

# **Bills of Lading vs Sea Waybills – and of course the Himalaya Clause**

**Peter G. Pamel - Partner  
BORDEN LADNER GERVAIS**

**NJI / CMLA - Federal Court of Appeal and Federal Court  
Maritime Law Seminar  
Ottawa - April 15<sup>th</sup>, 2011**



# Types of Sea Waybills and Bills of Lading

- **1. Sea Waybill – not negotiable**
- **2. Straight Bills of Lading – not negotiable**
- **3. To Order Bills of Lading – negotiable**
- **4. Bearer Bills of Lading – negotiable**

# With whom is the Shipping Line contracting

- **1. Bills of Lading**

- Need to tender the document for possession of cargo
- Application of the *Bills of Lading Act*
- Issued in three originals

- **2. Sea Waybills**

- No need to tender the document for possession
- Often issued only electronically
- *Bills of Lading Act* does not apply

# Documents of Title

- **1. Sea Waybills**
  - No issue - not a document of title
- **2. Bills of Lading**
  - History of the term “document of title”
  - *Bills of Lading Act*
  - *Hague Visby Rules*
- **3. Entitlement to Possession**

# Himalaya Clause

- **1. History**
- **2. Modern three prongs of the clause**
  - Extends benefits of contract of carriage to agent and sub-contractors of the Carrier
  - Prohibition of Suit against agents and sub-contractors
  - Circular Indemnity Clause

# Bills of Lading vs Sea Waybills

• **THANK YOU**