

The latest stage in the bill of lading's evolution

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The bill of lading's evolving style and format reflect the progression of transportation as an industry, culture and technology-dependent business over thousands of years. That's fitting, inasmuch as the bill of lading's purpose since Roman times has been just that: to be an alter ego of the freight it documents.

Millennia ago, a carrier had a tough time being sure who a cargo's proper consignee was. An ocean shipment (the only mode available for long haul throughout most of history) could be en route weeks while any number of merchants bought and sold (i.e., "negotiated") ownership of the freight. But only the guy who produced a properly endorsed bill of lading from underneath his toga could get the goods, lest the carrier be held liable for misdelivery. And if the vessel owner didn't come up with *exactly* the freight documented, the consignee could hold the carrier accountable (thus was born the cliché "fit the bill"). The bill of lading was the world's first document of title, and has been ever since. It was far from a perfect system, but there probably weren't many better ideas in an era of limited long-distance communication.

It's no surprise that the history of international trade finance tracks closely that of shipping documentation. The letter of credit system's genesis was the bill of lading, as banks realized that guaranteed payment for shipped goods whose delivery is reliably documented was a marketable financial product. To this day, international commercial transactions often are premised on issuance of precisely stated bills of lading.

As time progressed and organized systems of shipping law took shape, the bill of lading grew into a concurrent second role. In addition to being a receipt for freight which could be tendered in exchange for transported goods, the document became the written manifestation of the shipper/carrier contract. Shipping terms had become more uniform, and the invention of the printing press in 1436 enabled players to mass produce form documents. No, the early forms didn't have the plethora of those tiny words on the back connoting shipping terms (although some of the contractual clauses we see today were already in use), but we were well on our way to commercially reliable consistency. Marine insurance was becoming the norm, loading and lashing practices were tried and true, and soon we even began seeing government regulation.

But it was technological advancement that prompted the bill of lading's next evolutionary stage. With containerization, international legislation regarding liability, modernized business practices, and the massive volumes of modern-day shipping, the twentieth century saw bills of lading assume even more of a contractual role. Spin-offs emerged, such as "non-negotiable bills of lading" (which reduced carrier concern about misdelivery), and "waybills" (which are not documents of title and serve only as receipts and contracts, such that they need not be presented to the carrier for delivery). Service

contracts in the era of deregulated shipping address many of the issues which once were the bill of lading's exclusive domain, and intermediaries attend to many of the details for the sake of efficiency.

In the last ten years, computer and internet technology have occasioned the bill of lading's latest significant evolution. Let's face it, electronic data transfer and the transacting of business by mouse click have revolutionized virtually every business sector. Transportation is an industry particularly conducive to enjoying keyboard conveniences. But what does the electronic bill of lading do to the essence of that most essential of shipping documents?

A few courts have taken a look at that issue, most recently a federal court in New York City which does a good job summarizing relevant law. It being relatively early in the electronic era, many issues have not yet received judicial, or even industry, attention. But this much we do know: electronic shipping documentation is a luxury players purchase by sacrificing a level of legal certainty. Everyone agrees that the advantages of electronic documentation are convenience, speed, and cost savings by way of obviated paper generation and storage. We can't expect carriers and forwarders to print up hard copies of every virtual bill of lading used, as that would defeat the very purpose of the approach we agree is cheaper and more expedient.

But if we don't have contemporaneous hard copies, how can litigating shippers and carriers demonstrate whether certain terms were really agreed to? For instance, how can a shipper prove it was not offered a fair opportunity to declare full cargo value (usually noted on a written bill of lading) when a carrier attempts to limit its liability for lost or damaged freight? The short answer to that, at least in highly influential and precedential New York (where many cargo claims are litigated), is that usage of a carrier's electronic documentation system imposes a degree of responsibility on a shipper or forwarder to explore fully the carrier's offered shipping terms. Carrier websites typically contain their standard bills of lading, the full-blown versions which include declared value terms and, usually, everything else of relevance. If you want to use the electronic short form version, fine. But you might spend some time surfing the rest of the carrier's website to make sure you really know what you're getting into.

In other words, if ease and expediency drive your business practices, take the initiative of exploring the full circumstances of those benefits. You might not want a court to do so for you.

Ref: Delphi-Delco Electronics Systems v. M/V Nedlloyd Europa, 2004 WL 963997 (SDNY 2004)