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Electronic Bills of Lading



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Introduction

It is testament to the strength of the paper bill of lading system that it is still prevalent in today's electronic age – but for how much longer? The increasing use of electronic bills of lading (e-bills) by oil majors and traders and the recent decision by a large bulk commodities trader to start using e-bills in some areas and trades demonstrate that e-bills are starting to gain significant traction.

Undoubtedly paper bills will remain in pole position for the time being, and are likely to exist for many years to come, as they are accepted and understood in all trading nations around the world. Given the lack of sophistication and technology in some countries a total switch to e-bills is probably a long way off.

In the interim it appears likely that the larger, more sophisticated traders may switch to e-bills in many trades and, as such, ship owners will be faced with a dual system that requires the use of both e-bills and paper bills depending on the circumstances of the trade.

The purpose of this briefing is to provide a brief overview of the legal status of electronic bills of lading, the currently available systems and P&I Clubs' position with regard to cover.

International Group FAQs

The International Group of P&I clubs (IG) has recently issued a set of FAQs on paperless trading and this document should be read in conjunction with this briefing.

Please click here for the IG FAQs.

Why Use E-bills?

The paper bills system has developed over hundreds of years and whilst it was entirely suitable for purpose for many years, modern practices have overtaken it somewhat. Trading practices such as just in time deliveries, modern efficient cargo transportation and other developments in the logistics chain have meant that in some trades paper bills cannot always keep up with the goods. The modern practice of extensive use of letters of indemnity (LOI) for delivery of cargo without production of an original bill of lading is evidence that paper bills of lading are not keeping up with the movement of cargo. By switching to e-bills traders are merely seeking to provide a fast, reliable, safe, secure system that is fit for purpose.

Legal Status of E-bills

The important starting point for Members to understand is that the long established law, practice and convention relating to paper bills of lading, which is pretty well universally understood in all trading nations, cannot simply be replicated into electronic form. Very few of the laws, practices and conventions translate easily into a "virtual" document.

Where e-bills do exist and are in use, it is because they are used by a "Club" which has set out its own rules and practices for use by its members for the electronic transfer of title to goods. As to the actual terms on which the goods are carried these may also theoretically appear in that document, but they can also be set out in other documents, such as charterparties, lifting contracts, or contracts of affreightment.

Essentially when a Member agrees to use e-bills they are also agreeing to abide by the rules governing that particular system. As such any Member considering the use of such a system should scrutinize the rule book of their particular system closely to ensure that they are comfortable with the governing rules. Members should also be aware that there is very little established law governing these systems.

Membership of these 'Clubs' has previously been limited to a small group of traders, usually within a discrete trade, who all know each other, are sophisticated, and have signed up to the terms – often after very many years of working on the project.

As e-bills become more common an increasing number of ship owners and charterers who are not familiar with e-bills may be drawn into the system.

Electronic Bills of Lading (cont.)

Who May be Included in an E-bill System?

In response to the lack of international convention governing the use of e-bills, Electronic Shipping Solutions (ESS) and Bolero International Ltd (Bolero) each formed and manage a private closed group of participants allowing for trade to be undertaken on paperless terms. Participants of these systems can be owners, charterers, banks, shippers, receivers, commodity traders, insurance companies, vessel agents and import/export authorities.

The ESS and Bolero systems have now been joined by the Electronic Title User Agreement (E-Title) system and Global Share's edoxOnline platform. E-title is a secure mechanism focusing exclusively on title transfers, complementing existing web-portal services offered by shipping lines, logistics operators and trade facilitators. The solution is supported by a legal framework to facilitate electronic exchange of Bills of Lading and waybills, removing the need for a paper Bill of Lading.

All participants enter into an agreement which regulates not only the use of the e-bills but also the participants' rights and obligations towards the rest of the group and its managers. Depending on the system used, participants may elect between English or US law and jurisdiction to resolve their differences.

P&I Club Cover

Until February 2010, the rules of all member clubs in the International Group of P&I Clubs specifically excluded all liabilities for cargo carried under electronic trading systems if the liabilities would not have arisen under a 'normal' paper system.

However, after having reviewed a number of electronic trading systems, the International Group agreed from 20 February 2010 to include cover for liabilities arising in respect of the carriage of cargo carried under such systems provided that the system had first been approved by the Group. The review process is ongoing and more systems have been put forward for the International Group's consideration.

The latest club circular in respect of e-bills contains important information regarding the potential risks associated with e-bills and should be read by Members already using, or considering the use of, e-bills.

You can learn more about the currently approved systems at their respective websites:

Bolero: www.bolero.net

ESS: www.essdocs.com

E-Title: www.e-title.net

edoxOnline: www.globalshare.com.ar

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