



Letters of Indemnity

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Letters of Indemnity (LOI)

- Undertaking to hold the owners harmless to comply with their requests
- Given by the charterers or shippers
 - at the load port, clean bill of lading
 - or antedated bill of lading
 - at the discharge port



Content of an LOI

- Reason and the circumstances
- Specific risks
- Agreement to provide funds to defend claims
- Agreement to provide security if vessel or assets are arrested
- Full list of parties jointly liable under the LOI
- Law and jurisdiction of the LOI

LOI v LOU

- LOI: Guarantees for the risk of carrying out certain actions (deviate from the normal practice)
- Letter of Undertaking (LOU): Guarantees for the damages as a result of a shipping incident

LOI and Third Parties

- No defense to Third Parties
- Rule Art III(3) Chinese Maritime Code: Arts 73, 75, 76 , 77
- Must deliver against original bill of lading: [1889]

Chinese case , Art. 71 of the Chinese Maritime Code requires delivery against original bill of lading



Loss of P&I cover

- The standard insurance would not cover claims arising out of (API Rules 2014)
 - issuing of bill of lading containing knowingly incorrect description of cargo (Class I Rule 2.8 proviso c iv)
 - delivery without production of bills of lading (Class I Rule 2.8 proviso c ii)
 - discharge at a port other than the one named in the bill of lading are also not covered (Class I Rule 2.8 proviso c i)

Loss of P&I cover (cont.)

- When the cargo is discharged ashore, any loss or damage incurred there is also not covered by the Club
- Additional insurance available
- Some jurisdictions require delivery to the customs authority. Still not covered by P&I

Loss of P&I cover (cont.)

- On rare occasions, the owners may be covered at the sole discretion of the Board of Directors (Rule 2.8 proviso c)
- Limited to claims of the same kind or nature covered under the standard P&I terms. Loss of the cargo or cargo delay claims.

Loss of FD&D cover

- The expenses in the recovery against the guarantor not covered by FD&D
- Club's role: Drafting LOI wordings, assisting the members in the negotiation or even provision of LOIs.



Parties to the LOI

“

”

is the wording held in [1994] to give the owners the rights of LOI but not an obligation to accept it.

Parties to the LOI (cont.)

[1990]



Enforceability

- Bona fide LOI, enforceable against issuer
- LOI misrepresenting the condition of the cargo could be fraudulent and not enforceable.

, [1957] 2

Lloyd's Rep

- Enforceable against third part Receivers Contracts (Rights of Third Parties) Act 1999, Owners are agents of Charterers. 2 LOIs

2005

Financial Status of the LOI Guarantor

- Bona fide LOI, enforceable against issuer
- LOI misrepresenting the condition of the cargo could be fraudulent and not enforceable.

, [1957] 2

Lloyd's Rep

- Otherwise a worthless piece of paper, unless counter-signed by a bank or a P&I Club
[1999]

Bank

- Stamp forged
- No authority to sign LOI
- Faxed copy of LOI



P&I club wording

- Club Circular No. 20/98 of Nov 30, 1998
- Club Circular No. 2/01 of Jan 26, 2001
- Club Circular No. 27/10 of October 4, 2010

British Bankers Association (BBA)

P&I club wording (cont.)

The forms adopted by the International Group of P&I Clubs are in respect of:

- (A) Delivering cargo without production of the original bill of lading.
- (AA) Delivering cargo without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity.
- (B) Delivering cargo at a port other than that stated in the bill of lading.

P&I club wording (cont.)

- (BB) Delivering cargo at a port other than that stated in the bill of lading incorporating a bank's agreement to join in the letter of indemnity.
- (C) Delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading.
- (CC) Delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity.

P&I club wording (cont.)



[2009]

1. “ [name of specific party]

”
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Identify the party to whom delivery is to be made. If incorrectly made to another party, the Owner may lose its entitlement to an indemnity.

P&I club wording (cont.)

2. Timing of demands under an LOI. On receiving wrongful delivery claim / demand for security, Owner immediately notify the issuer of the LOI:

that a claim has been notified to the Owner

that security has been demanded from the Owner and that the Owner requires to be secured by the issuer in accordance with the LOI

This must be done before the Owner provides any security, otherwise the Owner may prejudice its right to demand and receive security from the issuer of the LOI.

P&I club wording (cont.)

Also, the wording should be widely drawn to include any direct or indirect consequences:



P&I club wording (cont.)

- Issuance of clean bills of lading
- Issuance of a new (second) set of bills of lading
- Guarantee for change of destination
Change of destination and issuance of a new (second) set of bills of lading
- Guarantee for issue of freight prepaid bills of lading
- On deck cargo clause, cargo owners/insurers
- On deck cargo clause, charterers
- Guarantee for issue of liner bills of lading instead of tramp bills of lading

Party to whom the cargo is discharged

- No reference to the name of the party to whom the discharge is to be made:

“

[insert place where delivery is to be made]

”

.

- Wording should be widely drawn to include any direct or indirect consequences

Party to whom the cargo is discharged (cont.)

A provision designed to give greater security to tankers has been incorporated, whereby requested delivery of a bulk liquid or gas cargo to a terminal or facility, or to another ship, lighter or barge is to be deemed to be delivery to the party to whom delivery has been requested.

Party to whom the cargo is discharged (cont.)

(cont.)

“

”

.

Losses before the original bill of lading are returned

- “

”
.

The guarantor argued that it prevented the claim for losses or damages before the original bills are delivered.

- Deletion of the clause.

Amount

- Amount is not limited. where practically impossible, as with banks, the following words can be inserted:

“ [insert name of bank]

”
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- At least 200% the CIF value. low value cargo, a higher percentage.

Time Limit

There should be no time limit (an in rem writ renewable year after year in the event that the vessel fails to call within the jurisdiction)



Jurisdiction

- LOI London High Court C/P Arbitration
- LOI same jurisdiction as the charter party. Owners could then claim against the charterers under both the charter party and the LOI at the same time in the same forum.

Thank you!

