



1. One of the functions of a Bill of Lading (“B/L”) is that it acts as a document of Titleⁱ in that the Carrier has a duty to deliver the cargo to the holders of the B/L. This duty to deliver, in our opinion, also includes taking further instructions from the holder of the B/L which arguably on the basis of trade practices, include the issue of Switch B/L’sⁱⁱ. Additionally, one of the documents sought at the time of cargo recovery is evidence that the claimants have “Title to Sue”ⁱⁱⁱ. However, this function appears to be under attack, at least in Singapore, given that Singapore Law has moved from the position in English Law as stated in *The*

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Aliakmon^{iv} i.e., to pursue, the claimant must have some legal ownership of or a possessory title to the property concerned at the time of the loss or damage. The Singapore position has been dealt in a joint article published earlier, *The case of NTUC Foodfare Co-operative Ltd – Whether Singapore Law is better or English Law is preferable?*^v.

2. In *The Jeil Crystal*^{vi}, the Singapore High Court dealt with an admiralty action in which it considered as to whether the warrant of arrest should be upheld on the basis of an amended claim / cause of action not originally pleaded. One of the issues detailed in the judgement was on the issue of Switch B/L's (Paras 10-12 & 21). While this judgement is presently under appeal, it appears to us that the position of Carriers^{vii} will continue to be in attack given that whenever there is a claim, claimants and their legal counsels, will as a matter of course, consider which other parties could be joined / attacked to seek recovery. The best analogy we could think of is the difference between shooting with a rifle which focuses at individual targets or shooting with a shotgun which is able to focus on multiple targets which are in a parabola. Naturally, using a shotgun has a better chance of hitting at least one target vis-à-vis a rifle, all other things being equal.
3. The fact is that a SB/L is invariably issued to mask commercial information and this being the case, the practice is for Carriers to maintain confidentiality and only issue on surrender of the earlier issued original BL's. With respect to

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seeking permission from the earlier parties involved in the BL chain, the Carrier is rarely aware of the parties and moreover seeking such information will go against the very basis why the Switch BL is sought. We submit that seeking confirmation from the earlier parties may also result in the breach of the inherent duty of confidentiality and therefore the Carrier may also be on attack from the party seeking SBL should they make a general enquiry seeking permission from the earlier involved parties as suggested by the claimants in *The Jeil Crystal*.

4. So where does this leave Carriers? We believe that Carriers will always be on increased attack should something go wrong. The problem is that Carriers are rarely, if ever, aware of the contractual relationships with their counterparty (Shipper/Charterers) and this being the case, it sometimes comes as a rude shock when they are pursued or joined into an action which they were never aware of. Additionally, as Carriers are generally a better target vis-a-vis the trading parties, they will come under increased scrutiny and attack. In order to ensure that Carriers protect themselves, Carriers should revisit their standard operating procedures including
 1. Background search of their clients and which will hopefully ensure that they do not deal with parties who engage in malpractices.
 2. Issue of trade documents such as B/L's and SB/L's .



3. Use of LOI and wordings should the Carrier agree to deviate from the established norm. Whether the LOI is of any use would naturally depend on the worth of the party issuing the LOI and which would then go back to whether the Carrier has done a proper background search on their customer i.e., KYC.

- i. See article by Chakarvarthi Thillainathan of Low & Partners, [Bills of Lading as a Document of Title](#).
- ii. See our earlier article, [Switch Bills of Lading – Revisited](#).
- iii. See article of Clyde & Co, [Think Recoveries: Title to sue in cargo recovery claims](#)
- iv. Leigh and Sullivan Ltd v Aliakmon Shipping Co. Ltd (The “Aliakmon”), [1986] 2 Lloyd’s Rep. 1
- v. The article can be viewed at <https://nau.com.sg/the-case-of-ntuc-foodfare-co-operative-ltd-whether-singapore-law-is-better-or-english-law-is-preferable/>
- vi. [2021] SGHC 292 and which can be viewed by clicking this [hyperlink](#).
- vii. Carrier includes any party issuing their Bills of Lading as the Contractual Carrier and would include Vessel Operators (VOCC’s) and those without vessels (NVOCC’s)

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