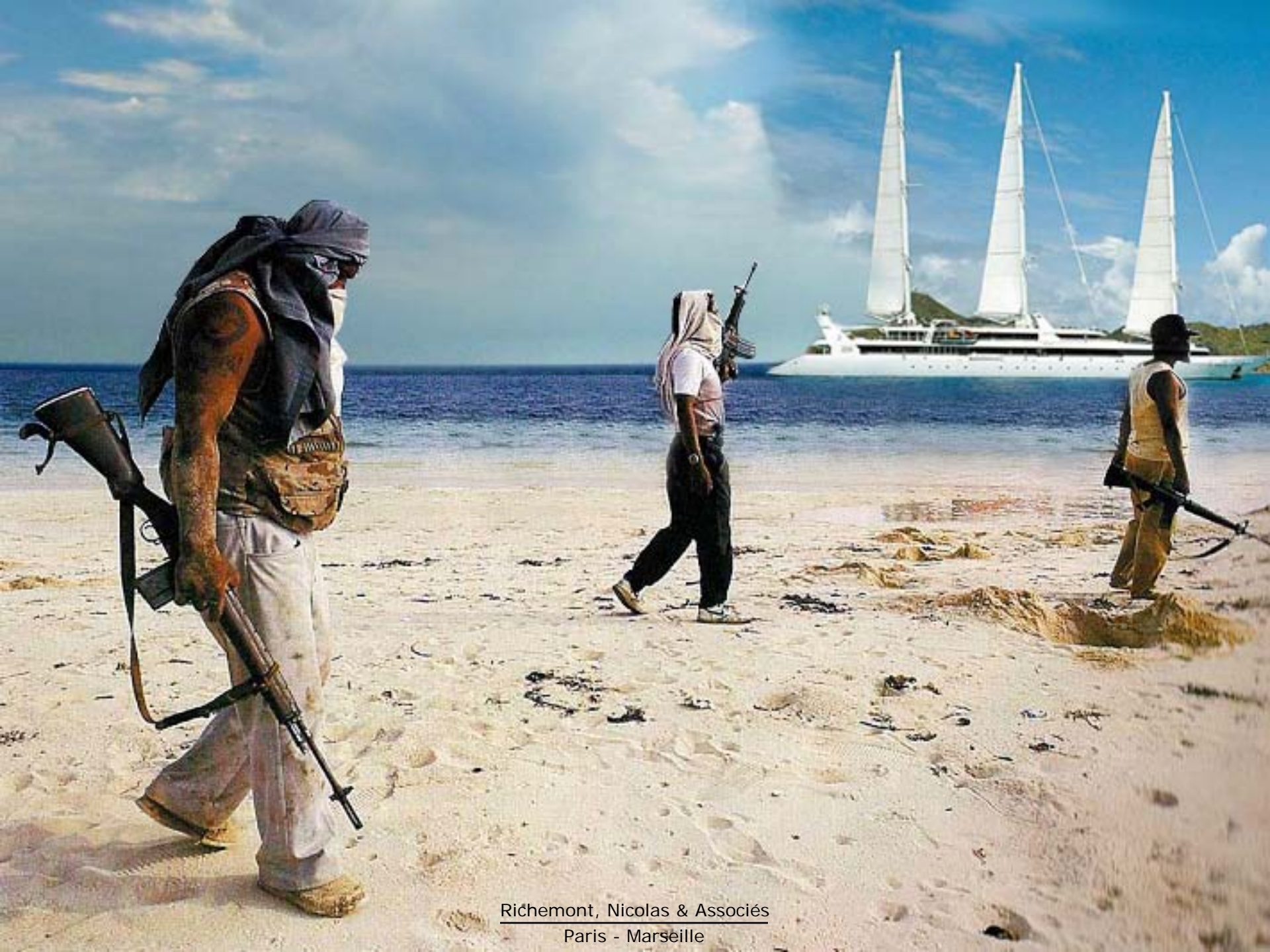


Title to sue
under a Bill of Lading



Who may sue the Sea Carrier?

Who may be sued by the Sea Carrier?

Article 31 of the French Code of Civil Procedure:

“The right of action is available to all those who have a legitimate interest in the success or dismissal of a claim, without prejudice to those cases where the law confers the right of action solely upon persons whom it authorizes to raise or oppose a claim, or to defend a particular interest.”

An Interest to act

Legitimate

Personal and Direct

Born and Actual

A Capacity to act

CONTRACT

The title to sue is strictly reserved to the Parties

Functions of the Bill of Lading

Receipt for Goods

Evidence of the Contract

Document of Title

Document of Title

- Only the holder of the B/L is entitled to the delivery of the goods

French Courts

- ➔ Only the holder of the B/L is entitled to sue the carrier

Who is the holder of the Bill of lading?

The Consignee

Article 49 of the Decree of 31 December 1966 :

“The consignee is the person whose name is mentioned in the straight bill of lading;

It is the holder of the bill of lading at goods' arrival when the bill of lading is to bearer;

It is the last endorsee of the bill of lading to order.”

Straight bill of lading

Only the named consignee is entitled to sue the carrier, except when his rights have been transferred

Order bill of lading

Only the last endorsee of the B/L is entitled to sue the carrier.

Bearer bill of lading

Only the lawful holder is entitled to sue the carrier

The Shipper

if he is still in possession of the B/L

M/V THE MERCANDIA TRANSPORTER II

Supreme Court, 22 December 1989

“If the action in liability against the maritime carrier, for loss or damage, belongs to the last endorsee of the bill of lading to order, this action is also opened to the shipper who is the only one to have sustained the damage caused by the carriage.”

M/V KARL X

Supreme Court, 29 November 1994

“Whereas by ruling on these grounds, without investigating, as it was invited by the underwriters, whether the company EPCAIE was indeed the actual consignee of the goods and whether it was the only one to have sustained the damage, the Court of Appeal did not justify its decision.”

Who is the actual Consignee?

Who is the actual Shipper?

The actual Consignee

- **Terms of the Bill of lading:** *Notify*
- **Documents issued in the course of the organization or achievement of the transport:** manifest, delivery order, customs documents, etc
- **Documents in connection with the sale of the goods:** Contract of sale, invoices, orders, etc

The actual Shipper

- **Terms of the Bill of lading:** *Per account*
- **Documents issued in the course of the organization or achievement of the transport :** booking confirmation, packing list, correspondence, etc
- **Documents in connection with the goods:** Contract of sale, invoices, orders, INCOTERMS, etc

ADDITIONAL PREREQUISITE:

proof of personal damage

“The only one to have sustained the damage”

Freight forwarder : damage presumed.

Forwarding agent: no personal damage.

The Contract of Carriage a tripartite contract

The Carrier

The Shipper

The Consignee

who accepts
the delivery
of the goods

Section 2 (1) of the Carriage of Goods by Sea Act 1992

“A person who becomes:

(a) the lawful holder of a bill of lading;

...

shall (by virtue of becoming the holder of the B/L or, as the case may be, the person to whom delivery is to be made) **have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.”**

The “lawful holder”

faith = a person in possession of the B/L in good
who is either:

- i. identified in the B/L as consignee;
- ii. an endorsee of the B/L ;
- iii. a person who would have fallen into categories i. or ii. if he had come into possession of the B/L before it ceased to be a document of title.

Who may be sued by the Sea Carrier ?

- **Recovery of Freight**
- **Breach of Contract**

RECOVERY OF FREIGHT

Principle: Liability of the Shipper

Article 15 of the Law of 18 June 1966 :

“By the contract of sea carriage, the shipper undertakes to pay a determined freight and the carrier to ship a determined cargo from a port to another.”

Article 41 of the Decree of 31 December 1966 :

“The shipper owes the price of carriage or the freight.
In case the freight is payable at destination, the consignee shall equally be debtor, if he accepts the delivery of the cargo”

Which Shipper?

- The Shipper nominated on the B/L?
- The Forwarding Agent ?
- The Freight Forwarder ?
- The actual Shipper ?

Standard Clauses in B/L

“1. Definition

“Freight” means all charges payable to the Carrier in accordance with Applicable Tariff and this Bill of Lading, including storage and demurrage.

“Merchant” includes the Shipper, Holder, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such Person.”

“12. Freight

The Merchant shall be responsible for the full payment to the Carrier, its agents, representatives, successors or assignees, of the entire Freight due pursuant to this bill of lading on the agreed date and for its full amount, without possible deduction or set off of any sort.”

Additional debtor: The Consignee

“In case the freight is payable at destination, the consignee shall “**equally**” be debtor, if he accepts the delivery of the cargo.”

Freight prepaid: mere presumption

NB:

UNCITRAL, article 42:

“If the contract particulars contain the statement ‘freight prepaid’ or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid.”

BREACH OF CONTRACT

False statements

Wrongful act or negligence

FALSE STATEMENTS

Article 19 of the Law of 18 June 1966:

“The shipper guarantees the accuracy of the information concerning the goods mentioned on the bill of lading.

Any inaccuracy made by him shall engage his liability vis-à-vis the carrier. The carrier can only prevail himself thereof vis-à-vis the shipper.”

Article 31 of the Law of 18 June 1966:

“When the shipper makes knowingly a false statement of the nature or the value of the goods, the carrier shall not be liable for any loss or damage to such goods.”

The Carrier have a right of action against the Shipper for any false statement made on the face of the B/L

The right of action is limited to the Shipper who made the false statement, ie. the nominated shipper, the freight forwarder or the principal of the forwarding agent

The Carrier may exclude his liability for false statement of the shipper ONLY IF:

- the statement concerns the nature or value of the goods
- the shipper knew it was false

The exclusion of liability for false statements of the Shipper is enforceable against the Consignee or the lawful holder of the B/L, were they in good faith

Article 3 of the Hague-Visby Rules:

“5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.”

Article 4 al. 5 of the Hague Visby Rules :

“(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.”

WRONGFUL ACT OR NEGLIGENCE

Article 27 of the Law of 18 June 1966:

“The carrier is liable for the loss or damage sustained by the goods from the moment he takes them in charge until the moment they are delivered, unless he proves that such loss or damage results from:

(...)

d) Acts constituting an event not attributable to the carrier;

(...)

g) Faults of the shipper, particularly in packing, packaging or marking of goods;”

Article IV rule 2 of the Hague-Visby Rules:

“2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(...)

(i) Act or omission of the shipper or owner of the goods, his agent or representative.; (...)

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks. (...)

(q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.”

What about the fault of the Consignee?

Hague-Visby Rules : EXCULPATORY

Law of 18 June 1966 : NOT EXCULPATORY

Supreme Court, 15 November 2005:

“Given article 17 of the law of 18 June 1966,

Considering that the fault of the consignee, which does not appear in the list of the exceptions of liability of the maritime carrier for loss or damage to the goods, from the date of their taking over to the date of their delivery, does not amount to a cause of exoneration of the liability of the latter...”

article 27 (g) of the Law of 18 June 1966?

“event not attributable to the carrier”

Caselaw: Characteristics of a Force majeure, ie:

Exterior

Unpredictable

Irresistible

INSURANCE

Insurer's title to sue under a B/L

Title to sue the Insurers under a B/L

**The Insurer must prove his subrogation
into the rights of the assured:**

Legal Subrogation

Conventional Subrogation

LEGAL SUBROGATION

Article L. 172-29 of the French Insurance Code :

“The insurer who pays the insurance indemnity shall be entitled, within the limit of its payment, to all the rights of the assured in respect of damage that gave rise to cover.”

- **Payment** (subrogation receipt, acknowledgement of payment, etc... are sufficient)
- **Pursuant to a duty to guarantee the damage/loss** (insurance policy, etc)

CONVENTIONAL SUBROGATION

Article 1250 of the French civil Code:

“ A subrogation is conventional where a creditor receiving his payment from a third person subrogates her into his rights, actions, privileges or mortgages against the debtor. This subrogation must be express and made at the same time as the payment”

- **An express subrogation** (unequivocal subrogation receipt)

- **Simultaneity of the subrogation and the payment** (cheque, order or payment AND bank statement, etc)

Proof of the valid subrogation may be brought until the closing of the debates:

Article 126 of the French Civil Code of Procedure:

« Whenever the situation giving rise to the inadmissibility may be regularised, the inadmissibility of the action may not be upheld if its cause had disappeared the date the judges rules. »

Direct action against the Insurers

Article L. 124-3 al.1 of the French Insurance Code :

“The injured third party has a right of direct action against the insurer who guarantees the civil responsibility of the liable person.”

The French Supreme Court has ruled that the admissibility of the direct action against the insurer does not depend on the involvement into the proceedings of the assured, deemed to be responsible for the damage (Cass. 1re civ., 7 November. 2000.)

Assignment of the title to sue

Article 1690 of the French Civil Code :

“An assignee is vested with regard to third parties only by notice of the assignment served upon the debtor.

Nevertheless, the assignee may likewise be vested by acceptance of the assignment given by the debtor in an authentic act.”









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