

Incorporation of Charterparty Arbitration Clauses into Bills of Lading under the law of the United Kingdom

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Arbitration in the cases, concerning carriage by sea, could be a quite significant factor for the faster, cheaper and more amicable outcome of the dispute. Still, it is common that the bills of lading contain jurisdiction clauses which provide for litigation in courts in the event that a dispute about the contract of carriage under the bill of lading arises between the parties. However, there is the possibility for the bill of lading to be issued under a charterparty and, then, it could expressly incorporate the arbitration clause of the charterparty in its own terms. Consequently, the parties to the carriage contract, which is contained in the bill of lading, may refer the arising disputes to arbitration. It is then that the question comes whether the charterparty arbitration clause was successfully incorporated into the bill of lading. In most of the cases the third party holder of the bill of lading argues that he is not bound by the charterparty arbitration clause since he has not signed the charterparty at all. However, if the incorporation clause in the bill of lading is carefully drafted and refers to the arbitration provision, this incorporation may be understood as binding even to that third party. If the arbitration clause is a part of the bill of lading, then in a possible dispute between the carrier and the third party holder, they will have to start arbitration proceedings. If the arbitration clause is not considered as incorporated, regular court proceeding will be the legitimate method to settle the issue. However, the interpretation of the incorporation of the arbitration provision depends on the approach of the courts in the different countries, which varies and is limited by the requirements of the particular jurisdiction.

Once the goods are shipped and a bill of lading is issued, it becomes evidence of the contract of carriage and its terms. This presumption can be disproved only if it is clear that the parties have agreed on other terms. The incorporation initially aims to give the opportunity to the carrier under the bill of lading – the charterer or the shipowner, to make the holder of the bill of lading bound by the terms of the charterparty. However, there is a practical difficulty with the common charterparty bill of lading - Congenbill which has only a few clauses on it. Then, the holder of the bill of lading will have imposed liability by that incorporation, although he may not be able to get acquainted with the charterparty terms of the incorporation clause in the

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bill of lading. Pursuant to English law, the incorporation will be valid and will have full effect if notice has been given. This means that it has to be reasonably brought to the knowledge of the holder of the bill of lading in an adequate time – before or at the moment when he becomes a party to the carriage contract. Usually these essential conditions are met if there is a written clause for the incorporation in the contract. The bill of lading itself is provided to the attention of the shipper because he has to fill into the standard form the specifics of the shipped cargo.

Although there have been plenty of court judgments under English law, the issue with the incorporation of the charterparty in the bill of lading is still a reason for uncertainty. The English courts uphold a strict position, they will recognize the incorporation of the arbitration clause only if the incorporation provision contains an explicit reference to it. This is why if the parties want to make sure that their interest and intentions are distinctly envisaged in the incorporation clause, the best solution shall be to clearly identify the charterparty which they consider as applicable on the face of the bill itself and to try to use the most appropriate and specific wording in this provision in order to leave as little place for interpretation as possible.

Should you have any further questions, regarding the advantages of arbitration or the valid incorporation of the arbitration clause, do not hesitate to contact our team for legal advice for shipping dispute resolutions.