Lost Bills of Lading

1. This is a topic which has been discussed in many newsletters. However, we felt that it might be worthwhile to relook at this particularly as this was the topic of our discussions in the very recent past with one of our clients.

2. As has been advised in one of our earlier articles, it is a common law duty of the carrier to deliver the cargo to the holder of the original bill of lading. Breach of this duty may impose liabilities to the carrier for at least the value of the cargo released. This being the case, the carrier must always ensure that they release the cargo to the holder of the original bill of lading (The bill of lading is a very important document but its importance is still not properly understood, and therefore it does not get the proper respect it is due. We will touch on this aspect in a subsequent article but for now will restrict our comments on actions to be taken when the Original Bill/s of Lading are lost).

3. Often cargo interests will approach the carriers with a request to issue duplicate / additional original bills of lading as the earlier original bills of lading were lost due to carelessness (went missing in the office of at the bank, etc) or in transit (by dispatch or the courier company).

4. A point to be noted that the carrier’s liability insurance cover would generally not extend to release of cargo without production of original bills of lading. This being the case, any issue of duplicate bills of lading may be for the sole risks of the carrier and therefore should be carefully dealt with.

5. In order to consider any issue of a duplicate bills of lading, carriers should, amongst others, do the following:

   i) Ascertain the circumstances of the loss: Carrier should request proper evidence to substantiate the claim made by the cargo interests i.e. if the bills of lading were lost in the office or the bank, then the Cargo interests / Bank should provide a statement duly signed by the person responsible for the loss together with his contact / identification details. The carrier
should either directly or through its agents check that the documents submitted are indeed genuine.

ii) If the carrier becomes satisfied that it is indeed a genuine loss, they should ask the cargo interests / bank / Courier Company to submit a police complaint. While this may not have any direct advantage to the carrier, parties making the police complaint will be aware of the ramifications of making a spurious complaint (which may well result in criminal sanctions).

iii) The bills of lading earlier issued (which is now lost) may be made to “a named consignee” or “To Order”. We will take each situation in turn.

a) If the bills of lading issued are to “a named consignee”, the matter is simpler in that the cargo can only be delivered to the named consignee. The carrier should check with the named consignee as to whether they have any objections to the issue of duplicate bills of lading. Only on receipt of express confirmation, should the carrier proceed with any issue of duplicate bills of lading.

b) If the bills of lading are made “To Order”, the matter becomes more complicated in that the bills of lading are negotiable and could be endorsed multiple times. Any party presenting a well endorsed bill of lading could therefore seek delivery of the cargo from the carrier. In this case, the carrier should seek a copy of the sale contract to ascertain as to whether the documents are being negotiated through banking / financial channels so as to approach them to ascertain as to whether they have any objection to the issue of duplicate bills of lading.

iv) Assuming that parties approached in iii) do not have any objections, the carrier must do the following:
a) Seek a Letter of Indemnity ("LOI") from the cargo interests for at least the value of cargo in question together with estimated legal costs (to cater for the legal costs should this matter go to courts at a later date). In this regard, some LOI forms require the value to be 150-200% of the cargo – while this would be perfectly acceptable for high valued cargoes, it may be an issue for low value cargoes (legal costs may be considerable) and therefore it would best to make a decision on a case by case basis for low valued cargo.

b) LOI’s are only as valuable as person / company signing the LOI. If the carrier is unaware of the worth of the person / company signing the LOI, they should ask for a Bank Guarantee ("BG") i.e. the Bank joins in the LOI and is jointly and severally liable to the carrier. While cargo interests may not be happy to provide BG as their banks would require either a deposit or some undertaking / lien for the value of the BG, carriers should carefully consider their risks before agreeing to any waiver of the requirement of BG.

c) With respect to wordings of the LOI/BG, we would recommend using the IG wordings with suitable amendments.

6. Upon receipt of the LOI, the carrier should send a message to all its agents / offices that the Bills of Lading initially issued were lost and have now become cancelled. They should update their agents / offices of the new set of Bills of Lading issued (we would suggest a different Bill of Lading number) so that all parties are aware of the same.

7. In summary, issue of a duplicate bill of lading is fraught with dangers and therefore should only be done after considering all relevant risks involved. The steps to be followed are:
i) Detailed circumstances of the loss of the bill of lading together with appropriate evidence.

ii) A Letter of Indemnity / Bank guarantee for at least the value of cargo in question + estimated costs for any legal action which may arise.

iii) If the above satisfies the carrier’s risk management process, issue a duplicate bills of lading preferably with a different no (so as to differentiate between the earlier bill issued).