

**IDENTITY OF CARRIER**

Whereas a bill of lading has the effect of creating a contractual relationship between the carrier and the cargo shipper, one of the big questions which is tackled by disputes in court or in arbitration is to decide who is the carrier when the vessel is on time charter. One of the usual ways of resolving this question is to establish whether the bill of lading incorporates an “*identity of carrier*” clause. One of the biggest cases under English law which have recently addressed this matter is “*The Hector*” (1998) (2 Lloyds Rep 287) in which Rix J. (as he then was) observed (*obiter*) that an owner who puts his vessel and master under the directions of a time charterer with respect to employment of the vessel thereby confers ostensible authority on the time charterer to issue bills of lading binding the owner.

The much more recent case of “*The Starsin*” has finally established full guidelines – very full, the judgment covered 110 pages! - and has overruled the previous judgment of the Court of Appeal in 2001. In fact the same judge, Rix LJ, had dissented in that Court of Appeal judgment, so the Law Lords have effectively upheld his reasons. On 13<sup>th</sup> March 2003, the House of Lords held that the identity of the carrier clause printed on the reverse of bills of lading did not mean that those bills of lading were “*Owners’ Bills*”.

On the contrary, where a typed entry on the “*face*” (or front) of a bill of lading is inconsistent or in conflict with the printed conditions on the “*reverse*” (or back) of the bill of lading, the typed entry shall prevail in determining whether the bill of lading were Owners’ Bills or Charterers’ Bills of Lading. So in this case, the Charterers were held to have issued the bills of lading and were therefore bound towards the relevant cargo claims. The beneficial owners in this case were therefore not responsible for damage to goods being carried.

There would be real confusion if an agent were to sign a bill of lading for and on behalf of the Master AND for the carriers, if those carriers are time charterer disponent owners! Since this does indeed occur, the Master would have to seek guidance from his beneficial owners – i.e. his employers – whether his authority to agents to sign on his behalf is being given on behalf of his employers (i.e. the beneficial owners) or on behalf of the carriers. In the light of this most recent judgment from the HL in “*The Starsin*”, many beneficial owners will be more relieved of their original responsibilities towards merchant holders of bills of lading than carriers are.