

## **Bills of lading and sea way bills issued under charter parties: who is bound?**

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### **1. The topic**

When a vessel is on a voyage or time charter, bills of lading will normally be issued for the cargo which is to be carried: either one for the total cargo, or several bills – each for a distinct part of the cargo. The use of the traditional bill of lading has, however, gradually lessened in favour of the sea way bill. The purpose of this article is to analyze some legal aspects of the two documents, and in particular: who is legally bound by them? For the sake of simplicity we assume here that the chartered vessel is engaged in liner service. This means that the original promise of cargo transportation is given by the charterer (the line), and further we assume that this promise is evidenced by a booking note signed by both the line and the cargo side (the sender).

The use and consequences of using the bill of lading are fairly well regulated by the Maritime Code 1994 (the MC),<sup>1</sup> whereas the sea way bill is only addressed in two sections.

One common characteristic feature, which should be mentioned at the outset, is that both the bill of lading and the sea way bill are considered as evidence of a previously concluded contract, cf. MC Section 292 paragraph one and Section 309 paragraph two. As already indicated, in the liner trade this contract is (usually) the booking note.<sup>2</sup>

Due to the historical order of development of the documents and the extent of legal regulation, it is the bill of lading that requires our first attention and has the highest number of words in the article.

## **2. Bills of lading issued under a charter party – an overview**

### **2.1. The simple situation: the line is the owner of the carrying vessel**

Naturally, the rules of the MC are primarily aimed at the situation where the line is the owner of the carrying vessel. In these circumstances, the cargo is delivered to the line by the party who has the contract with the line (the sender, who is, e.g., a cif-seller) or by someone having a contractual relation with the sender (the shipper, who is, e.g., a fob-seller). In the latter case, it follows from the line's contract with the sender that the line is obliged to accept the cargo and transport it (see, however, below).

According to general principles of contract law, the person delivering cargo to the vessel is entitled to some kind of receipt.<sup>3</sup> The MC has more specific rules on this point in Section 294 paragraph one:

“When the carrier [in our context: the line] has received the goods, the carrier shall at the request of the shipper issue a received for shipment bill of lading.”

Paragraph two then states that this received for shipment bill of lading may later on be substituted by an ordinary on board bill of lading. The important feature is

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<sup>1</sup> The Maritime Code of 24 June 1994 no. 39 is translated and published in MarIus no. 435 (2014). This unofficial translation is used in this article. The quotations from the preparatory works to the Code and from judgments have been translated by the author.

<sup>2</sup> This means that both sides may argue that the bill of lading or the sea way bill is not in conformity with the booking note: a date or the freight rate is wrong, an exception has been forgotten, etc. The ordinary rules on evidence are applicable; there is no qualification (with e.g. words like “clearly” or “without doubt”). However, it must be expected that the burden of proof is somewhat heavier when the line argues that the bill which it has formulated and signed in error does not protect the line, as envisaged in the booking note. And conversely when the shipper has filled in the document and presented it for signature.

<sup>3</sup> Se. e.g., Augdahl, *Den norske obligasjonsretts almindelige del* (5. ed. 1978) p. 57 and p. 164, and Hagstrøm, *Obligasjonsrett* (2 ed. 2011) p. 215.

that the shipper – who is not necessarily the sender – is entitled to a bill of lading, and the contents of such a document and its legal effects are stated in the MC (on some of the details, see below). The obligation to issue a bill of lading rests on the line, in its capacity as carrier.

It is remarkable that although the MC defines the shipper (Section 251), and also says that the shipper is entitled to have a bill of lading (Section 294), it has no provision as to who is or may be a shipper without being the sender. Has the sender the right to nominate anyone as shipper? And when and how should such decision be notified to the carrier? Furthermore, a standard booking note, such as CONLINEBOOKING 2000, has no box for shipper, but one for “Merchant” – a concept that is defined in clause 1 as including “the shipper, the receiver, the consignor, the consignee, the holder of the bill of lading, the owner of the cargo and any person entitled to possession of the cargo”. The document gives, however, no indication as to who the shipper is or may be.<sup>4</sup>

It should be added that the standard voyage charter forms also do not have a box for the insertion of the name of the shipper.

At the port of discharge the situation is simpler: a bill of lading is a negotiable document that can, of course, be transferred. And fulfilling the obligation to transport and deliver is subject to the presentation of the document. It is sufficient here to quote the MC Section 302 paragraph two:

“The person who presents a bill of lading and, through its wording or, in the case of an order bill, through a continuous chain of endorsements or through an endorsement in blank, appears as the rightful holder, is prima facie regarded as entitled to take delivery of the goods.”

## **2.2. Bills of lading when the line uses chartered tonnage**

We now turn to the situation where the line uses chartered tonnage; we assume here that this is permitted under its contract with the cargo side (the booking note).<sup>5</sup>

The shipper is, as we have seen, entitled to a bill of lading, issued by “the carrier” (MC Section 294). The obligation to issue a bill of lading rests on the

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<sup>4</sup> In Falkanger, *The concept of shipper in sea carriage law – with some deviations to other modes of transport*, SIMPLY 2014 (= MarIus no. 456, 2015) pp. 31 et seq. it is stated that there is no definition of who the shipper is as regards Sect. 294 and that one way of explaining that the shipper who is not the sender is nonetheless entitled to a bill of lading, is that the sender - directly or presumably – has transferred this right to the shipper. The better view, however, is that the shipper’s position is not a right derived from the sender, but is given him by law, and that this obligation on the part of the carrier arises on receiving the goods for transportation” (p. 40).

<sup>5</sup> Whether the carrier has such freedom is not regulated in the MC; the answer depends upon the construction of the transport agreement.

line in its capacity as carrier, and the preparatory works to the section make it quite clear that it is not sufficient that a bill of lading is issued, it must be “binding on the carrier”.<sup>6</sup> Section 295, on the master’s bill of lading, conforms with this approach:

“A bill of lading signed by the master of the ship carrying the goods is regarded as having been signed on behalf of the carrier.”<sup>7</sup>

However, sometimes there is no doubt: the bill of lading is signed by or on behalf of the owner of the vessel, not on behalf of the contracting carrier. In such a case the bill of lading cannot really be said to be *evidence* of a contract of carriage (Section 292 paragraph one no. 1); it is *the contract*, binding the owner. There is no doubt that the owner hereby incurs liability according to the rules governing bills of lading, see in particular ND 1955 p. 81 (= Rt. 1955 p. 107) (Lysaker) where the Supreme Court said:

“The bill of lading is signed by the master, who has also designated himself as such, and according to usual rules it is then the owner, not the time charterer, that is bound.”

In any case, the owner will incur liability as a sub-carrier (a performing carrier): see the first sentence of Section 286 paragraph one, stating that a sub-carrier is liable for such part of the carriage as he performs, “pursuant to the same rules as the [contracting] carrier.”

But the line is not – in contrast to what was previously the law<sup>8</sup> – thereby free of liability; see the main rule in Section 285 paragraph one:<sup>9</sup>

“If the carriage is performed wholly or in part by a sub-carrier [here: the owner of the vessel], the carrier [here: the line] remains liable according to the provisions of this Chapter as if the carrier had performed the entire carriage him- or herself.”

A distinction should be noted: the carrier (the line) is not liable according to his contract (adjusted as the case may be because of the peremptory rules in the MC), but according to the rules of the MC Chapter 13 on the carriage of general cargo.

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<sup>6</sup> NOU 1993: 36 p. 45. After having described standard practice on the issuance of bills of lading, it concludes: “The point is that the issued bill of lading shall be binding on the carrier.” And in our context the carrier is the line.

<sup>7</sup> See NOU 1993: 36 p. 45 on the situation where the transport is performed by a ship whereof the carrier is not the operator-owner: “The section removes the doubts that may have existed. A bill of lading signed by the master of the performing vessel is deemed to be signed on behalf of the carrier”.

<sup>8</sup> See in particular Supreme Court decisions in ND 1903 p. 331 (= Rt. 1903 p. 642) (Gerdt Meyer) and ND 1955 p. 81 (= Rt. 1955 p. 107) (Lysaker) as well as the Swedish Supreme Court decision in ND 1960 p. 349 (Lulu).

<sup>9</sup> There are important modifications in the second and third paragraphs; the important point in the present context is, however, the principle.

In addition to the liability following from Section 285, we have the carrier's obligation to issue a bill of lading, if so demanded by the shipper (regardless of whether or not he is the sender), cf. Section 294. There is no exception, e.g. for the case where another party issues a bill of lading for the cargo. But if the shipper accepts a bill of lading issued by the owner of the vessel, it may be argued that the shipper has waived this right according to Section 294.<sup>10</sup>

The carrier may have agreed to better terms than those provided by the MC, e.g. that the limitation amount shall not be 667 SDR per unit (Section 280), but instead 1 000. However, this is not binding on the sub-carrier unless he has given his "written consent" (Section 286 paragraph two). With the line's continued liability, based upon the rules in Chapter 13, it appears that the 1 000 SDR-limitation becomes inoperative when the line exercises an option to use a sub-carrier. The unfortunate result, seen from the cargo side, is a breach of the promise given by the carrier (the line) and a consequence of how the carrier has acted – and for such breach the carrier will be responsible.<sup>11</sup>

### 2.3. The rules in MC Chapter 14

We have shown above that the rules in MC Chapter 13 entitle the shipper – even when he is not the sender – to request a bill of lading, and that this document will then be binding on the carrier, being the contracting carrier named in the booking note.

However, when we turn to Chapter 14 on the chartering of ships, the rules are different. Regarding voyage charters Section 338 paragraph one says:

“When the goods have been loaded, the voyage carrier [Norwegian: reisebortfrakteren] or the master or the person otherwise authorized by the voyage carrier shall, at the request of the shipper, issue a bill of lading, provided the necessary documents and information have been made available.”

Such a document is binding on the voyage carrier, which is made abundantly clear by the recourse right according to paragraph three: if the voyage carrier has been held liable under the bill of lading because the bill contains stricter rules than those imposed by the charter party, the voyage charterer has to hold him harmless.

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<sup>10</sup> However, a clause in the booking note stating that there is no obligation on the part of the line to issue a bill of lading would not be valid, even if the line promised a sea way bill as a substitute.

<sup>11</sup> It may be found otherwise [proposed added wording for clarity: “by the courts”] if it has been made sufficiently clear that a diminished liability may be the consequence of sub-carriage.

Words to the same effect are used for time chartering, see Section 382 paragraph one:

“The time carrier [Norwegian: tidsbortfrakteren] shall issue a bill of lading for the goods loaded for the voyage the ship is to perform, with the conditions usual in the trade in question. If the timer carrier thereby incurs liability to the holder of the bill of lading in excess of the liability according to the chartering agreement, the time charterer shall hold the time carrier harmless.”

These contradictions in Chapters 13 and 14 have a historic explanation. The previous MC 1893 – as amended in 1938 when the Hague Rules were implemented – established, in a joint subchapter on voyage charters and carriage of general cargo, the rule that bills of lading should be signed by the master, with recourse for the owner to the charterer in cases where the bill contained “other terms than in the agreement and this leads to increased liability” (MC 1893 Section 95). In the time charter section of the Code there was a similar regulation: the owner was obliged to issue bills of lading for loaded cargo “with the terms of carriage that are usual for the trade in question”, and again in this case with recourse to the charterer in case of increased liability.

Nowadays, the general rule on the issuance of bills of lading has changed (the previous Section 95 compared with today’s Section 294, cf. Section 295): The obligation rests on the carrier, i.e. the counterparty to the sender. This change should be seen against the background of the extensive discussions after a Norwegian and a Swedish Supreme Court decision. In ND 1955 p. 81 (= Rt. 1955 p. 107) (Lysaker) a time chartered vessel was used in liner service. Since a possible cargo damage claim against the owner of the vessel was time barred, the cargo interests sued the line, arguing that the line was bound by the bill of lading which had been signed by the master. The Norwegian Supreme Court found, however, that the master bound the time charter owner, not the line: “Should the time charterer [the line] be liable under the bills of lading, his behavior, in the specific circumstances, must have been understood as acceptance of bill of lading responsibility” – and that was not the case. The Swedish case – ND 1960 p. 349 (Lulu) – concerned loss of cargo under a liner shipment: the bill of lading was signed on behalf of the master, and consequently the owner of the vessel was held liable, not the line that had the

vessel on charter. The first sign of a changed attitude can be found in Ot. prp. no. 28 (1972-73) p. 9:<sup>12</sup>

“Questions have been raised as to whether the master can bind not only his owner by issuing bills of lading, or whether he also can bind a contracting carrier [Norwegian: kontraherende bortfrakter] who is not the owner of the vessel [Norwegian: reder]. The latter understanding is the correct one, according to the view of the Department of Justice, and this should also follow from the wording of the section [Section 95 in MC 1893], cf. ‘ ... the master or the one the owner [Norwegian: bortfrakteren] o t h e r w i s e authorizes ... ‘.

In other words: the master’s signature on the bill of lading does not necessarily bind his employer; the above preparatory notes suggest that MC 1893 Section 95 ordinarily has the effect of making the contracting carrier bound by the master’s signature. The owner of the vessel could be liable as the actual carrier, according to rules that at that time were not as developed as in today’s Section 286.<sup>13</sup>

The statement quoted above was followed up and reinforced in NOU 1993: 36 p. 45 in the commentaries to today’s Section 295 on the master’s bills of lading.

By contrast, in the rules dealing specifically with voyage and time charters, the old regime has been maintained (Sections 338 and 382) – without any indication on how the dividing line between “carriage of general cargo” and “chartering of ships” should be drawn<sup>14</sup> regarding our bill of lading problem.

In short: When the line uses chartered tonnage: “Chartering of ship” may be a condition for “carriage of general cargo”, and the bill of lading belongs to the “grey area” between the two regimes.

As between owner and charterer, there is in principle no problem; there is freedom of contract, and the parties may – with varying degrees of clarity – agree that the owner will or will not issue bills of lading which will be binding on him. A typical example of the first is the traditional clause stating that the master shall “sign bills of lading as presented”.

The real problem is the expectations on the cargo side. Sender A has a contract with line B. This contract may be crystal clear: B has the right to use chartered tonnage, and it is stated in the contract that in such a case the cargo liability is the chartered owner’s and his alone. It has not been argued that such an arrangement is contrary to the Hague-Visby Rules.<sup>15</sup> Accordingly, it might be

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<sup>12</sup> This is a preparatory work for an act of 8 June 1973, whereby the rules in MC 1893 on carriage of goods were restructured and adapted to the Hague-Visby Rules.

<sup>13</sup> See Ot.prp. no. 28 (1972-73) p. 13, cf. NOU 1972: 11 pp. 18-20.

<sup>14</sup> Se NOU 1993: 36 p. 19 and p. 57.

<sup>15</sup> This may be formulated in this way: in real terms, the line has acted on behalf of the actual carrier (the owner of the chartered vessel) and created a contractual link between the cargo and the actual carrier.

said that the real issue is the necessity for a clear agreement, and that the starting point is that question marks over construction works against the carrier (the line). Here the legislators have made a contribution in respect of one typical situation: the master's signature is "regarded" as binding the line (Section 295). However, this doesn't provide us with any reasonable explanation for Sections 338 and 382. Take the Lysaker case: if we start with Section 295 the line is bound, but if we start with Section 382 the owner of the vessel is bound. It might, however, be argued that the master is not mentioned in Section 382, i.e., the line is bound when *the master* signs (without qualifications). An argument along such lines is not convincing: Section 338 mentions the master, and above all, Section 295 is a confirmation of what follows from Section 294 on the liability of the line.<sup>16</sup>

#### 2.4. The terms of the charter party and the bill of lading – the tramp bill of lading

When the vessel is on charter, questions may arise as to the relationship between the bill of lading and the charter party. The answer is given in MC Section 325 – which is entitled "Tramp bill of lading":

"If the carrier [Norwegian: *bortfrakteren*] issues a bill of lading for goods on the ship, the bill of lading shall govern the conditions for the carriage of and delivery of the goods as between the carrier [*bortfrakteren*] and a third party holder of the bill of lading. Provisions of the chartering agreement which are not included in the bill of lading cannot be invoked against a third party unless the bill of lading includes a reference to them.

The provisions relating to bills of lading in Sections 295 to 307 also apply to a bill of lading as mentioned in paragraph one. When it follows from Section 253 that the provisions of Chapter 13 apply to the bill of lading, the liabilities and rights of the carrier [*bortfrakteren*] in relation to third parties are governed by the provisions of Sections 274 to 290, cf. Section 254."

Here the "carrier" is defined in Section 321 as "the person who, through a contract, charters out a ship to another (the charterer)", and that may be on voyage or time charter terms.

The background here is that when the charterer delivers goods to the vessel – he is the shipper – he is entitled to demand a bill of lading (Section

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<sup>16</sup> One possible, but not very tempting, "escape route" is to accept that there are two regimes: one for liner trade (including the situation that chartered tonnage is used) and one for the remainder. The obvious question, difficult to answer, is: how can one decide which of Chapter 13 or Chapter 14 is applicable?

338).<sup>17</sup> It is trite law, however, that a bill of lading issued to the charterer does not change the terms of the charter party.<sup>18</sup> One qualification is necessary: the bill of lading does have one important function in this context: it is an acknowledgement of having received goods in the quantity and condition described in the bill of lading, at the time stated in the document. The evidentiary effect of this information is regulated by MC Section 299: there is a presumption that the information is correct (paragraph one). The non-rebuttable provision in the third paragraph, in favour of a bill of lading holder who has acquired the document “in good faith”, cannot be pleaded by the charterer, unless he is not the actual shipper.<sup>19</sup>

When the charterer transfers the bill of lading<sup>20</sup>, the legal position of the issuing owner may change dramatically, cf. Section 325. The bill of lading now constitutes a contractual relationship between the issuer and the bill of lading holder.<sup>21</sup> The terms of the charter party are immaterial (e.g. a limitation of liability or jurisdiction clause), unless there is “a reference to them”.

A simple reference to “all the terms of charter party are incorporated” has been met by courts with scepticism:<sup>22</sup> As the shipper in most instances has no knowledge of the charter, and the reference may have serious consequences, there has been a tendency to disregard terms that deviate from what could have been reasonably expected – and such terms have not been accepted as “incorporated”. This is the background for adopting the wording “all terms, including exceptions and jurisdiction clauses” or similar. It is surprising that this issue was not commented upon in connection with the preparatory work for the MC 1994.<sup>23</sup>

The cargo may be delivered to the vessel by a party who is not the charterer (typically: a fob-seller). In such a case, the bill of lading issued by the owner of the vessel to this shipper then constitutes a contract between them

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<sup>17</sup> Here we are clearly outside our practical limitation to liner carriage: it is very unlikely that the line delivers goods to the chartered vessel and demands a bill of lading. But it has been considered useful to include an overview of Section 325, since it throws light on the attitude to the basic bill of lading questions.

<sup>18</sup> Exceptions may arise from clear statements, as in the old Baltimore Form C Berth Grain Charter Party stating that the charter “shall be completed and superseded by the signing of bills of lading”.

<sup>19</sup> He is e.g. a buyer on fob-terms and has paid the purchase price against receipt of the bill of lading; he may then be protected by the third paragraph.

<sup>20</sup> E.g., the charterer is a cif-seller who is paid against transfer of the bill of lading.

<sup>21</sup> Receiving the bill of lading does not necessarily mean that the holder is bound, but at least on receiving the goods the relationship is changed, see Section 269 paragraph one: “If the goods are delivered against a bill of lading, the receiver becomes liable on receiving the goods for freight and other claims due to the carrier pursuant to the bill of lading.”

<sup>22</sup> See Falkanger & Bull, *Sjørett* (8 ed. 2016) p. 412.

<sup>23</sup> See NOU 1993: 36 p. 61, where one could have expected a discussion.

(Section 325 paragraph one first sentence), and the contents of the charter party are immaterial unless there is a “reference” to those charter party terms.

We should add some remarks here about Section 325 paragraph two, regarding the effects of the bill of lading issued by the owner of the chartered vessel. The second sentence – dealing with the application of the general rules on cargo damage and delay and to what extent the rules are preemptory – requires no comments. It is partially otherwise with the first sentence. This says that Sections 295 to 307 apply. Of these general bill of lading rules, only those in Section 295 are of interest in our context. First, it should be noted that there is no reference to Section 294 concerning the general obligation to issue bills of lading when demanded by the shipper, which is explained in the preparatory works:

“There is no reference to Section 294, which gives the shipper the right to demand a received for shipment bill of lading. In voyage chartering the owner is only obliged to issue an on board bill of lading, cf. Section [338]” (NOU 1993: 36 p. 61).”

This is not quite correct, since Section 294 paragraph two deals with the right to demand an on board bill of lading. The essence, however, is that the shipper can demand an on board bill of lading according to Section 338.

The preparatory works do not comment on the reference to Section 295, which says, as stated above, that the “carrier” is bound by the master’s signature on the bill of lading. The *carrier*, according to Section 251, is the contracting carrier, while Section 338, as pointed out in 2.5, makes the *owner* of the vessel liable under the master’s bill of lading.

### 3. The sea way bill issued under a charter party

#### 3.1. Introduction

A sea way bill, in contrast to the bill of lading, is a non-negotiable document, which the legislators found it unnecessary to regulate until the MC 1994, and even then, restricting this to only two sections. In Section 308 the sea way bill is said to have two elements: (i) it evidences a contract of carriage and the receipt of cargo for carriage, and (ii) it contains a promise to deliver the goods to the named receiver, albeit with the possibility for the contracting party (the sender) to decide that the goods shall be delivered to someone else.<sup>24</sup> Section 309 concerns the contents of the document: the identification of the parties,

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<sup>24</sup> This right may be waived, see below, and it ends when «the consignee has ... asserted his or her right” (Section 308 paragraph two second sentence).

information on the goods received, the conditions of carriage and freight and other charges payable by the receiver. Furthermore, it is stated in Section 309 that both Section 296 paragraph three (regarding the signature requirement) and Section 298 (on the carrier's duty to check the accuracy of the information given regarding the cargo) apply. And, finally, Section 309 deals with the evidentiary effects (as have already been indicated):

“Unless otherwise shown, the sea way bill shall be evidence of the contract of carriage and that the goods have been received as described in the document.”

The relationship to the provisions on the carrier's duty to issue bills of lading is clarified in Section 308 paragraph three:

“A bill of lading can be demanded according to Section 294 unless the sender has waived his or her right to name a different receiver.”

This right to demand a bill of lading also exists after a sea way bill is issued and received by the sender or by a shipper where not the sender. The issuance of the bill of lading does not require redelivery of the sea way bill.<sup>25</sup> In the underlying sales and payment agreements it may be stipulated that the right to change receiver is waived, and this is the reason why there is no right to demand a bill of lading when the possibility to name another receiver under the sea way bill is waived.<sup>26</sup>

The rules are based on delivery of the goods by the sender, see e.g. Section 309 on the contents of the document: the sender and the receiver must be identified, but the shipper is not included or referred to – in contrast to Section 296 paragraph one no. 4 on bills of lading. So, if a shipper who is not the sender delivers cargo to the line, his right to a sea way bill will depend upon the agreement between the line and the sender.<sup>27</sup> But this agreement cannot deprive the shipper of his right according to Section 294 to demand a bill of lading.

The paramount feature is that the contract evidenced by the sea way bill is a contract of carriage to which the “provisions of this Chapter [13] apply” (Section 252).

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<sup>25</sup> Compare ND 1960 p. 338 Bergen.

<sup>26</sup> The question has been raised as to whether this restriction on the right to demand a bill of lading is in conformity with the Hague-Visby Rules has been raised, see Utgaard in *MarLus* 223 (1996) p. 25-26.

<sup>27</sup> See above in 2.1 on delivery of cargo by a shipper who is not the sender in a bill of lading context.

### 3.2. What is the binding effect of the sea way bill?

Usually, the sea way bill is issued by the line, as for bills of lading, and it is “evidence” of the booking note.

In other words: being bound by the sea way bill is, in this context, primarily a question of the evidentiary effect of the cargo description. The substantive rules on cargo liability are not changed, with a small exception for the right to demand a bill of lading, cf. Section 308 paragraph three.

The receiver, named either in the sea way bill or in a subsequent order from the sender, derives his rights from the sender. He may, therefore, argue that he is entitled to rely on the sea way bill, but in a dispute between the carrier and the receiver, both parties may contend that the sea way bill is not decisive.

The above covers the situation where the performing vessel is on charter to the line, and the sea way bill is issued and signed by or on behalf of the line. The only additional remark required is a reminder of the liability of the performing carrier, as laid down in Section 286.

Now we turn to the possibility of a sea way bill being issued by the performing carrier.

According to the MC, the shipper has the right to demand a bill of lading from the carrier, and we have seen that Chapter 13 places the obligation on the line as contracting carrier, while the rule in Chapter 14 is that the duty to issue a bill of lading rests on the performing carrier. The MC has no rules on the issuance of sea way bills. However, as stated above, general contract law entitles the shipper to demand a receipt, and it may be argued that in maritime transport such a receipt should comply with the modest requirements of Sections 308 and 309. The decisive factor is, however, that since the shipper is entitled to a bill of lading, he should have the right to demand a document that is less burdensome than a bill of lading, as seen from the carrier’s point of view.

We have also seen that a bill of lading issued by the performing carrier constitutes a contract of carriage between him and the shipper. Does the issuance of a sea way bill have a similar effect? The shipper is, e.g., a fob-seller.

The performing carrier has a full Chapter 13 liability (see Section 286), and the question is, therefore, of no practical interest unless the terms of the sea way bill deviate from those of Chapter 13.

If the sea way bill has more carrier-friendly rules, such rules will very often be contrary to the preemptory regime. Consequently, the practical situation to consider is whether a sea way bill with increased obligations binds the owner, or whether he is entitled to state that his liability is limited to what follows from

the receipt declaration. It is submitted that the performing carrier is bound by what is stated in a document signed by him: if it is stated, as mentioned in an example above, that the unit limitation is 1 000 SDR, then the 667 SDR rule cannot be relied upon.

For bills of lading we have an explicit regulation in Section 325 paragraph one addressing the consequences of signing a bill of lading, but no similar stipulation regarding sea way bills. The different attitude is, no doubt, partly due to tradition, but can also be explained by the important, special rules connected with the bill of lading as a negotiable instrument. The obligation to issue such a document should have clear basis.

### **3.3. Additional remarks on the reference to Section 296 paragraph three and Section 298**

The statement in Section 309 paragraph one second sentence, that Section 296 paragraph three and Section 298 shall apply, requires some comments, in view of the fact that the contract evidenced by the sea way bill is a relationship governed by Chapter 13 (Section 252, se above in 3.1).

Section 296 deals with the contents of the bill of lading: in paragraph one there are 13 required items listed, and the inclusion of further requirements follows from paragraph two. These requirements do not apply to the sea way bill; what must be included therein appears from Section 308 paragraph one. Section 296 paragraph three states that the bill of lading must be “signed by the carrier or a person acting on behalf of the carrier”, and the reference in Section 308 makes it clear that the sea way bill shall also be signed.

Section 296 paragraph one item 1 states that the bill of lading must contain information on the goods: “the nature of the goods, including their dangerous properties, the necessary identification marks, the number of packages or pieces and the weight or otherwise expressed quantity of the goods”. When the shipper has supplied such information, Section 298 imposes a duty on the carrier to “check the accuracy of the information”. A similar duty applies in respect of information in the sea way bill, but here it should be noted that Section 309 describes the required information in vague words: “statements on the goods received”.

### **3.4. The receiver and the sea way bill**

The position of the receiver has been mentioned above. A summary may be useful.

The receiver may be the sender (typically: the fob-buyer is party to the transport agreement), and will be named as receiver in the sea way bill.

When the receiver is not the sender, his position may depend upon his being originally named in the sea way bill (typically: he is a cif-buyer). His rights are derived from the sender; he cannot have better rights, but the opposite is possible: the sender may decide to transfer less than all of his rights to the receiver. The right to get the possession of the cargo may be subject to payment of freight. But the receiver's obligation to pay may depend on whether he has actually received the goods, see Section 269 paragraph two:

“If the goods were delivered otherwise than against a bill of lading, the receiver is only liable to pay freight and other claims according to the contract of carriage if the receiver had notice of the claim at the time of delivery or was aware or ought to have been aware that the carrier had not received payment.”

The originally named receiver may lose this status as a result of the sender's instruction to deliver the goods “to someone other than the consignee named in the document” (Section 308 paragraph two). What is said above applies equally to the new named receiver. The original one has obtained no rights as against the carrier, and is therefore obliged to accept the change. As regards the relationship between the first named receiver and the sender, the change may very well be a breach of their agreement – typically a sales agreement.