Straight Bills of Lading - Do The Hague-Visby Rules Apply?

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Is a straight bill of lading a "bill of lading or similar document of title" within the meaning of the Hague-Visby Rules Art. (10) and section 1(4) of UK Carriage of Goods by Sea Act ("COGSA") 1971. This was the central issue in *The Rafaea S*¹, a case in which the House of Lords gave its judgment on the 16th February this year.

At arbitration and in the Court of Appeal² it had been held that a straight bill of lading did indeed fall within the category of documents to which these provisions applied.

The appellant, the carrier of a consignment of four containers of printing machinery, sought to argue that the stricter package limitation contained in US COGSA 1936 should apply, whereas the receiver contended (and has successfully argued before the Court of Appeal) that the more liberal package limitation contained in UK COGSA 1971 should apply (the bill having been issued in 1990 prior to UK COGSA 1992 coming into force).

The financial impact on the claims was significant; if the carrier prevailed, the compensation would be limited to US$2,000. If the receiver prevailed, the carrier would be liable for US$150,000.

Lord Bingham delivered the leading judgment dismissing the carrier’s appeal and the other Law Lords concurred. One of the primary reasons given by Lord Bingham for dismissing the appeal was the need for courts to give effect to the international consensus on the use of straight bills of lading.

He observed that straight bills of lading were not uncommon before the Hague Rules were drafted or adopted, and that if it had been intended to exclude straight bills of lading from the scope of the Rules "special provision to that effect would surely have been made", and that there was no sensible commercial reason why the draftsmen of the Hague Rules would have wanted to deny a consignee under a straight bill of lading of the same degree of minimum protection afforded a consignee that obtains rights by endorsement under an order bill of lading.

In *The Rafaea S* the bill contained a clause expressly requiring presentation. Nonetheless, Lord Bingham concluded that were it necessary for him to do so, he would hold that production of a straight bill of lading is a pre-condition of delivery, even where there is no express provision to that effect. Because UK COGSA 1992 did not apply to the case these remarks are "obiter" and not of binding effect but are an indication of the way that the Courts might address this issue in the future.

Lord Bingham’s obiter comments do not though sit comfortably with the treatment of straight bills of lading that are subject to UK COGSA 1992. That Act expressly states that the transfer of rights and liabilities for straight bills is the same as for seaway bills. In other words, presentation is not required for delivery as no transfer of the document is envisaged and a consignee acquires rights simply by being named as the consignee. If the COGSA 1992 envisages a straight bill never leaving the shipper’s hands and that the named consignee is the party to whom the cargo is to be delivered, save where on its terms the bill of lading must be presented to obtain delivery of the goods, why should there be an obligation to present a straight bill of lading to trigger delivery of the goods?

Such a requirement would also create a divergence between English law and U.S. law, which does not require presentation of straight bills.

In practice carriers can, and often do (as in *The Rafaea S*), expressly provide for delivery against presentation of a straight bill of lading. There is no legal barrier to prevent them doing so or, presumably, in appropriate trades and circumstances by clear words providing that there is no presentation requirement. Equally, those who want the security of a presentation requirement, such as those involved in trading of cargoes that are sold in transit, can use traditional negotiable bills of lading. In the *Rafaea S* the House of Lords did not need to deal with differing treatment of a straight bill of lading under COGSA 1971 and 1992 and left open the question whether there should be delivery of cargo only against presentation of a straight bill of lading where the bill itself is silent as to whether or there should be presentation of the bill, albeit such bills probably are few and far between.

1. JI Macwilliam Co Inc v Mediterranean Shipping Co - *"The Rafaea S"*

2. Click here for a commentary on the Court of Appeal decision in the *"Rafaea S"* and Singapore case *APL Co. v Peer Voss* published in Sea Venture Vol 21 (pages 17 to 22).