

Paperless Trading – Electronic Bills of Lading

Background

Electronic bills of lading have been in existence for some time but their use has recently begun to increase significantly. In order to support Members in their use of such systems, the International Group of P & I Clubs (“IG”) analysed those offered by the leading suppliers in order to assess whether liabilities can fall within Club cover.

The purpose of the review process was to ensure that the three functions of a bill of lading - (i) as a receipt for the goods loaded, (ii) evidence of the terms of the contract of carriage, and (iii) a document of title to the goods - are adequately supported by the system being assessed. Against those criteria, the following systems have so far been approved for the purposes of Club cover:

- Electronic Shipping Solutions DSUA 2009.3 and DSUA 2013.1 (“essDOCS”) – for further information see www.essdocs.com. essDOCS has produced some FAQs which can be found here: <http://www.essdocs.com/resources/cargodocs-faq>
- Bolero International Ltd Rulebook/Operating Procedure 1999 (“Bolero”) – for further information see www.bolero.net. Bolero has produced some FAQs, a copy of which can be requested via the following webpage: <http://resource.bolero.net/download-bolero-ebi-faqs>
- E-title (The Electronic title User Agreement~ version 1.2) - for further information see www.e-title.net. E-title has produced some FAQs which can be found on the following webpage: <http://www.e-title.net/Index.php/the-solution/faqs>

Any liability arising under an electronic bill issued under one of these systems is treated for Club cover purposes in exactly the same way as if it was a paper bill (and subject to the same policy exclusions, including those set out in Rule 2 Section 16 of the Class I Rules).

Other systems exist but it has been determined that so far their systems do not sufficiently meet the required criteria and



are therefore not approved for the purposes of cover. If Members use unapproved systems then they will have the additional hurdle of proving that the liability would have arisen even if a paper bill had been used before Club cover can incept.

Like the use of any electronic data system however the use of all paperless trading systems carries with it potential “cyber” risks. These do not fall within Club cover – see the FAQs below.

BIMCO

BIMCO has published an Electronic Bills of Lading Clause for use in charter parties as follows:

BIMCO Electronic Bills of Lading Clause

(a) At the Charterers’ option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.



(b) For the purpose of Sub-clause (a) the Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by the Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for the Charterers' account.

(c) The Charterers agree to hold the Owners harmless in respect of any additional liability arising from the use of the systems referred to in Sub-clause (b), to the extent that such liability does not arise from Owners' negligence.

Further details are available via the BIMCO website: <https://www.bimco.org/en.aspx>

Frequently Asked Questions ("FAQs")

The IG has issued a set of Frequently Asked Questions regarding its position on the use of electronic bills of lading and their impact on P & I cover with a view to assisting Members with their queries on the subject.

1. What is the position of the P&I Clubs within the International Group with regard to paperless trading?

The position is set out in the Club's Notice to Members No. 11 2015/2016 titled Electronic (Paperless) Trading Systems - Bolero International Ltd, Electronic Shipping Solutions and e-title (the "Notice") which incorporates the latest IG Circular on the topic.

In considering the use of a trading system that features electronic bills of lading, the Clubs wish to ensure that such a system ensures performance of the three functions of a bill of lading which customarily underpin P&I cover, namely: as a receipt, as a document of title, and as a contract of carriage which incorporates the Hague or Hague-Visby Rules.

2. In the light of this circular, do I have P&I cover in general for liabilities arising under any electronic bills of lading?

(a) Yes, cover is available for P&I liabilities arising under any electronic bills of lading to the extent these liabilities would also have arisen under paper bills of lading.

(b) To the extent these liabilities would have arisen because an electronic bill of lading has been used instead of a paper bill of lading, cover is discretionary unless the electronic trading system has been approved by the International Group.

3. Have any systems been approved by the Club/ International Group?

The three systems approved are those set out in the circular:

(a) Electronic Shipping Solutions DSUA 2009.3 and DSUA 2013.1 ("essDOCS") and

(b) Bolero International Ltd Rulebook/Operating Procedure 1999 ("Bolero").

(c) E-title (The Electronic Title User Agreement-version 1.2)

It is always advisable to check that the system preferred bears the correct designation and is the approved version.

4. Is my position better when using one of these approved systems, than another electronic system which has not been approved?

Yes. You will have Club cover for P&I liabilities arising out of the use of one of the approved systems (though not for liabilities which are of a non-traditional P&I nature – see Q6 below) and thereby avoid exposure to the risks connected with the use of non-approved systems as described in Q5 below. However it is important to note that all exceptions and exclusions under the Club Rules continue to apply (as they would with a paper bill of lading). This includes the traditional exclusions of cover relating to the carriage of goods, such as:

- The issue or creation of an electronic document/record with a description of the cargo or its condition known to be incorrect;
- Short delivery where an electronic document/record is issued or created for an amount of cargo greater than that known to have been loaded;
- Discharge at a port or place other than the port or place provided for in the contract of carriage;

- The issue or creation of an ante or post-dated electronic document/record; and
- Delivery of the cargo without production of the negotiable electronic document/record.

5. What might the risks be if I use an unapproved electronic system?

The risk is the one set out in the answer to question 1 above i.e. that the electronic system is not recognised as performing all the functions that a paper bill of lading would have performed. One example could be that an unapproved system is found, when challenged legally, not to transfer rights in goods in the manner that the creators of the system intended. This may give rise to a dispute about ownership and mis-delivery of the cargo. Another example could be if the Hague or Hague-Visby Rules have not been effectively incorporated into the electronic bill of lading. If it is found that in each case the liability has arisen because of the use of the electronic system, then that will not be covered within normal P&I cover. It may be covered at the discretion of Club Boards.

6. Are there any other liabilities I could incur in using electronic bills of lading?

Members should be aware that participation in an electronic trading system may require entering into a contract with the system operator (essDOCS, Bolero or E-title or a non-approved system provider), which contract can include obligations to maintain minimum IT standards to access and use the electronic system and to use the electronic system only as permitted by the user agreements. The user agreements usually also contain undertakings of confidentiality. If broken these obligations could give rise to contractual liabilities under the user agreement to other users and the operator of the electronic bill of lading system. These liabilities are no different to those contained in, for instance, software agreement or other IT application agreements and would fall outside P & I cover.



7. Is there an insurance which can cover me for these obligations?

These are non-marine risks, and may be covered by your own business insurances. This is something which you can check with your non-marine business insurance broker. These are not in the nature of P&I risks. In insurance terms, they may be described as "cyber-risks" or business risks.

8. If I am considering using one of the three approved systems and I wish to look into the Bolero Rule Book, essDOCS User Agreement or E-title User Agreement, how can I obtain a copy?


The party inviting you to use this system should provide this for you, or put you in touch with Bolero, essDOCS or E-title.

9. Do I need to ask you to check and approve the Rule Book or User Agreement of an approved system?

No. The International Group has approved these documents (as long as they are unamended and match the titles set out in the circular) as acceptable.

10. If I am considering using an unapproved system will the Club review the documents?

It is for you to satisfy yourself as to the manner in which the system operates. The Club cannot currently "approve" systems



other than through the IG mechanism for doing so. Unapproved system operators can of course approach the IG Secretariat for approval, and the matter would then be considered by the appropriate sub-committee comprised of Club representatives, but this is not a quick or immediate procedure.

11. Electronic systems are based on specific contractual terms rather than statutes and treaties. Is there a risk when using an approved system that the contract of carriage will not be subject to the Hague or Hague-Visby Rules and that I might therefore be deprived of my P&I cover?

No, the contractual terms for both approved systems make clear that any convention, treaty or national law that would have been applicable to carriage under a paper bill of lading will equally govern the carriage using an electronic document or record. Thus, so long as the carriage is subject to Hague or Hague Visby Rules by reference to the terms and conditions incorporated into the electronic document/record and/or by application of convention or national law as if a paper bill of lading had been issued then there will be no problem with Club cover.

If the carriage is compulsorily subject to another liability regime like the Hamburg Rules then again Club cover will remain in place as it would if the carriage were under a paper bill of lading.

12. Are there any standard wordings governing the use of electronic bills of lading?

As set out above BIMCO has published a standard clause for use in charter parties governing the use of electronic bills of lading. This clause was drafted by a committee of representatives from owners, charterers and the International Group. A copy can be found via the following link: <http://www.bimco.org/~media/Chartering/SpecialCirculars/5C201403.ashx>

Further assistance

The Club has previously issued Notices to Members on the subject of electronic bills of lading, copies of which can be found here:

<http://www.westpandi.com/Publications/Notice-to-Members/Archive/Notice-to-Members-No-18-20102011/>

<http://www.westpandi.com/Publications/Notice-to-Members/Notice-to-Members-No-3-20132014/>

<http://www.westpandi.com/Publications/Notice-to-Members/notice-to-members-no.-11-20152016/>

Members requiring further information should direct them to their usual contact at the Club or to Dr Michaela Domijan-Arneri, (telephone: +44 20 7716 6036, e-mail: Michaela.Domijan-Arneri@westpandi.com).