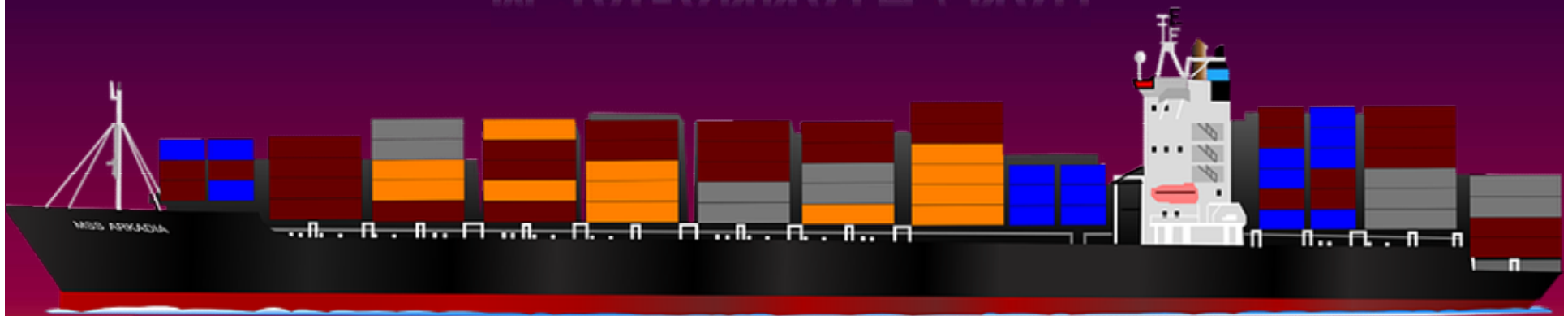


# LOI for Dummies

M JAGANNATH / NAU



# Letter of Indemnity

## ○ Definitions



**Indemnity** – a contract by one party to keep the other harmless against loss

- Gives rise to a primary obligation
- Owed to the debtor because he has performed his obligation



**Guarantee** – an undertaking to answer for the payment or performance of another person's debt or obligation in the event of a default of the person primarily responsible for it



# Development

Initially issued to iron out certain problems such as genuine differences in interpretations in quality

Business practice drove traders to incorporate this in their C/P's to avoid costs for delays

P&I Clubs refuse insurance cover for cargo released without B/L's

# Letter of Indemnity

Where used



Clean Bills



Discharge without Bills / Presentation



Change of Destination

# Clean Bills

## Bills of Lading



Receipt



Evidence of Contract of Carriage



Negotiable document of Title

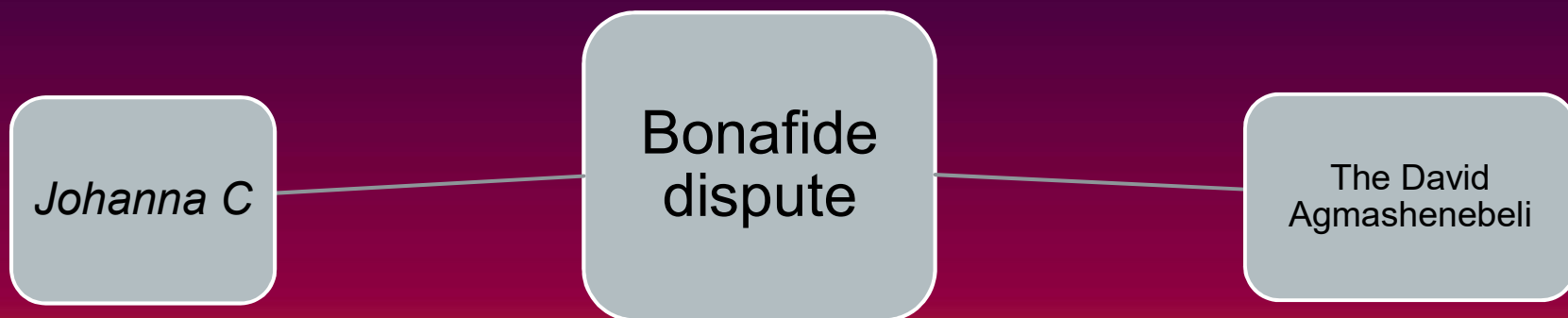
---

Issues with the quality of the cargo i.e. apparent good order and condition of the cargo

- ❖ Bonafide dispute
- ❖ No dispute on the quality and purported fraud

# Clean Bills

- Issues with the quality of the cargo i.e. apparent good order and condition of the cargo



# Clean Bills

## Bills of Lading



Receipt



Evidence of Contract of Carriage



Negotiable document of Title

---

Issues with the quality of the cargo i.e. apparent good order and condition of the cargo

- ❖ Bonafide dispute
- ❖ No dispute on the quality and purported fraud

# Clean Bills

- Issues with the quality of the cargo i.e. apparent good order and condition of the cargo

No dispute on  
the quality and  
purported fraud

Brown  
Jenkinson v  
Percy Dalton



## Delivery without Presentation

Heskell v Continental Express Ltd

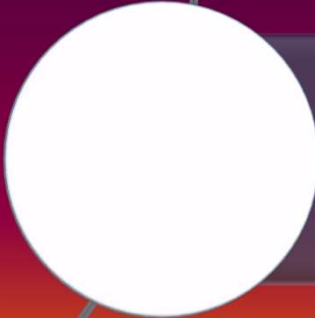
The Stettin (1889)

The Jag Ravi

# Delivery without Presentation



Delay in receiving the OBL's



Whether OBL's issued in the first instance – if not issued then contractual provisions in C/P may not apply

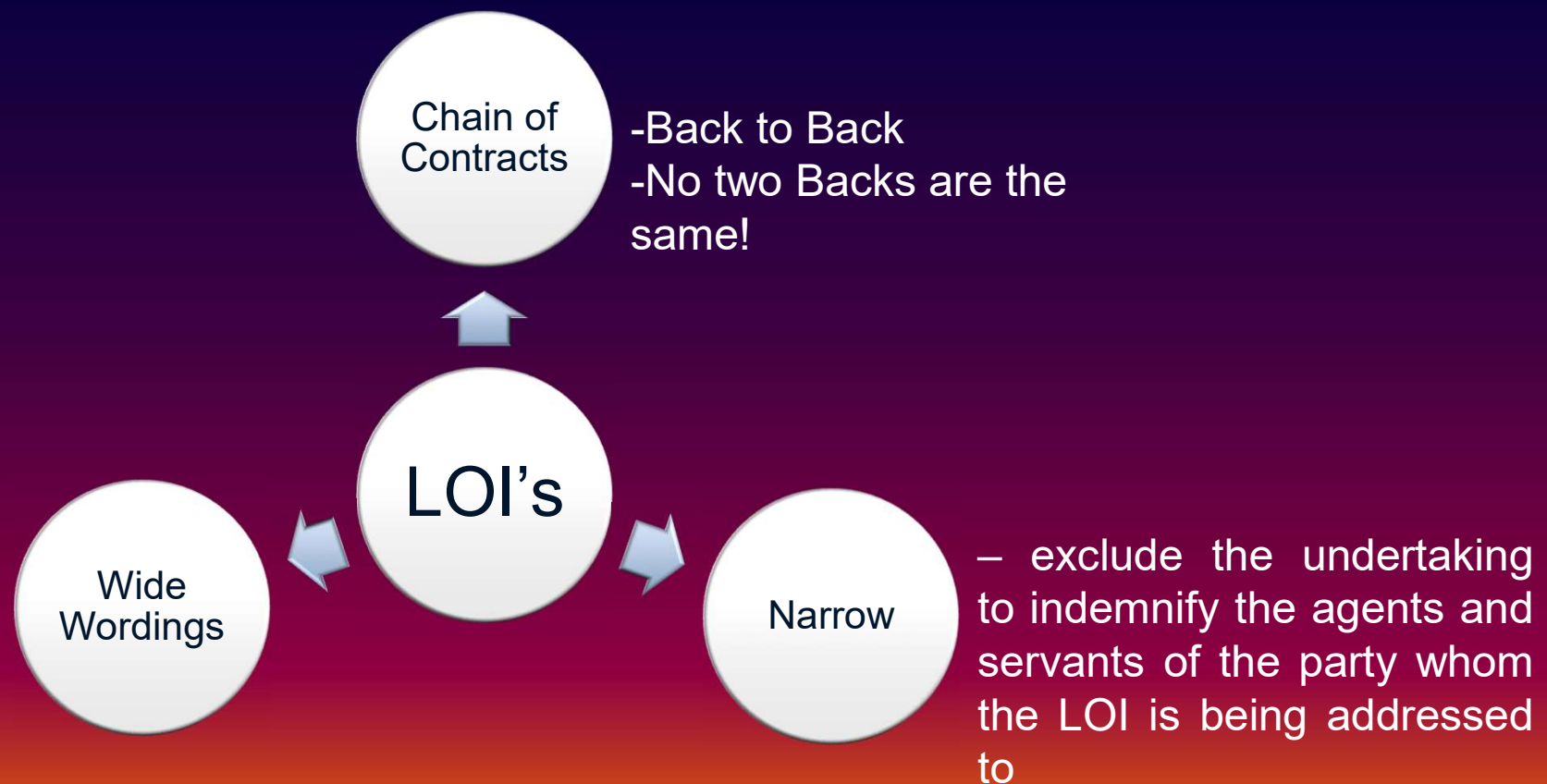
# Change of Destination

If the initial Bills  
returned, little risk

Otherwise, Carriers  
will be exposed to  
the holders of the  
Bills for breach of  
contract

No cover under the  
P&I Rules for  
change of  
destination in  
exchange of LOI

# LOI's



# Issues with LOI's

1. Validity

2. Enforceability

3. Time issues – whether 1 year or 6 years?

4. Limits of liability under

Hague Rules

HV Rules

US COGSA wordings and  
application of Deviation

# Issues with LOI's

5. Insurance Cover?

6. Bank's Signature

-Pacific Carriers Ltd v BNP Paribas

-China Shipping Development Co Ltd v State Bank of Saurashtra

# LOI Wordings

## International Group Standard Letter of Indemnities

### Int Group A

- wo production of OBL

### Int Group B

- delivery to a port other than that ...

### Int Group C

- delivery to a port other than that ... wo production of OBL

### Int Group AA

- with bank

### Int Group BB

- with bank

### Int Group CC

- with bank

## Insurance issues

- ❖ Rule 2 c of the UK P&I Club Rules – Discretionary cover (Omnibus Rule) - Delivery without B/L, Change of Destination
- ❖ Clause 13 (9) i on Limitation of Cover of Charterers P&I excludes cover for cargo without production of OBL or documents of title



# Suggestions



Look at counter-party



Look at exposures including legal costs



Party in the chain – look to defend and attack and seek recovery of the costs in the indemnity



Seek Guarantee's (for instance from Bank)

# Suggestions



Fraud unravels all – LOI's will not be valid when issued with intent to defraud



Wordings of LOI – wide / narrow depending on which side a party is in



Finally, commercial tool – handle with care

# Solutions



Electronic Bills of Lading



Counterparty of the sale / BL / Bank advised prior to release



Commercial tool – be properly secured – no legal right to agree unless contractually bound

# THANK YOU

NAU Pte Ltd  
Level 36 UOB Plaza 1  
80 Raffles Place  
Singapore, 048624

Tele(24h): +65 6763 3239  
Email: [jagan@nau.com.sg](mailto:jagan@nau.com.sg)

