The apparent conflict between the bill of lading identity of carrier clause, demise clause, and words in the signature box on the face of the bill of lading was discussed in “Sea Venture” Vol 18 in a report of the decision in “The Hector”. Since then, the issue of identification of the contractual carrier under a bill of lading has been further considered in both The “Flecha”1 and The “Starsin”2.

Both cases involved bills of lading on the same printed form signed by the agents for Continental (the vessel charterer) who were described in various similar ways as “carrier”. The bills contained identity of carrier clauses that provided that a party other than the owner could be the carrier or bailee of the goods shipped.

The decisions reached in these cases are contrasting: In The “Flecha” the bills of lading were held to be owners’ bills while in the The “Starsin”, the same form bills of lading were held to be charterers’ bills.

Despite the different findings, it is now clear that the issue of identification of the party undertaking the obligations of carriage is one of construction. To construe a bill of lading it must be read as a whole, giving preponderant weight to such written words as may be inconsistent with the wording of the printed form, and having regard to the question "...in what sense could the shipper to whom the bill was originally issued be expected to have understood the words used" (Colman J, The “Starsin”).

A party signing a commercial document such as a charterparty or bill of lading may so do in a way that indicates that he does not accept liability, but he may equally do so in a way that indicates that he does. (Universal Steam Navigation Co Ltd v James Mckelvie & Co3). Therefore, the identification of the party undertaking liability for the carriage could be reined to a short question: Do the words of the signature box clearly represent an assumption of liability so as to override the identity of carrier and demise clauses on the reverse of the bill of lading?

Following the decision in “The Ines”4 (also discussed in “Sea Venture” Vol 18) Moore-Bick J in The “Flecha” thought that the words of the signature box did not override the clauses on the reverse: "...to describe a liner company loosely as a "carrier" is not unusual ……... and is not sufficient of itself to displace the clear terms of the bill of lading." However, the signature on the bill of lading in “The Ines” (“agents for the carrier”) was ambiguous as the carrier was not identified.

Therefore, the signature box should not be viewed in isolation and the definition of "carrier" set out on the reverse side of the bill of lading should also be considered. While this does no more than represent that the obligation of carriage will be undertaken by the party on whose behalf it has been signed, if the identity of carrier clause set out on the reverse of the bill of lading envisaged that the owner may not be the carrier, then the "carrier" could be some other party.

In this way, in The “Starsin” Colman J took the view that a shipper looking at the face of the bill of lading signed "agent for X the carrier" (or in some other similar form) would understand that X, and not the owner, was described as carrier. In addition that the term "carrier" should be read "to indicate the same meaning as that word is given throughout the reverse side clauses" so that it is possible for the charterer not only to procure but also to be responsible for the carriage: if there was no ambiguity as to whether the agents signed for the line as carrier (as opposed to on behalf of the charterer or line who in turn acted on behalf of the carrier) the signing of a bill of lading "as carrier" is an intention to represent an assumption of liability, not merely a loose description of the charterer as the party that procured the carriage.

Colman J went on to set out a two stage process for determining whether a bill of lading issued by an agent on behalf of charterers was an owners’ or charterers’ bill:

1. to determine if, on the face of it, the bill represents that the owners are contracting to carry the goods. The document should be construed as a whole, which involves starting with the express words and when determining the meaning intended, regard should be had to the fact that the only parties involved in this process will be the shipper and charterer or his agent;

2. if so, the issue may then arise as to whether the signatory had actual or ostensible authority to bind the owner. If the owner can show that no such authority exists only then can he escape liability under an owners’ bill.

While the decisions in The “Flecha” and The “Starsin” are at odds, Colman J in "The Sarsin" agreed with Rix J (as he then was) in "The Hector" that the term "carrier" was critical and is "the expression in which the party with the obligation to carry out the bill of lading contract is clothed". It would appear, therefore, that where the identity of carrier clause provides that a party other than the owner may be the carrier, a bill signed by agents and clearly identifying some other party as carrier, for instance "agents for the carrier X", or "agents for X, the carrier", or "agents for X as Carrier", will probably be held to be a charterers’ bill. Without such clarity, the bill of lading will probably be held to be an owners’ bill of lading.

2 [1999] 2 Lloyd’s Rep. 612
3 [1999] 2 Lloyd’s Rep. 65
4 [1930] A.C. 492
5 [1986] 2 Lloyd’s Rep. 144

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