

# Exploration of the Seller's Litigation Rights in Maritime Transport Contracts under Cross border E-commerce

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## Abstract

**In this paper, The relationship between the ownership of claims and the claim in cross-border electronic commerce is an important factor affecting the claim of seller in the shipping contract. Based on the relativity of the contract, the basic nature of the transportation contract in the cross-border electronic commerce was examined based on the third theory of the third party profit theory, contract transfer theory and the theory of the securities relation, and the legal reason was searched for the right of the consignor. This paper analyzes the right to the contract program for the caller in and outside the bill of lading, and the possibility of different contractors (e.g., offshore prices) to obtain contract program rights. We also propose to classify and define the callers in legislation. Finally, this document describes the conversion relationship between the carrier and the recipient, and how the recipient or carrier owner violates or violates the contract. And publish an opinion on the legislative model of the program right**

## Keywords

**Cross border e-commerce, right of action, contract of carriage, Contract Creditor's Rights.**

## 1. Introduction

In the contract of carriage of goods by sea, the relationship between the ownership of the consignment note and the creditor's right and whether the non contractual parties must break the relativity of the contract to obtain the right of appeal are the core issues in the research of the parties' right of appeal in the contract of carriage of goods by sea.

There is little debate about the right to lend a lawsuit to the carrier. Until the bill of lading was issued in 1855, the British law did not allow the bill of lading directly to the carrier. Because, based on the principle of contract relativity, the bill of lading does not have the right to suit the carrier in accordance with the contract as a third party of the contract. The surrogate theory in the litigation of the maritime cargo transport contract was formed after the trial. This case has established a rule that allows the caller to make a contract litigation against the carrier as the agent of the victim. In order to solve this serious problem that annoys the theoretical world and the legal world, the article 1 of the bill of lading in Any person who has acquired the ownership of goods pursuant to the bill of lading based on the beneficiary of the bill of lading or the transfer or endorsement shall be the same as the person who concluded the contract. The 1855 bill of lading combined the right of the consignee to acquire the ownership of the cargo and the right of the consignee to acquire the ownership of the cargo; the right of the trustee to obtain the property is limited to the trustee's right, but the right of trustee to acquire property is subject to many restrictions. It was abolished instead of 1855. When the "marine cargo transport law" was promulgated in 1992, there was an initial plan for the ownership of the right to contract liabilities of transferable lease securities. That is, only the owner of the bill of lading with the risk of cargo has the right to contract. But in the end, the United Kingdom does not take such a way and does not give the right to take lawsuits to the lenders, regardless of whether they are related to cargo related

risks. After the transfer of the bill of lading, do you hold the right of the bearer? This is a different argument. Finally, the United Nations Legal Commission and the scottold Legal Commission believe that if another person acquires the liabilities through a position as a lender, the sender will not have the right to enjoy his rights. Aside from South Africa, the United Kingdom, Australia, New Zealand, Singapore, India and other British nations, the answer to China and Hong Kong is the same as the British answer to the consignor's litigation based on transferable shipping documents.<sup>5</sup> According to the United States law, the bill of lading or the consignee has no right to suit the carrier as in the "United Kingdom marine cargo act" in 1992. Article 17 (a) of the civil litigation law stipulates that all cases should be prosecuted in the name of a true stakeholder.

## **2. Shipper's Right of Action in International Carriage of Goods by Sea**

The purpose of the maritime cargo transport contract is to transport cargo from one port to another, and the legal relationship of the bill of lading means the right to take the cargo with a single seal. The movement of the bill is always accompanied by the movement of the cargo. The bill was issued when the carrier received the package. People who have a bill of lading can control their luggage. When freight leaves the carrier's control and is handed over to the bill of lading, the bill of lading becomes invalid. The claim is always included in the carriage contract. Bill of lading is a sign of ownership of contract cargo. Distribution of the bill of lading between parties enables the division of contract rights.

### **2.1. Shipper's right of action before transfer of bill of lading**

Prior to the delivery of the consignment note, the shipper enjoys all the rights as the carrier's consideration in the contract of carriage of goods by sea and all contract disputes in accordance with CIF terms.

#### **2.1.1. Shipper transfers the consignment note and shipper's obligations**

Bill of lading law is the main law of the contract for the carriage of goods by sea. If the consignor transfers the consignment note, he loses the right to the contractual goods. Without rights, there is no necessary remedy and no interest in a lawsuit; Therefore, the shipper has no right to bring legal action against the freight rights. However, before handing over the consignment note, the consignor may have fulfilled several obligations under the contract of carriage, such as the obligation to properly pack the goods and ensure that the goods are correctly described; have the obligation to complete all formalities related to the transport of goods in a timely manner; obligation to correctly pack and declare dangerous goods; Duty to pay freight.<sup>10</sup> As the Legal Committee and the scottord Legal Committee stated in the 1991 report, "According to the law, the original shipment was responsible for the contract, although the purchaser of the bill of lading had already acquired some rights. For the value of this clause, if the exporter transports a toxic gas container, the gas leak would result in significant loss of property and human injury. If the owner of a new carrier does not fulfill a contract, the ship will not be able to claim to anyone.

#### **2.1.2. Related cases**

In short, the transfer of the bill of lading deprives the shipper of the right to seek redress from the court with respect to the right of shipment rather than all contractual rights. The exclusivity of bill holder's litigation right is particularly related to the exclusivity of bill shipping right. Any dispute between Wuyang Trust Management (Hong Kong) Co., Ltd. and Guangxi Civil Products Branch of China Civil Products Import and Export Corporation over the maritime transport contract shall occur before the issuance of the waybill. During the loading process, the carrier clearly expressed his opinion on the loading of defective goods. The shipper refused

to accept the consignment note with remarks because the goods met the quality standards of the sales contract. This case has nothing to do with the claims and disputes arising from the damage, loss or delay of the goods, nor with the rights of the bill of lading.

### 2.1.3. Case Inspiration

In this case, the shipper's right of action does not originate from the Bill of Lading Law that has not yet been promulgated. This case shows that the existing theory of the carrier's right of action against the carrier must be demonstrated and amended by gradually expanding the shipping practical experience.

## 2.2. Shipper's right of action after transfer of bill of lading

Dispute over sea freight between Hainan Tonglian Shipping Company and Minmetals International Nonferrous Metals Trading Company. The Supreme People's Court ruled that Minmetals no longer has a right to the goods on the waybill because Minmetals has granted Toyota Tongshan accommodation compensation, and Toyota Tongshan has not transferred the right to bring an action against the carrier pursuant to the transport contract proven by the waybill to Minmetals. No right to sue Tonglian. Tonglian's request for re-examination is reasonable and should be supported.

The consignor under CIF and the actual consignor under FOB have the right to sue the carrier for the goods

The case clearly stipulates that if the holder of the waybill expressly refuses or waives the right to deliver the goods to the carrier, and confirms that the waybill is in the hands of the carrier and has not been re-transferred during the litigation, the consignor under CIF and the actual consignor under FOB have the right to file a lawsuit against the carrier for the goods. Whether the waybill holder returns the waybill to him or not. Because in this case, the consignment note has lost the ability to negotiate and cannot be transferred again; The holder of the bill of lading also made it clear that he had waived his right to the bill of lading and could not become the consignee of the contract of carriage. At that time, the contract of carriage of goods by sea was inconsistent with the waybill issued because the agreement between the carrier and the consignee "froze" the validity of the waybill; The parties to the contract of carriage are the carrier and the shipper. The shipper also has the right to take the goods and take action. In this regard, the shipper has no interest in the goods, even if he has successfully received payment for the goods on the commercial invoice and transferred the waybill; The holder of the bill of lading waives the right to lodge a claim against the shipper under the contract of trade in goods, and the shipper may continue to lodge a claim against the carrier under the contract of carriage by sea.

## 2.3. Shipper's Right of Action under FOB Terms

Buyer in FOB goods procurement contract. The contract shipper is divided into contract shipper and consignment note shipper. A contracting party is a person who enters into a contract of carriage with the carrier. This is the buyer in the goods procurement contract under FOB. Before receiving the consignment note, he has no right to purchase the goods or institute legal proceedings. Its litigation right is similar to the shipper's litigation right to transfer the consignment note under CIF conditions, which is not explained here. After receiving the consignment note, the contract shipper becomes the legal holder of the consignment note. If the buyer decides to exercise its right to take delivery of the goods according to the document itself, the buyer becomes the consignee of the contract, the consignor and the consignee become a whole, and enjoy all contractual litigation rights

Litigation rights after the transfer of transport documents. If the transport document is transferred to a third party again, its litigation rights are as follows: The shipper who transfers

the consignment note according to CIF terms no longer has the right to goods and related legal proceedings.

The third party shall exercise the right to conclude the contract of carriage and become the consignee. The buyer and the third party of the consignor become the subject matter of most of the parties to the contract, and form a contractual relationship according to their respective shares. The third party is obliged to share the rights of the carrier and enjoy the contract law in the same way as their respective shares.

The author's views on this issue. The author believes that the matters related to the carrier recorded on the consignment note have the meaning of the consignment note, and the carrier, as the issuer of the consignment note, is an indispensable part of the consignment note and should be truthfully recorded. The registration of the shipper or consignee is not part of the meaning of the consignment note, and even if it is lost, it does not affect the title of the consignment note. For example, when issuing the holder certificate, the consignee does not need to indicate on the waybill; If the shipper is neither a party to the contract nor an actual shipper, the shipper is not bound by the carrier in the contract of carriage. Obviously, the main purpose of the items covered by the shipper and consignee is to clarify the circulation relationship of the bill of lading (whether negotiable or non-negotiable, and how to circulate, whether in the form of instructions, or in the form of registered or anonymous), which is not necessarily related to the transport contract. The shipper specified on the waybill can be used to order or register the waybill to determine who has the right to designate or designate the consignee. For example, "According to sender's instructions" appears in the To column of the Roadmap to identify an authorized instructor. The shipper's instructions on the waybill do not necessarily allow the waybill to receive the waybill<sup>23</sup>.

Legal disputes arising from transportation costs and contracts The shipper of the bill of lading cannot, of course, become a party to the contract of carriage in case of legal disputes arising from the cost of carriage and the contract. From the perspective of legal protection, the registered sender is not important. The consignment note is not the only evidence of the contract of carriage of goods by sea. To the extent that other documents or commercial facts can prove who is the contractual partner and the actual shipper, it is sufficient to indicate the shipper in front of the carrier.

### **3. Right of action of consignee or bill of lading holder**

#### **3.1. Action for breach of contract**

The stage of performance of a contract of carriage by sea. The performance of the contract of carriage of goods by sea is diachronic and can be divided into five stages: 1. the formation of carriage of goods by sea; 2. The consignor delivers the goods to be shipped; 3. The carrier actively participates in the sea transportation stage; 4. The holder of the consignment note requests delivery of the goods or the carrier sends a notice of arrival; 5. The stage when the goods are delivered to the consignee or the consignee requests to accept the goods and disputes with the carrier

Conditions for potential consignee to become actual consignee. The consignee of the documents from the first stage to the third stage is only a "potential consignee (the consignment note indicates who can accept the goods)", and even if there is a consignment note, it has no right to accept the goods. Only when entering the fourth and fifth stages can the "potential consignee" be changed into the "actual consignee" (the person who claims to accept or accept the goods after they arrive at the port of destination)

Legal relationship between buyer and carrier. The Legal Affairs Commission described the waybill as an "existing exception" in its 1996-report "The Relativity of Contracts: Contracts for Third Interests". In general law, the buyer cannot sue the carrier in the contract of carriage

because there is no connection between the buyer and the carrier. The principle of relativity means that a contract cannot confer rights or obligations on persons other than the contracting parties. The author is of the opinion that Germany as a country of the civil law system has different forms of expression of contractual relativity, but there is little evidence of contractual relativity. However, as a contractual principle, the relativity of the Treaty reflects the essential characteristics of the Treaty. The relativity of the contract is a logical form of contract formation. Without the theory of relativity, it is difficult to call a contract a contract; Relativity is an objective and inherent contract law that cannot be broken. It is assumed that the validity of the contract for the carriage of goods by sea extends to the third party, which contravenes the principle of confidentiality of the contract. In fact, he was confused about appearance because of his theoretical understanding. The contract for the carriage of goods by sea does not exist in isolation. It penetrates the contract on international trade of goods, the legal relationship of the waybill and the custody relationship and has unique characteristics. The author believes that the above theory can reveal to some extent the legal nature of all aspects of the contract of carriage of goods by sea. The theory of the third interest can well explain the contract for the carriage of goods by sea with non-negotiable documents such as sea freight letters. In such a contract of carriage, the recipient is not a party to the contract. The recipient is a third party outside the contract and has the same status as the sender to execute the assistant. It therefore has contractual rights and obligations. The right of the consignee against the carrier is equivalent to the right of representation of the consignor against the carrier. In the case of a maritime transport contract using a waybill, the consignee exercises the rights of the waybill and accepts the transfer of the contractual rights and obligations of the consignor. If the consignor and the carrier have agreed upon the handover in advance when issuing the consignment note (regardless of contractual rights or obligations), the consignor shall be deemed to have agreed to the handover in default. The fact that the holder of the waybill can only participate in the contract of carriage by notification to the carrier does not violate the provisions of the Contractual Law on Contract Assignment. If the holder of the waybill becomes the recipient of the contract, he shall be entitled to the rights to the goods and other contractual rights from the waybill in the event of damage or loss of the goods. (For example, the dispute over compensation for damage to goods under the Sea Freight Transport Contract signed by Hashman Shipping Company and Shanghai Shenfu Chemical Co., Ltd., and the dispute over compensation for damage to goods under the Sea Freight Transport Contract signed by Debao Shipping Co., Ltd. of Japan) The Recipient may bring an action file against the carrier for breach of contract.

### 3.2. Tort action

Most disputes relating to the carriage of goods by sea are resolved by infringement actions brought under the contract of carriage.

Basic Elements of Infringement in Maritime Transportation Contract. The basic elements of general tort liability are: illegal acts; The existence of damage; There is a causal relationship between the illegal act and the fact of damage; It's the actor's fault. The first three elements are objective, and the last element is subjective.

Specific content of infringement of transport contract. First of all, buyers and sellers of international goods should anticipate the legal risks that trade rules can entail. Once rules such as FOB pricing conditions are selected, this means that they must be restricted and take potential risks. <sup>31</sup>Secondly, the validity of the bill of lading as a deed of ownership is not absolute, and the agreement between the holder of the bill of lading and the carrier can also eliminate the function of the bill of lading as a deed of ownership. For example, if the holder of the waybill refuses to exercise his right to the goods and refuses to pay the shipper, the shipper retains interest on the goods, but has no right to sue under the contract because

the waybill has been transferred. The author is of the opinion that the consignor should consider the holder of the bill of lading as a third person when bringing an action against the carrier.

If the holder of the waybill does not transmit the waybill, it shall be deemed invalid. At that time, the contract for the carriage of goods by sea does not correspond to a waybill. The rights to the goods lie with the consignor, who should have the right to bring an action.

#### 4. Conclusion

The subject of the contract of international carriage of goods by sea is changeable. The opposite party of the carrier's contract can be a single subject or a majority subject. In the contract of carriage involving bill of lading, the consignee is uncertain and has the nature of involving others; The content of the contract is also changeable. The initial agreement between the shipper and the carrier is not the whole process of the conclusion of the transport contract. The content of the contract will be adjusted and supplemented periodically. The relationship between the rights and obligations of the carrier and the consignee is just like the relationship between the rights and obligations of the carrier and the shipper. Whether in form or in substance, it is the relationship between the contracts of international carriage of goods by sea. The former and the latter occur successively and are relatively independent. They form two contractual relationships of international carriage of goods by sea, but because the two contractual relationships share the same subject matter, It can be integrated into an international contract of carriage of goods by sea.

International maritime transport contract is an indispensable part of international commercial law, and also a necessary link in international commercial transactions. There are still many issues of litigation rights that deserve our in-depth study and exploration.

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