ITIC SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

Issuance of Switch Bill of Lading

What are "switch" bills of lading?

"Switch" bills of lading are a second set of bills issued by the carrier (or by the carrier's agent) in substitution for the bills of lading issued at the time of shipment. The agent who is asked to issue the second set is often at a port other than the load port. The holder of the bills may decide (for one reason or another) that the first set of bills is unsuitable, and the carrier is requested to issue switch bills to satisfy the new requirements of the bill of lading holder. Some of the reasons are:-

- the original bill names a discharge port which is subsequently changed (e.g. because the goods have been resold and new bills are required naming a new discharge port);
- a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bills, and so a new set is issued naming the seller as the shipper is issued;
- the goods were shipped originally in small parcels, and the buyer of those goods requires one bill of lading covering all of the parcels to facilitate his on-sale. Conversely one bill may be issued for a bulk shipment which is then to be split into multiple bills covering smaller parcels.

When can "switch" bills be issued?

The issuance of a second set of bills of lading is an extremely dangerous practice and the perils of having two sets of bills of lading in circulation for the same cargo are obvious. Great care must be exercised by ship agents asked to issue switch bills and they must follow these rules:

- **the second set of bills of lading should only be issued if the complete first set has been surrendered for cancellation** either to you or to your principal;
- **the principal's authority should be obtained IN WRITING** not only to issue switch bills, but also to any changes to be made to the content of the original bills;
- **the second set of bills should not contain misrepresentations**, e.g. as to the true port of loading, or the condition of the cargo, or the date of loading. If switch bills are issued containing misrepresentations, then the carrier and his agent (if the agent has issued the switch bills) will be at risk of claims from parties who have suffered a loss because of such misrepresentations.

A warning to agents

In practice "switch" bills are sometimes issued in addition to, and not against cancellation of, the first set. The reasons for this practice are various; the first set may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills.

Another reason is, however, when the party trading the goods wants to improve his cash flow by receiving payment from the final receiver on the second set of bills before he pays the shipper on the first set. In the past trading companies have

International Transport Intermediaries Club Ltd.
90 Fenchurch Street, London, EC3M 4ST
tel: +44 (0) 20 7338 0150 fax +44 (0) 7338 0151
email ITIC@thomasmiller.com web wwww.itic-insure.com twitter @ITICLondon
© 2013 International Transport Intermediaries Club

obtained two sets of bills for the same cargo, negotiated both sets for cash, and then declared bankruptcy or disappeared, causing substantial losses to shippers, endorsees and banks, who then pursue the contractual carrier for reimbursement. If a ship agent is instructed by a principal (or receives a request from a customer) to issue a second set of bills without collecting the first set, he needs to be aware of the dangers. This dangerous practice has in the past resulted in ship agents facing large claims from the ship owners, or the holders of the first set of bills of lading (eg. the shipper, a bank or a party to whom the bills have been negotiated) with nothing to rely on but a worthless indemnity. A long established or multinational ship agent may make a more worthwhile target for the bill of lading holder than a charterer with no assets or a ship owner who has sold the ship in question.

How should agents protect themselves if asked to issue a second set of bills without retrieving and cancelling the first set?

- **the agent must consider what he is being asked to do and the possible consequences to himself.** Is the principal authorising the issuance of the second set substantial, reputable and reliable? Even if an indemnity is provided by the principal, the indemnity is only worth as much as the party giving it;
- **the agent must NEVER issue a second set at the request of a customer -** any such request must always be referred to the principal;
- **if the first set of bills are negotiable they MUST be surrendered before the second set is issued;**
- **the agent must always obtain the principal's authority IN WRITING,** and a letter of indemnity signed by the principal (and counter-signed by a bank if deemed necessary by the agent) indemnifying the agent for all consequences of issuing the second set of bills;
- **the agent must also consider whether it is necessary to obtain written authority from any other party who might be adversely affected by his action** (eg. the ship owner or the shipper, an endorsee or a bank). If an agent is instructed by a charterer principal to issue a second set of bills on behalf of the master, **he must also obtain the master or ship owner's written authority**. The ship owner would otherwise have a valid claim against the agent for losses resulting from the issuance of the second set on the basis that the agent had done this without his authority;
- **if the principal has instructed the agent to obtain a letter of indemnity from the party receiving the second set of bills, the agent should obtain from the principal a written instruction on the exact wording and security (e.g. counter-signature by a bank or not).**
- **the agent should keep the indemnity in a safe place and make reasonable efforts to retrieve the first set of bills.** If the first set have not been produced within, say, one month, the agent should notify his principal and ask for instructions;
- **GET ADVICE - any request to issue a second set of bills without first collecting the first set should be referred to ITIC.** The deliberate issuance of a second set of bills of lading without surrender of the first set may be regarded by the Club as a deliberate commercial risk, and as such the consequences would be uninsured.

ITIM Co Limited, Managers

International Transport Intermediaries Club Ltd

International Transport Intermediaries Club Ltd.
90 Fenchurch Street, London, EC3M 4ST
tel: +44 (0) 20 7338 0150 fax +44 (0) 7338 0151
email ITIC@thomasmiller.com web wwww.itic-insure.com twitter @ITICLondon
© 2013 International Transport Intermediaries Club