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**J. J. LAWSON**  
CUSTOMS • FREIGHT • TRANSPORT



# Bare Facts

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Bringing you the bear essentials

## Inside this issue

Customs

Meet the bears

Top tips & more...



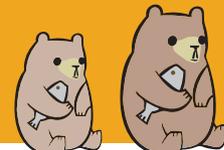
## Port Botany update

The State Government recently appointed Hutchison Port Holdings as the operator of the new third container terminal (T3) at Port Botany.

The Hutchison Terminal is now undergoing a fit-out and is scheduled to be operating for trade in 2012. This huge expansion will cement Port Botany's position as one of the most important container ports in the world.

Port Botany has consistently shown strong trade growth despite the world economic downturn and is currently generating more than \$1.5 billion a year in economic activity for Australia.

Sydney Ports anticipates the new terminal will deliver 9000 new jobs and boost the state's economy by \$16 billion over the next 20 years. Hutchison has interests in 308 berths in 51 ports, spanning 25 countries throughout Asia, the Middle East, Africa, Europe, the Americas and Australia.



## Matt's top tip

### BILLS OF LADING

This article aims to provide general information on the functions of the Bill of Lading in international trade. It is not meant as legal advice nor does it attempt to address all issues that may arise in regard to the legal effect of a Bill of Lading on the consignor, consignee and others who may be covered in the terms of the Bill of Lading.

This article also does not cover seaway bills or airway bills, as they are different to a Bill of Lading. Seaway Bills and Airway Bills will be dealt with in a later issue.

There are various international conventions & legislation that govern the use of Bills of Lading – the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules), the 'Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading' (Hague-Visby Rules), the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) and in Australia we have the CARRIAGE OF GOODS BY SEA ACT 1991 which implements these rules.

Continued on page 2





# Matt's top tip

Continued from page 1

## WHAT IS A BILL OF LADING?

A Bill of Lading is a document issued by the carrier (shipping company or freight forwarder) to the consignor (shipper) for the carriage of seafreight cargo.

The Bill of Lading basically serves three purposes:

- (1) It is evidence that the goods have been received by the carrier and may (depending upon the wording of the Bill of Lading) evidence the condition of the goods as received;
- (2) It is evidence of the contract of carriage between the carrier and the consignor.
- (3) It is a document of title (this needs further explaining as it is not a document of title for all purposes).

The Bill of Lading is usually issued with three Originals and any number of Non-Negotiable Copies. Release of goods covered by a Bill of Lading can only be achieved on presentation of one of the three Original Bills of Lading (although there are mechanisms to obtain release of cargo should all three Original Bills of Lading go missing or be destroyed).

As an importer, you always want to receive all three Original Bills of Lading from your supplier as this reduces the risk of others trying to obtain delivery of the same goods. However, make sure the supplier sends at least one Original Bill of Lading separately to the other two Originals, just in case one goes missing.

## EVIDENCE OF RECEIPT OF GOODS

Basically, the Bill of Lading is evidence that the goods described thereon have been received and shipped by the carrier. If the goods go missing or are not shipped, the onus is on the carrier to prove what has happened.

The Bill of Lading is also a document of title (discussed later) meaning that if the goods shipped are different to the goods described on the Bill of Lading, liability for the misdescription rests with the shipper and not the carrier. The shipper is deemed to guarantee the accuracy of the description of goods on the Bill of Lading and the shipper must indemnify the carrier from any claims arising from any misdescriptions.

The Bill of Lading can also be used to evidence the condition of the goods when received by the carrier, provided the Bill of Lading contains terms such as "shipped in good order and condition". Most carriers will not include this on a Bill of Lading though so as to reduce their exposure to any liability where goods are delivered in a deteriorated state.

## EVIDENCE OF THE CONTRACT OF CARRIAGE

The Bill of Lading is evidence that there is a contract of carriage between the carrier and the shipper. It also evidences the terms and conditions of that contract of carriage. The terms and conditions of the contract of carriage are usually found on the reverse side of the original Bill of Lading and/or on the website of the carrier.

As an importer you should take the time to read the terms and conditions, as they give plenty of rights to the carrier (such as the right to vary the route or be indemnified by the Merchant, limit the carrier's liability, or give the right to call a general average, etc) and place most of the risk, liability and responsibility on the Merchant.

The term 'Merchant' is defined in most Bills of Lading in terms similar to the following:

"*MERCHANT*" includes the shipper, consignor, endorsee, transferee, holder of this document, consignee, receiver of the goods, any person or entity owning or entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such persons.

This is an extremely broad definition by which carriers seek to impose the risks and liabilities of the Bill of Lading on as many persons as possible; in other words the carrier tries to create as large a pool of people as possible against which they can make claims in case of a dispute.

In reality, a legal doctrine called 'privity of contract' makes such a broad definition unenforceable against all but the consignor, consignee and/or transferee, unless a person expressly or by their actions seeks to be made a party to the contract of carriage. However this fact does not seem to stop some carriers from trying to use such a broad definition to leverage or coerce settlement of disputed issues.

## DOCUMENT OF TITLE

The Bill of Lading is a document of title in the hands of the legal owner of the goods.

The legal owner of the goods can transfer title to those goods by indorsing an Original of the Bill of Lading in writing and giving the indorsed Original of the Bill of Lading to the transferee. On indorsement, the transferee has the same rights and obligations under the Bill of Lading as the original consignor.

However, a holder or transferee of the Bill of Lading does not have title to the goods merely because they hold the Bill of Lading or a person has indorsed the Bill of Lading to a transferee. The holder or transferee of a Bill of Lading can get no better title to goods than that which the indorser/transferor had; i.e. if a person in possession of an original Bill of Lading is not the legal owner of the goods, they cannot transfer title to another by endorsement or transfer of the Bill of Lading.

Indorsement of a Bill of Lading usually takes one of two forms:

- (a) "Indorsement In Blank" – this is done by the consignor signing the back of one of the Original Bills of Lading and giving the indorsed Original Bill of Lading to the transferee. The problem with Indorsement In Blank is that any person who has possession of an Original Bill of Lading that has been 'indorsed in blank' has the ability to pick up the goods (even if they are not legally entitled to them).
- (b) "Special Indorsement" – this is done by the consignor signing the back of one of the Original Bills of Lading, nominating the transferee to whom the Bill of Lading is indorsed and giving the Original indorsed Bill of Lading to that transferee.

## DELIVERY OF GOODS

In theory, to pick up goods all a person needs to do is to pay any appropriate port, wharf and/or other charges owing in respect of the shipment and be either

- (a) the named consignee on the Bill of Lading and hold an Original of the Bill of Lading; or
- (b) a transferee (named or not) and legally hold a correctly indorsed Bill of Lading.

On payment of all relevant charges and the handing over of the Original Bill of Lading, the carrier will issue a Delivery Order allowing the consignee or transferee to pick up the goods.

It has become the practice of carriers or their agents to require the consignee or transferee to sign the back of the Original Bill of Lading and stamp it with the consignee's or transferee's company stamp before issuing the Delivery Order.

Where such 'indorsement' is made this is not a transfer of title as,  
(i) this is not the intention of the parties in indorsing the Bill of Lading; and  
(ii) it is arguable that the contract of carriage evidenced by the Bill of Lading has come to an end anyway once the goods are made available to the consignee or transferee.

So what is the purpose of the consignee or transferee signing and stamping the back of the Bill of Lading?

Because a Bill of Lading is a document of title, the carrier has a legal obligation to ensure that they are delivering the goods to the person who is legally entitled to receive the goods.

In essence, (and I am assuming here that the shipping companies and freight forwarders have actually thought about this) what this 'indorsement' is, is a method by which the carrier satisfies themselves that the person to whom they are delivering the goods is the person legally entitled to receive the goods.

Should someone else somehow obtain the Delivery Order after its issuance to the consignee or transferee and pick up the goods then, in most circumstances, responsibility has passed from the carrier to the consignee or transferee to whom the Delivery Order was given. It is not the responsibility of the carrier for any incorrect delivery arising there from.

It has also been argued that by the consignee or transferee 'indorsing the Bill of Lading' to obtain a Delivery Order, the consignee or transferee is acknowledging that it is bound by the terms of the Bill of Lading; however becoming bound by the terms of the Bill of Lading has in all likelihood already occurred at a much earlier point in time.

## REFUSING DELIVERY

(i) By the Carrier:

It happens from time to time that a carrier will withhold issuing a Delivery Order because there is a dispute over fees or demurrage allegedly owing on previous shipments.

In doing this, the carrier is in breach of the contract of carriage under the Bill of Lading which can be sued against.

However, because the consignee or transferee want delivery of their goods, some carriers will withhold issuing a Delivery Order for a current shipment to coerce or force settlement of disputes over past shipments, knowing that the chance of legal action is highly unlikely.

(ii) By the Consignee / Transferee

Under the terms of the Bill of Lading, the consignee or transferee is required to take delivery of the goods when they are made available. Should the consignee or transferee refuse or merely not take delivery of the goods, the carrier usually reserves for themselves, in the terms of the Bill of Lading, the right to unpack the goods from any shipping container and/or store them at the expense of the consignee or transferee and this action then deems that delivery has occurred. Sometimes carriers also reserve for themselves the right to sell goods than have not been delivered.

As stated at the beginning, this article does not attempt to address all issues in regard to the Bill of Lading, it is aimed merely at giving an overview of its main functions.

If you need any further information on the Bill of Lading or have any questions arising from this article, please call us on **02 9669 3011** or email [marty@jjlawson.com.au](mailto:marty@jjlawson.com.au) and he'll direct you to the best person.

Until next time...  
Matt



## Anything to Declare?

People risk their freedom and often their lives when they decide to smuggle illegal substances into Australia but, whether motivated by greed or desperation, they clearly underestimate the diligence of our Customs officials and the Australian Federal Police who have made some incredible discoveries over the years. Lately, they have foiled many bizarre and dangerous attempts to outsmart the authorities.

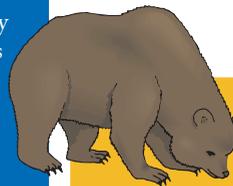
In February, a 31 year old man was stopped for questioning and baggage examination at Sydney International Airport after a flight from Chile. He began acting strangely and was transferred to hospital where he was found to be carrying 78 pellets of cocaine – approximately 800 grams – the content of just one pellet would be a fatal dose.

In early March, two Vietnamese men living in Sydney thought they had beaten the system when the postman delivered two parcels from Canada, each containing four vehicle shock absorbers and 2kg of cleverly concealed cocaine. Unfortunately for the recipients, the Police Drug Squad were following the postman and they were both arrested and charged.

Three people from Melbourne are awaiting trial after taking delivery of a shipping container filled with 882 cartons of frozen seafood in March. The container was examined on arrival at Port Melbourne and it was found that three of the cartons contained a total of 36 frozen blocks each concealing 350g heroin. The AFP followed the container to a business premise in Braybrook and made their arrests.

Later that month, another shipping container declared as 'kitchen and hardware items' was examined at Sydney Container Examination Facility and had 26 boxes of bolts inside – each bolt contained carefully concealed heroin.

Some people prefer a more traditional style of delivery for illegal loot. In April, two young Queensland housemates were arrested. They had set up an elaborate web of fake names and multiple postal addresses to receive 23 parcels of steroids hidden in toys and fashion accessories – a total of 11,450 tablets and three vials were delivered to them over their two years of operation.. Ironically, their emails with their supplier were key evidence against them!



## BEAR BITS

### Naughty Bears

In light of the rising frequency of human/grizzly bear conflicts, the Montana Department of Fish and Game is advising hikers, hunters, and fishermen to take extra precautions and keep alert for bears while in the field.

We advise that outdoorsmen wear noisy little bells on their clothing so as not to startle bears that aren't expecting them. We also advise outdoorsmen to carry pepper spray with them in case of an encounter with a bear. It is also a good idea to watch out for fresh signs of bear activity. Outdoorsmen should recognize the difference between black bear and grizzly bear poop. Black bear poop is smaller and contains lots of berries and squirrel fur. Grizzly bear poop is larger and has little bells in it and smells like pepper.





# Meet the Bears!



## Ketut Sudarma AKA The K-Man

I've been at JJL since February 2000.

**The best thing about my job is...**  
*dealing with different clients and being part of the JJL team.*

**My ideal weekend would be...**  
*spent with my little family, a bit of golf and some footy.*

**The most amazing thing that has ever happened to me was...**  
*witnessing my children being born into this world.*

**To me, sport is all about...**  
*mateship, being competitive and keeping fit.*

**I really admire...**  
*my wife Emma and my three little ninjas.*

**When I'm driving around, I'm listening to...**  
*whatever sounds good on the radio.*

**Don't talk to me about...**  
*money - I don't have any!*

**In ten years time, I'll be...**  
*old and grey and hopefully still here with the company.*

**All I want for 2011 is...**  
*to see joy on my kids' faces and to be healthy.*

**What I like most about working for JJL...**  
*the friendships that I've made over the years with everyone here and the pride I have in working for such a reputable company.*



**E-Bare Facts**

*If you would also like to receive Bare Facts as a attachment or HTML, please e-mail [marty@jjlawson.com.au](mailto:marty@jjlawson.com.au) stating your preference.*



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