidence as between the shipowner and the shipper or charterer
 - Conclusive evidence as between the shipowner and a third party

Golden Rule 3

- The bill of lading must tell the truth



BILLS OF LADING – LEGAL FUNCTIONS



- Bill of lading functions in different trades
 - Bulk dry cargo
 - Bulk liquid cargo
 - General cargo
 - Container cargo



BILLS OF LADING – LEGAL FUNCTIONS

- Each of these Golden Rules is important
- Each underpins P&I cover



BILLS OF LADING – LEGAL FUNCTIONS



- Provisos to P&I cargo risks covered
- Contract of carriage should be subject to Hague /Hague-Visby Rules
- Cargo should only be delivered at the port named in the bills of lading
- Cargo should only be delivered upon production of the original bills of lading
- Bills of lading should not be antedated or post-dated
- Bills of lading should contain a correct description of the cargo, quantity and condition

Rule 2

Rule 1

Rule 3

Rule 3

BILLS OF LADING – LEGAL FUNCTIONS



- The first two Golden Rules can be dealt with commercially if you wish by taking LOIs. Examples:
 - Delivery of cargo without production of bills of lading
 - Delivery at a different destination
- (Your decision – but it has P&I implications)...

Golden Rule 1

- Remember that someone somewhere has the bill

Golden Rule 2

- Keep your promise

BILLS OF LADING – LEGAL FUNCTIONS



- ...but the hardest of these Golden Rules is the last

Golden Rule 3

- The bill of lading must tell the truth

- because that is where the stakes are at their highest...

BILLS OF LADING – RECEIPT



Not telling the truth can give rise to liability of the shipowner.

- Deceit

Tort of deceit gives rise to civil liability and damages

- Fraud

Criminal counterpart of deceit – gives rise to criminal liability

BILLS OF LADING – RECEIPT



Fraud is proved when it is shown that a false representation has been made

- knowingly, or
 - without belief in its truth, or
 - recklessly careless whether it is true or false.
-
- Derry v Peek (1889)

BILLS OF LADING – RECEIPT



Apparent order and condition of the goods

- If the master thinks the cargo is not in good order and condition then he should clause the bills of lading

BILLS OF LADING – RECEIPT



Clausing bills – objective standard

- “[Master’s] view must be consistent with that which could properly be held by a reasonably observant master”
- Not an expert surveyor
- Can seek expert advice but unlikely to be criticised for not doing so
- Entitled to form his own opinion from his own observations
- David Agmashenebeli (QBD May 2002)

BILLS OF LADING – RECEIPT



Apparent order and condition of the goods

- Clausing bills – words to use

“The words used should have a range of meaning which reflect reasonably closely the actual apparent order and condition of the cargo and the extent of any defective condition which he, as a reasonable observant master, considered it to have”

David Agmashenebeli (QBD May 2002)

BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- Clausing bills – words to use
 - For example - “Damaged” is not sufficient



- Buyer should know what he is getting

BILLS OF LADING – RECEIPT



- Similar issues relate to quantity
- Masters obligations
 - Issue to the shipper a bill of lading showing:
 - the marks, quantity or weight of the goods as furnished in writing by the shipper
 - the apparent order and condition of the goods
- Hague Visby Rules – Article 3, Rule 3

BILLS OF LADING – RECEIPT



- Disputed weight / quantity
- The Master cannot be made to sign for a figure he does not believe in
- Hague Visby Rules – Article 3, Rule 3

BILLS OF LADING – RECEIPT



Disputed weight / quantity

- What should master do?
 - If he believes the figures
Sign it
 - If he does not believe the figures
Do NOT sign it
 - If in doubt
Consult the P&I Club

BILL OF LADING PROBLEMS

- Look at the golden rules – which one applies?

Golden Rule 1

- Remember that someone somewhere has the bill

Golden Rule 2

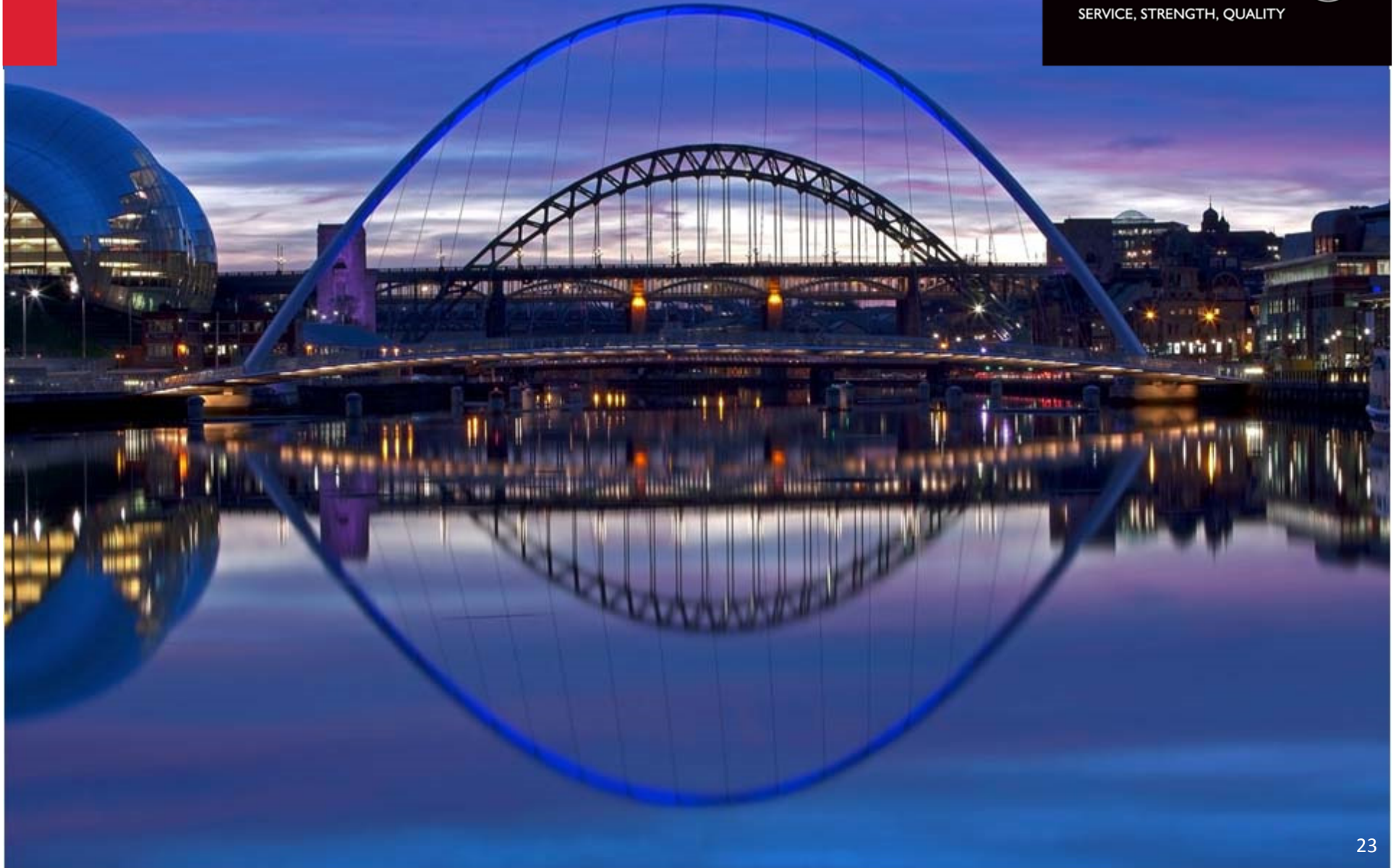
- Keep your promise

Golden Rule 3

- The bill of lading must tell the truth

LETTERS OF INDEMNITY

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LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?



The law, insurance and commercial practice

- The law and International conventions (Hague Visby Rules) and P&I Club Rules set standards and law that applies to carriage of goods
- Applies to bills of lading
- Commercial practice may put the carrier and traders in conflict with each other and with these “Rules”

LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

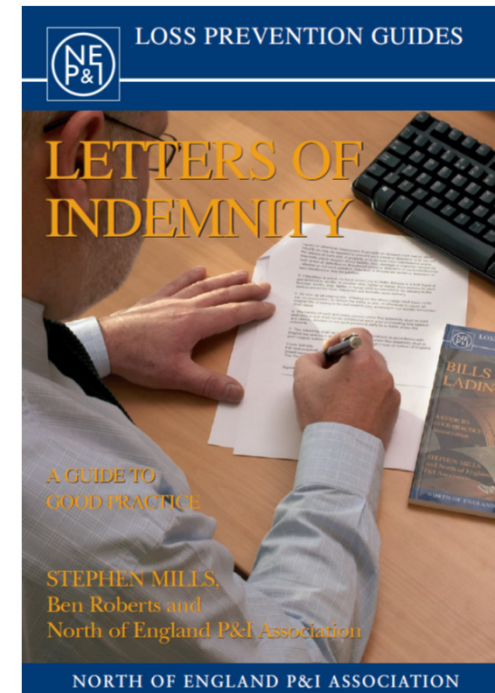
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Carrier

- Issue a bill of lading
 - Accurate
 - Compliant

Seller

- Satisfies sale contract
- Avoids delays



LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?



What is a Letter of Indemnity?

- A Letter of Indemnity is essentially a promise that:
 - “if you do what I ask, I will make sure that you do not suffer any loss”



LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?



Who benefits from a Letter of Indemnity?

LETTERS OF INDEMNITY

- Accepting a letter of indemnity – two more golden rules

Golden Rule 1

- Do you trust the issuer?

Golden Rule 2

- Is the risk acceptable?

LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?



In exchange for agreeing to

- Deliver without production of the bills of lading
- Change of destination
- Split bills of lading
- Switch bills of lading
- Replace lost bills of lading
- Co-mingle, blend or mix cargo
- Add dye to liquid cargoes
- Mis-describing information on bills of lading

LETTERS OF INDEMNITY



- Owners are often asked to do things that may breach the provisos of their P&I cover in return for a LOI:
- Variety of circumstances – not all are legitimate
- Commercial decision for owners
- Carry out a risk analysis
- LOI only as good as authority / creditworthiness of its issuer
- LOI may not be enforceable
- Careful consideration / drafting required
- Look at alternative options

LETTERS OF INDEMNITY - CHECKLIST



- Insurance
- P&I Clubs can NOT approve or recommend of the acceptance of a LOI
- Acceptance of a LOI is a commercial decision for owners
- Claims arising as a direct result of accepting a LOI are likely to be subject to Club director's discretion
- LOIs normally replace P&I cover



SUMMARY



- Commercial function
- Legal function – the Golden Rules
- Particular problems with description
- P&I cover
- Where letters of indemnity may or may not help
- Checklist when using them

THANK YOU