BILLS OF LADING - SOME TRAPS FOR THE UNWARY

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SOME TRAPS FOR THE UNWARY

Some of you may recall the *cri de coeur* of the agents quoted in the "SAGONA" case ([1984] 1 Lloyd's Rep. 194, 203)

> *"The need to adhere to delivery conditions and surrendering of blading is being totally neglected".*

That case really starts the modern legal history of bills of lading. The "SAGONA" was discharging in 1978. Staughton, J. in his judgment refers to evidence given before him. He says that the bills of lading had been misused for at least 30 years before that. Since the "SAGONA" there has been a steady stream of further cases examining rights and liabilities under and connected with bills of lading.

In this paper I want to suggest to you, by means of a series of recent cases as illustrations, that things have not really improved since 1978.

It may seem a little juvenile to do so by means of case studies, but illustrations are usually helpful in any text.

CASE STUDY 1

A vessel is fixed for a voyage from a Far Eastern range to USEC/Gulf on a Gencon (1976) Form with a cargo of heavy break bulk generals. The charter contains the following relevant clauses:

> "5. *Freight [USD600,000] shall be fully paid...within 5 days of sailing from final load port...*
>
> 8. *Owners shall have a lien on the cargo for freight, dead freight, demurrage damages, for detention and all other charterers cost agreed...*
>
> 9. *The master shall sign Bills of Lading without prejudice to this charterparty...*
>
> *24. All Bills of Lading to be marked as per Mate's receipt. Bills of Lading also to be claused, "All terms conditions and exceptions (including the arbitration clause) as per charter dated 14 November 1998 are incorporated herein.*
>
> 25. *Freight to be fully pre-paid before releasing Bills of Lading marked "Freight payable as per charterparty.*
>
> *27. Arbitration and general average adjustment in London. Current LMAA arbitration clause incorporated herein.*"

Facts

The vessel loads *(inter alia)* valuable vehicles at Hong Kong for Miami, via Fort Lauderdale. There are other load and discharge ports, but we are not concerned with them.

The vessel sails from Hong Kong as her final load port. No freight payment is made to owners, either within 5 days (see Clause 5 above) or at any time before the vessel's arrival off the nominated discharge port (Fort Lauderdale).

Unknown to vessel's owners the charterers' agents issue COMBIDOC combined transport bills of lading with charterers' authority but, in breach of Clauses 9 & 24 of the charter, without incorporating the charter terms and using charterers' logo and masthead and naming charterer as carrier. Some of these bills are endorsed "freight paid as per booking note dated..." and all are marked "freight prepaid" and issued on the date of loading completed and of sailing. A copy of one such bill of lading appears as Annex I to this paper (although the specific endorsements are not quite as above).

The goods are damaged, through leaking hatch pontoons as it seems, *en route*. On arrival off Fort Lauderdale owners (after several protests and warnings about lack of freight payment) stop off the port giving notice that they will only discharge against freight payment. After a further week's total silence, the owners decide to enter the port and to lien the cargo there. The vessel is now arrested by the cargo owners (who are not the charterers). They of course produce the charterers' bills of lading.

Charterers' agents also advise that the charterers have received the full freight due under these combined transport bills and have applied it against load port disbursements. They add that they will fund discharge port costs and stevedore charges. These payments apart, it appears that charterers are in terminal financial difficulties.

Questions

The questions for discussion are as follows :

1. Are the charterers' bills of lading binding on owners?

2. Do owners have a lien for freight:

   1. *off the discharge port?*

   2. *at the discharge port?*

3. Are owners liable for the cargo damage?

4. If owners have gone wrong, how?

5. What lessons can we learn from this incident?

Discussion

This is without doubt to be regarded as an English law charter.

Stoppage off the discharge port will seldom be a justifiable means of exercising a lien where there is a right of lien over the cargo ("MIHALIOS XILAS" [1978] 2 Lloyd's Rep.186 cf. "CHRYSOVALANDOU DYO" [1981] 1 Lloyd's Rep.159, 165). However it is well settled that it requires the clearest of words to confer a lien on the goods of third parties ("a right to seize one person's goods for another person's debt must be clearly...conferred" per Lord Lindley, Turner v. Haji Goolam [1904] AC 826, and see "AGIOS GIORGIS" [1976] 2 Lloyd's Rep.192 cf. "AEGNOUSSIOTIS" [1977] 1 Lloyd's Rep. 268).

In this case the cargo has no notice of owner's right of lien. It will be seen that the bill of lading is to precisely the opposite effect.

Lack of notice would not be an issue if ~~charterer~~ had owned the cargo. In any event we would then regard the bill as being a receipt only. In the actual dispute I believe the US lawyers concerned found different grounds for the decision, but this matters not to our examination. Nor would these problems, whether occasioned by charterers' breach or otherwise, be fatal to owner's claim if the freight claim was supported by a maritime lien. This perversely enough is one of the areas where English and American law diverge. An owner's contractual lien for freight of the kind provided (routinely) by Clause 8 of the charter is of course recognised on both sides of the Atlantic, but, crucially, in the US the owner's right also attracts a maritime lien. It certainly does not under the much narrower English law concept of a maritime lien.

Since English law governs the charter, the local court at the discharge port will not recognise the owner's lien on the cargo.

What now of the owner/cargo relationship? It is plainly not contractual. Although it is difficult, particularly perhaps under English law, to make a bill of lading a charterers' bill (see generally e.g. "REWIA"[1991] 2 Lloyd's Rep. 325), there seems no doubt that it is so here. None of the possibilities of making this an owner's contract are anywhere near being met. This has some important effects.

The first ray of light we have seen for the owner is that he may not be liable for the cargo damage. Since the owner is not a contractual carrier he must be regarded as a sub-bailee from the charterer. There is no clear ground for making the owner a sub-bailee on the terms of the bills. This might be the result by reason of the concept of "bailment on terms". "Terms" here means that where an owner is a bailee, the duties he owes to the cargo may not be confined as in the normal law of bailment to taking reasonable care. He will also be deemed to have notice of (and to be entitled to the benefit of) the actual contractual terms of carriage, if they are usual terms (i.e. presumably Hague rules and other such standardised provisions, see "PIONEER CONTAINER" [1994] 2 A.C. 324 (PC)) cf. "MAHKUTAI" [1996] 3 WLR 1 (PC). Here however the owner seems to be a common law bailee only, given the way these bills were issued. As such his duty is to take reasonable care of the goods. We do not have enough facts to be sure about this, but probably the charterer has a considerable burden of proof to discharge. It would seem that the carriage conventions will be inapplicable as between owner and cargo but this, on such facts as we have, is really a neutral factor.

But now we come to an interesting practical point. Since there is no contract between owner and cargo, and no implied contract based on the terms of charterers' bills, why should the owner not simply refuse to deliver? This really is the crux of the whole study. Can we advise the owner to refuse delivery unless his freight is paid or secured?

I think the answer is "no". It is difficult to imagine a court, inevitably in the cargo's own home jurisdiction, supporting such action by an owner. Here we have an innocent cargo owner holding a bill of lading for which he has paid in good faith. His worst sin is probably to have secured a good freight rate for his needs. Everything I have seen of the law suggests to me that that court will leave the owner to his remedies against the defaulting charterer. Can one really argue with that as a matter of the equities of the whole affair?

CONCLUSIONS

So to the final point of any study like this. We have just told the shipowner that he has to deliver the cargo without exercising a lien for freight. He has carried freight free. We have advised him that he is liable for the detention off Fort Lauderdale.

We cannot help him much (yet at least) on the cargo claim. Ultimately, we are offering the highly unpalatable advice that the owner has a cast iron case against an insolvent charterer for an indemnity that he will never recover.

So our client now faces us and says, "*Thank you for all that, but now at least tell me where I went wrong so that I can avoid a similar catastrophe in the future*".

Nothing I have seen of the original papers in this case goes very far towards answering that request.

It is easy enough to see the negative lesson to be learned. Do not as carrier place undue faith in your supposed control of the bills of lading. The owner thought that by withholding the bills until he got his freight he was safe. It looks attractive - "*no freight, no bills, therefore no cargo.*" Apparently a self-enforcing security. In fact there are two major snags with this solution. Firstly Article III, Rule 3 of the Hague Rules will not permit this device. The shipper is entitled to a bill of lading. There is no way around that argument, but the second point is commercially even more potent. It is the absence of owner's bills at Fort Lauderdale which has had exactly the opposite of the desired effect. If the owner had issued "normal" bills of lading, at least he could have produced them at Fort Lauderdale as the authentic documents of title (and as showing the terms of the carriage contracts) and thus impugned the validity of the charterers' bills. In such a situation it seems likely that the cargo owner would be the party left to his remedy against the defaulter, on a balance of the equities, in the local court.

This is probably as far as we can go in salvaging something from the wreckage. One learns quite early in one's career that advising your client that he would have been better off not getting into a contract like that is not a prudent or tactful way of giving legal advice. As one owner in a not dissimilar situation once acidly said to me, "*Yes, you are right, I did not have to fix to that charterer. I could always have laid the ship up instead!*". There may be no law in that remark, but it does contain some wisdom to ponder on, whether you are in the market or merely an adviser to those who are.

CASE STUDY 2

We now move to the second study. It is happily shorter and rather less complex, but there are perhaps equally interesting lessons to be learned.

"Y" is a new VLCC. Her owners ("YCo") entered into a potentially very profitable charterparty with charterers, "C & Co", for the carriage of a cargo of soya bean oil from US Gulf to Australia.

It is quite common, and understandable, for newbuilding tankers to be employed for as long as is practicable on clean business, but this was the first known fixture of a VLCC for a cargo of soyabean oil.

An Asbatankvoy charter is used for the contract. The vessel is to load at ½ ports in charterers' option. Freight: USD30 per metric ton. Cargo: 200,000 metric tons, 5% more or less in owner's option. Clauses 20 and 21 of Asbatankvoy in standard form are included, as set out in Annex II to this paper. Likewise set out is Additional Clause A showing 30% freight payable before release of bills of lading and the balance freight payable before breaking bulk. This was a United States law charter with New York arbitration, but on this occasion we are not concerned with any divergence of view between the law on either side of the Atlantic.

Y was ordered to load a full cargo from lighters offshore Houston. The lighters were engaged by shippers "S & Co".

Loading commenced on arrival, but with only 10,000 tons loaded the work was suspended and charterers subsequently informed owners that the buyer of the product had filed for bankruptcy owing to a very sharp fall in the value of soya bean oil. The shippers in these circumstances discontinued loading. After a certain amount of prevarication, and distinctly limited attempts to find an alternative cargo, charterers advised that they could not proceed with the fixture and were unable to pay freight. Owners accepted this statement as a repudiation and brought an end to the charter.
"S" now approached owners and called for bills of lading for the parcel already loaded. Owners refused to issue bills of lading and (in the alternative) required that any bills of lading should incorporate the charterparty term and reserve their deadfreight claim.

Before these issues were sorted out owners gave notice that they would not set out upon what would have been the charter voyage. It was impracticable to put together any viable alternative cargo in mitigation of the deadfreight claim. It needed no mathematical genius to calculate that that claim would be in order of USD6m, while the CIF value of the cargo loaded could not exceed USD1.5m at best.

In these circumstances owners made it clear that if the shippers would not satisfactorily secure owner's full claim, they would bring an end to the contract of carriage (if any) for the cargo loaded, and sell the cargo in mitigation of their loss.

Shippers said they would not tolerate this result. They pointed out that if the bills of lading were not issued within the next 7 days (i.e. before month end), their letter of credit would expire and they themselves would lose a profit amounting to nearly USD100 per ton of cargo already loaded. It was made plain that this claim would be enforced through an arrest of the ship.

As in our previous case study we have to assume that, given the turn of events. the charterer is not worth powder and shot.

QUESTIONS

This time we have the following questions to consider.

6. Is Y & Co obliged to issue a bill of lading?

7. If so, can the bill of lading be formulated as per Annex 3 to this paper?

8. Was Y & Co entitled to terminate the contract of carriage for the cargo on board and/or to sell that cargo?

9. Will shippers succeed in their claim for damages if the goods are not delivered at destination?

10. What lessons can be taken from this bizarre tale?

DISCUSSION

Quite apart from analysis we would by now, from the general tenor of these examples, not expect owners to have any easy answers. It difficult to see how they can avoid the rigour of Article III, Rule 3 of the Hague Rules:

> *"After receiving the goods into his charge the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing..."*

That much was easy, but few people seem to advise with much confidence when it comes to the limits of clausing bills of lading. I put it to you that on the form of this bill (Annex 3) the owner is entitled to endorse his deadfreight claim on the bill. Where the agreement is to issue "charterparty" bills there can be no objection to clausing in the terms of the charter so as to reserve, for example, a deadfreight claim. This is not parallel to the notorious "LORFRI"/"BENFRI"/"NANFRI" case ([1979] 1 Lloyd's Rep. 201) where, as you may recall, a threat to clause bills with extraneous matters relating to a timecharter of the carrying vessel was persisted in so as ultimately to repudiate the timecharter on the basis that it unlawfully prevented the charterer from trading the bills.

So let us advise the owner that he may indeed clause the bill as he wishes - or should we? Perhaps now the question becomes even more interesting.

We have only limited knowledge of what agreement the shipper has with the charterer, but we do I think know enough for our purposes. The shipper is obviously not going to ship any more cargo than he has cover for on valid letters of credit. Whether that is a breach towards charterer does not concern us. It seems there can be no agreement between shipper and owner except as to goods already shipped. There is no suggestion that this parcel of cargo leaves the vessel in unseaworthy trim - in fact it plainly will not do so.

It is the plain duty of the owner to carry the cargo loaded, but it is equally plain that there is no way he will do so. If the vessel performs the voyage, owners' unrecovered loss will be between USD4 million and USD5 million. By simply discharging at the loadport the owner will lose his lien, will become liable to the shipper on his claim of course will earn no freight and must pay costs and charges all round, but even after all this, and even running the possible risk of punitive damages, he will still be at least USD 3 million to the good.

Perhaps the owner will do even better. It seems unlikely that the shipper could ever have recovered his profit on the delivered cargo. The owner's lien would probably have prevented a valid tender against the letter of credit.

CONCLUSIONS

This dispute was settled before it reached any tribunal's eyes. Surely though the lesson to be learned here is this.

Be very careful to think through the commercial and legal consequences of a novel piece of business before you get involved. In retrospect a 200,000 ton soya bean oil trade was ludicrous. It was always doomed to go wrong, yet it attracted a serious and experienced shipowner. The more bizarre the business the more important it may be to think it through step by step with a properly experienced lawyer, asking "what if ..." at every stage.

As with our last study, we see again that freight 'before breaking bulk' and right of lien, however good on paper, have to be practically effective if they are your last line of defence.

MOTIS EXPORTS LTD

Judgment in this case was given in the London Commercial Court on 1 March 1999 by Rix, J. 1 Lloyd's Rep. 837 [1999], 1 All ER (Comm) 571). The defendants are the corporate entitles who together run the Maersk Line liner services.

The plaintiffs were shippers in Chinese ports in 1996/7. They claim for the loss of their goods after discharge from the Maersk Line vessels because the defendant carriers issued delivery orders - and thereafter gave delivery - pursuant to forged bills of lading. In short, we have another "delivery without bills" case which, one might say, brings us back to where we started with the "SAGONA".

The starting point in this case is that to deliver cargo without production of original bills of lading is a conversion of the goods.

On the facts of the case the claimant holders of the lawful bills of lading duly brought their claim in conversion. The carriers defended themselves in effect on two grounds.

The first was an exception clause in the bill of lading itself in the following terms:

> *"Where the carriage called for commences at the port of loading and/or finished at the port of discharge, the Carrier shall have no liability whatsoever for any loss or damage to the goods while in its actual or constructive possession before loading or after discharge over ships rail ... however caused."*

The carrier's second argument was that there was breach neither of contract nor of duty by the carrier when goods were stolen from his possession by use of a forged bill of lading. This second argument has to be understood against the context that everyone agreed that the forgery was skilfully enough executed to rule out any suggestion of negligence on the part of the carrier in granting a delivery order against production of the forged "original" bill.

The Judge gives a useful historical review of the nature and effect of a bill of lading contract which probably ought to be required reading for any maritime lawyer in training.

In the course of an interesting and quite closely reasoned judgment, Rix, J. concludes first that the carrier's defence based upon the assertion of an exception from the rules as to conversion in the case of delivery without fault did not exist. The defendant's argument had been that because this was a skilfully forged bill, and there was therefore neither negligence nor any intention to deny the owner's right, took the matter out of the law of conversion. The Judge concludes that because the bill of lading and the fundamental rights and obligations it creates is so critical an element of maritime commerce, such an exception cannot be tolerated. The bill in the Judge's words is"the key to a floating warehouse". If a shipowner was entitled (or was to be excused from the consequences when he did) deliver goods against a forged bill of lading, then the integrity of the bill as the key to a floating warehouse would be lost.

So expressed the conclusion is a hard one, especially perhaps to a lawyer who is used to looking at these things primarily from a shipowner's standpoint, but if one pauses and analyses the matter, the decision has to be so. In short, there can be no possible ground for leaving the holder of the true bill of lading with the risk of misdelivery against a forged bill. Whether one regards the carrier as being the party who has the best (indeed the only) opportunity of guarding against this problem, or whether this is simply a question of apportionment of risk on a sort of balance of the equities, one reaches the same conclusion. The carrier cannot escape in this way.

We have already seen the clause which constituted the shipowner's other line of defence to avoid liability. There is no shortage of examples in the law reports of courts, including some very strong commercial courts, reviewing exception clauses in bills of lading.

Rix, J.'s judgment is a good point of reference for the various cases on bill of lading exception clauses both ancient and modern. Since they can be accessed through looking at the judgement, I will not parade the authorities here. What we see however is that ultimately the Judge rejects our present exception clause as protecting the carrier against liability for misdelivery. He does so essentially on the principle expressed in Glynn v. Margetson & Co. [1893] AC 351. Thus an exception clause must be limited and modified to the extent necessary to enable effect to be given to the main object and intent of the contract.

If one has to reduce this case to a single one sentence principle, I would do it like this.

> *"If a carrier intentionally parts with goods bailed to him and in so doing violates the true owner's rights, he will be liable in conversion unless he is protected by an unusually clear and explicit exceptions clause."*

CONCLUSIONS

It is perhaps less easy to draw any easily expressed lessons from this particular unfortunate set of circumstances. It is never easy to avoid the consequences of a skilfully executed fraud. We may add as we did before that shipowners, particularly in markets at rock bottom levels, necessarily run great risks with the charterers that they are forced to contract with. The dynamics of chartering business are such that the shipowner necessarily has to repose a degree of confidence in his charterer. The better that such parties are warned of the hazards of doing business with an unknown charterer, the less likely it is that they will come unstuck in the manner seen in these examples we have been considering. Slightly more specifically, it is never bad advice to the owners and operators of chartered tonnage to advise them to look after their bills of lading and rights of signature thereto with the greatest of care because the hazards of chartering business and of the trust necessarily reposed in the charterer are perhaps never more evident than they are when it comes to dealings with bills of lading.

In another lecture delivered to trainee shipbrokers I have described bills of lading as being much misunderstood documents. If the lessons to be learned from these examples are to serve any useful purpose, it is perhaps in helping us all to understand the nature and possible adverse consequences which flow from bills of lading a little better.

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Code Name: "COMBIDOC"

CT Doc. No. 1

Consignor

Singapore

Reference No.

Negotiable

COMBINED TRANSPORT BILL OF LADING

Issued by The Baltic and International Maritime Conference (BIMCO) and the International Shipowners' Association (INSA), subject to International Chamber of Commerce Uniform Rules for a Combined Transport Document (ICC Publication No. 298).

July 1st, 1977

Consigned to order of

North Carolina, USA

Notify address

Same as above

Place of receipt

Ocean vessel

MV " "

Port of loading

Name of sub-contractors for carriage by inland waterways *

Port of discharge

Place of delivery

Date of sub-contract for carriage by inland waterways *

Fort Lauderdale (intended port of discharge Miami)

Marks and Nos.	Quantity and description of goods	Gross weight, kg, Measurement, m³
Caterpillar	2 units, bulldozers	29,000 kgs/81,592 CB

Shipped on board ...98

Particulars above declared by Consignor

Freight and charges

Freight prepaid

Full liner terms Hook/Hook

RECEIVED the goods in apparent good order and condition and, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated.

The CTO, in accordance with and to the extent of the provisions contained in this CT Document, and with liberty to sub-contract, undertakes to perform and/or in his own name to procure performance of the combined transport and the delivery of the goods, including all services which are necessary to such transport from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services.

One of the CT Documents must be surrendered duly endorsed in exchange for the goods or delivery order.

IN WITNESS whereof CT Document(s) has/have been signed in the number indicated below, one of which being accomplished the other(s) to be void.

Freight payable at

Place and date of issue

, 30 October 1998

Number of original CT Documents

Signed for the Combined Transport Operator (CTO)

Note:

The Merchant's attention is called to the fact that according to Clauses 10 to 12 of this CT Document, the liability of the CTO is, in most cases, limited in respect of loss of or damage to the goods and delay. The liability of the CTO in respect of loss or damage occurring during carriage by inland waterways shall be covered by the provisions of his contract with the sub-contractors mentioned above (*) and dated as likewise indicated (*).

As agent(s) to the CTO

p.t.o.

20. ISSUANCE OF BILL OF LADING

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

21. LIEN. The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

Additional clause A

30 percent freight payable before release of Bills of Lading, balance freight payable BBB.

Forwarders Ref

FMC 275

TANKER BILL OF LADING B/L

#1 ASBATANKVOY

3

Shipped on board in apparent good order and condition by (shipper) Soya Sale & Co

on board the tanker FLAG. NORWEGIAN at the port of HOUSTON, TEXAS

Whereof Captain J is the master, to be delivered to the port of Sydney, Australia

Consignee/Order TO THE ORDER OF BANK LIMITED, HONG KONG

Notify B INDUSTRY COMPANY LIMITED, Australia

Also Notify

Combined transport onward carriage:

On board barge/transshipment vessel:

On board date, ocean carrier CLEAN ON BOARD

When the Pre-carriage or Onward carriage lines are filled out, shipment will be treated as Through Combined Transport. Carrier undertakes entire transport from the place where the cargo is taken in charge to place designated for its delivery and assumes full liability for such transport as per the governing Charter Party.

No S.E.D Required, section 30.39 C.A.S. - FC

A quantity in bulk said by the shipper to be:

COMMODITY (Name of Product)	QUANTITY (lbs/tons/barrels/gallons)
10,000MTS OF Soyabean oil IN BULK FOR DISCHARGING Sydney, Australia	10,000 METRIC TONS

DOCUMENTARY LETTER OF CREDIT NO.
COUNTRY OF ORIGIN: U.S.A.

FREIGHT PAYABLE AS PER CHARTER PARTY (BBB) above quantity part cargo only
Total freight acc. to C/P USD 6,000,000, loading stopped 10. .99. Vessel now on demurrage.

FIRST ORIGINAL

Stowage

These commodities, technology, or software, were exported from the United States in accordance with the export administration regulations. Diversion contrary to US law prohibited.

NLR

The quantity, measurement, weight, guage, nature, and actual condition of the cargo unknown to the carrier, the Vessel and the Master, to be delivered at the port of discharge or so near therto as the Vessel can safely get, always afloat upon prior payment of freight as agreed

This shipment is carried under and pursuant to the terms of the Charter dated 11 98
Month Day Year

at AS PER CHARTER PARTY between OWNERS

and Co OF as Charterer, and all the terms whatsoever the said Charterer, including the arbitration clause, except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment. Copy of the Charter may be obtained from the Shipper or Charterer. The freight is earned concurrent with loading, ship and/or cargo lost or not lost or abandoned.

The Owner shall have an absolute lien on the cargo for all freight, dead freight, demmurage/detention and for costs/expences including attorney's fees. Of recovering the same which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any bills of lading covering the same, or of any storageman. Owner shall be entitled to sell the property liened and apply the proceeds toward satisfaction of any such sums due.

If this Bill of Lading is a document of title to which the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, applies by reason of the port of lading or discharge being in territory in which the said Act is in force, this Bill of Lading shall have effect subject to the provisions of the said Act which shall be deemed incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading is repugnant to the said Act as so incorporated, such terms shall be void to that extent, but no further. The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner of the cargo and the owner or demise charterer of the vessel named herein to carry the cargo described above (The Carrier). It is understood and agreed that, other than said shipowner or demise charterer, no person, firm or corporation or other legal entity whatsoever, is or shall be deemed to be liable with respect to the shipment as carrier, bailee or otherwise in contract or in tort. If, however it shall be adjudged that any other than said shipowner or demise charterer is carrier or bailee of said shipment or under any responsibility with respect thereto, all limitations of or exonerations from liability and all defences provided by law or by the terms of the contract of carriage shall be available to such other.

In Witness Whereof, the Master has signed THREE ORIGINALS B/L'S
Bills of Lading of this tenor and date, one of which being accomplished, the others will be void

Dated at HOUSTON TEXAS Date 10/98

Master

MARITIME AGENCY AS AGENTS ONLY, ON WRITTEN AUTHORITY AND ON BEHALF OF THE MASTER