

Willie van.Straaten - VRIJGEVEN VAN LADING ZONDER ORIGINEEL B/L (IMPORT+EXPORT)

Van: Willie van.Straaten
Aan: Willie van.Straaten
Datum: 26/2/07 1:22
Onderwerp: VRIJGEVEN VAN LADING ZONDER ORIGINEEL B/L (IMPORT+EXPORT)

Onderstaand een belangrijk bericht van verzekeraar TTClub m.b.t. vrijgeven van lading zonder origineel B/L. Dit geldt dus zowel voor import als export, FCL en LCL, kortom: iedereen die hiermee te maken heeft.

Loss of B/L - mere advertisement doesn't help!

That the bill of lading is said to have been lost is no excuse for delivering the shipment without production of the original document. The reality is one can never be 100% sure what has happened to the original set of bill(s) of lading: are they indeed lost, or has someone just overlooked the business of paying the seller? If the carrier releases cargo without firm evidence of the consignee's right to take delivery, the carrier does so entirely at its peril.

English law - and that of many other nations - provides that the carrier is not bound to deliver the cargo to any person other than the lawful holder of the relevant bill of lading - unless, in a given case, the court so orders. If the difficult situation arises where the bill is missing but the importer is desperate for the cargo, the recommended solution for the carrier is to require a bank guarantee (or a company letter of undertaking countersigned by a bank, which thus agrees to "join in") in its favour.

It is sometimes said that an advertisement in the local press about the "loss" or "nullification" of the original bill is an adequate and simple remedy and once that has been done the carrier is able to issue a replacement set without hesitation (or even release the goods without production of the "lost" bill of lading). DO NOT simply rely on this!

Advertisement per se never serves as a complete defence as regards liability for wrongful delivery. At best, it is evidence that the relevant parties did have an intention to cancel the original bills of lading. Rather, when the parties have agreed to deliver cargo against a proper letter of guarantee (in lieu of the original bill of lading), the most important thing is to communicate to the delivery agent this new arrangement for the release of the cargo. This is to avoid the agent meanwhile delivering the cargo to a third party who happened to have in its possession the void/cancelled bill of lading.

The whole question of the delivery of cargo without production of the corresponding original bill of lading is fraught with danger for the carrier since it is standard practice for insurers, such as the P&I Clubs and the TT Club, to exclude from cover liabilities that a carrier incurs by delivering the cargo in these circumstances.