



The Importance of Incorporating Charter Party Arbitration Clauses into Bills of Lading *

by
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It is settled law that the charter may be made part of the contract under which the goods are carried by an appropriate reference in the bill of lading. Frequently the charterer wishes to make the goods subject to the liens given by the charter; also in cases of loss or damage the question arises of whether the charter party as well as the bill of lading constitutes a part of the contract under which the goods are carried. For instance, if the bill of lading provides "freight as per charter", this subjects the goods to a lien for the charter freight. If the bill of lading reads "freight and all other conditions as per charter", this incorporates into the bill of lading contract, in addition to the agreement as to freight, all conditions to be performed by the receiver of the goods including the payment of demurrage. However, in order to incorporate the charter party a clear reference thereto must be made. A clause "freight as per charter and all its conditions" will not incorporate the demurrage clause. The clause "other conditions as per charter" alone will not impose a lien for the charter freight. Nor will a broad clause such as "all other conditions and exceptions as per charter party" incorporate clauses which do not have anything to do with the carriage of the goods, for instance an arbitration clause¹.

This leads to the topic of this presentation. Why is it important to incorporate an arbitration clause from the charter contract between charterers and owners or between charterers and sub-charterers into the bill of lading as a contract mainly between the shippers and receivers of the goods on the one hand and either the owners or the charterers as carriers on the other? In gen-eral, it is probably not correct to state that it is "important", in the narrow sense of this word, to copy the arbitration clause of the charter party into the bill of lading, since, even if the bill of lading is made subject to an arbitration clause of a charter party, this does not mean - unless owners, charterers and cargo interests separately agree - that, for instance, an arbitration triggered by cargo interests against charterers is also the forum for the charterers' claims for recourse against the owners. Even if the arbitration clause of the charter party is incorporated into the bill of lading, an arbitration between cargo interests and, for instance, the carrier charterer is as independent from the charterers' recourse against owners under the charter party arbitration clause as it would be if the bill of lading provided that claims under the bill of lading were subject to the jurisdiction of a national court.

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1- W. Poor, American Law of Charter Parties and Ocean Bills of Lading, 5th Edition, p. 71-73