

Ad valorem bills and references to letters of credit in bills of lading: a practical guide

The club has recently received a number of queries from members in respect of the potential impact a reference to a letter of credit (L/C) in a bill of lading might have on their liability towards a cargo interest and on their club cover. This article explores the issue and offers some practical tips for carriers and charterers.



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The issue

Why do shippers ask for references to a letter of credit in a bill of lading?

Commonly, in the context of a sales contract transaction, the buyer (or one of the banks involved in financing the transaction) insists on the insertion of a reference to an L/C in the bill of lading.

The object is to ensure that the bill of lading issued matches and represents the same goods which form the subject of the credit facility. The buyer may also have an ulterior motive: to use the extra time needed for checking compliance with the requirement as a means to extend the period of time before the buyer must make the payment.

For the bill of lading carrier, this creates a potential problem: a reference to an L/C may render a bill of lading an *ad valorem* bill of lading, which in turn, by virtue of rule 3.13.3(12) of the club rules¹, prejudices the member's right to limit its liability for cargo loss or damage.

This article addresses the following questions:

- What is an *ad valorem* bill of lading?
- Why does a shipper ask for a reference to an L/C in a bill of lading?
- Does a reference to an L/C make a bill of lading an *ad valorem* bill of lading?

- How should a member react to a request by a shipper to insert a reference to an L/C in a bill of lading?

What is an *ad valorem* bill of lading?

An *ad valorem*² bill of lading is one that expressly states the value of the subject cargo on the face of the bill of lading. The purpose is to sidestep the package/unit limitation set out in Article IV Rule 5(a) of the Hague or the Hague-Visby Rules (the Rules), which limits the amount of damages recoverable by a cargo claimant 'unless the nature and value of [the] goods have been declared by the shipper before shipment and inserted in the bill of lading'. In the event that cargo loss or damage is suffered, a cargo claimant which ships valuable goods will want to recover the maximum amount of damages recoverable at law and, to that end, the Rules allow him to break limitation by issuing an *ad valorem* bill of lading. As a result, an *ad valorem* bill of lading deprives the carrier of his valuable right to limitation of liability per package or unit.

However, the Rules are not entirely clear about what amounts to an *ad valorem* bill of lading. The Rules provide that the shipper needs to declare the value and the nature of the goods in the bill of lading before shipment.

1. "... goods carried under a document containing or evidencing the contract of carriage where the value per unit, piece or package has been stated to be in excess of £2,500, or the equivalent in any other currency, which may deprive the member of the right to rely on defences or rights of limitation which would otherwise have been available to him, to the extent that such liabilities exceed that sum."

2. Latin *ad valorem*: 'to the value'

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Charles E. Aster, Katheryn C. Patterson

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Table of Contents A Practical Guide To Bills Of Lading

1. Understanding the eBook A Practical Guide To Bills Of Lading
 - The Rise of Digital Reading A Practical Guide To Bills Of Lading
 - Advantages of eBooks Over Traditional Books
2. Identifying A Practical Guide To Bills Of Lading
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an A Practical Guide To Bills Of Lading
 - User-Friendly Interface
4. Exploring eBook Recommendations from A Practical Guide To Bills Of Lading

- Personalized Recommendations
 - A Practical Guide To Bills Of Lading User Reviews and Ratings
 - A Practical Guide To Bills Of Lading and Bestseller Lists
5. Accessing A Practical Guide To Bills Of Lading Free and Paid eBooks
 - A Practical Guide To Bills Of Lading Public Domain eBooks
 - A Practical Guide To Bills Of Lading eBook Subscription Services
 - A Practical Guide To Bills Of Lading Budget-Friendly Options
 6. Navigating A Practical Guide To Bills Of Lading eBook Formats
 - ePub, PDF, MOBI, and More
 - A Practical Guide To Bills Of Lading Compatibility with Devices
 - A Practical Guide To Bills Of Lading Enhanced eBook Features
 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of A Practical Guide To Bills Of Lading
 - Highlighting and Note-Taking A Practical Guide To Bills Of Lading
 - Interactive Elements A Practical Guide To Bills Of Lading
 8. Staying Engaged with A Practical Guide To Bills Of Lading
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers A Practical Guide To Bills Of Lading
 9. Balancing eBooks and Physical Books A Practical Guide To Bills Of Lading
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection A Practical Guide To Bills Of Lading
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine A Practical Guide To Bills Of Lading
 - Setting Reading Goals A Practical Guide To Bills Of Lading
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of A Practical Guide To Bills Of Lading

- Fact-Checking eBook Content of A Practical Guide To Bills Of Lading
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
- Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
- Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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