THE CHALLENGE BILL OF LADING FRAUD POSES TO SHIPPING AGENCIES AT THE PORT OF TEMA

BY

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THIS DISSERTATION IS SUBMITTED TO THE UNIVERSITY OF GHANA, LEGON IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF MA PORTS AND SHIPPING ADMINISTRATION DEGREE.

DECEMBER 2010
DECLARATION

I hereby declare that, this dissertation is the result of my own research work, carried out in the Department of Maritime Studies, Regional Maritime University, under the supervision of Dr. Kwadwo Kwabia and Mrs. Joana Botchway. References cited in this work have been duly acknowledged and all errors found in this work are solely mine.

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DEDICATION

I dedicate this piece of work to my wife, Mrs. Akweley Laryea and our children: Jessica Martha Naa Adoley Laryea, Ethan Nii Adotey Laryea and Kyra Naa Adorkor Laryea.

“You are capable of more than others expect of you, even beyond your own most extravagant dreams”. Your generation shall arise and call you blessed.
ACKNOWLEDGEMENT

I am sincerely thankful to Almighty God for the Grace He bestows on me and the strength He gives me to carry on in arduous times. Without him this work would not have been made possible. I sincerely thank my supervisors; Dr. Kwadwo Kwabia and Mrs. Joana Botchway for their suggestions, corrections and input.

I acknowledge my Managing Director, Mr. Amire Seeman for giving me the leeway to undertake this MA programme. I cannot forget Mr. E.B Mensah who held the fort for me whenever I had to be away from the office attending lectures.

I am grateful to my mentors and friends who showed interest in this exercise and lent support and encouragement, particularly Rev. Cornelius Yakung. To my course mates and friends, particularly Eugene Dweben and Sarah Apasah; I say thank you very much for creating the enabling environment in which we encouraged ourselves and provoked one another not to give up when the challenges evidently suggested so.

Finally I am grateful to the numerous academics and authors whose work I benefited from and helped shaped my own. I am extremely grateful to all.
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ABSTRACT

TITLE: THE CHALLENGE BILL OF LADING FRAUD POSES TO SHIPPING AGENCIES AT THE PORT OF TEMA

The study is posited against the background that in the present state of international trade, the bill of lading has been subjected to increasing incidence of fraud in Ghana and other parts of the world. As a result, the study spelt out the following specific objectives; (1) examine the nature and form of bill of lading fraud perpetrated through the port of Tema; (2) determine the major perpetrators of bill of lading fraud that occurs at the port of Tema; (3) examine the loopholes in the administrative procedures put in place by shipping lines to ensure security of their bills of lading; and (4) recommend measures for improving the detection of bill of lading fraud.

Primary data used in the study was derived from in-depth interviews and focused group discussions conducted among shipping agency staff operating at the port of Tema. The data analysis revealed that indeed shipping agencies are confronted with bill of lading frauds even though the occurrence is not uniform among the agencies. This has led to loss of various sums of money in liabilities by shipping agencies. It was also revealed that the main perpetrators of bill of lading fraud are importers and exporters and their clearing and forwarding agents. The study therefore concluded that the incidence of bill of lading fraud poses a threat to shipping agencies and the shipping industry as a whole. It has been recommended among other things that all stakeholders collaborate to find a lasting solution to the problem, in order not to render shipping agencies bankrupt.
CHAPTER ONE
INTRODUCTION

1.1 Background to the study

Modern international trading arrangements require that shipping, which is one of the links in the transport chain, provides better and cheaper services for conveyance of goods from their origin to their destinations around the world. In meeting this requirement, and fueled by increasing globalization of the world, where movement of goods and services across the globe has been facilitated by improved technology, the world has evolved transport systems that provide fast and cheap access to nearly all parts of the world. The evolved systems consist of roads, railways, inland waterways, shipping lines, and air freight services, all of which fall into three transport zones, namely; inter-regional transport, short sea transport, and inland transport. Over the years, however, and in the light of increasing inter-regional trading the world over, deep sea transport has gained immense patronage and expansion because of its cost effectiveness. (Stopford, 2000:7-8).

Available statistics show that about ninety percent (90%) of world trade in goods is carried by maritime/deep sea transport. According to UNCTAD, "international commodity transactions are performed through the transfer of title rather than the physical delivery of merchandise". Hence, title to goods is conveyed by a set of documents, such as Commercial Invoice, Bill of Lading, Certificate of Origin, Inspection Certificate, Packing List, Dock and Warehouse Receipts, Insurance Certificate, Shipper's Export Declaration, Phytosanitary (Plant Health) Inspection
Certificate, and Export and Import Licenses. Since international commodity transactions involve two parties, it is important that the shipping documentation conforms to the sales contract established between the parties in order to ensure that the goods are delivered on time and in the right quantities. (Youssef - UNCTAD/ITCD/COM/Misc.31:28-30)

The Bill of Lading, which is the focus of this study, is a document issued by a carrier (a shipping line) acknowledging that specified goods have been received on board as cargo for conveyance to a named destination for delivery. On arrival at the named destination, the carrier delivers the goods to the consignee on presentation of the original copies of the Bill of Lading covering the said goods. According to D'Arcy, Murray, and Cleave (2000:253), the Bill of Lading in effect is a receipt issued by the ship owner in acknowledgement of the fact that goods have been delivered to him for carriage to a destination according to the terms of the contract. They note, however, that the Bill of Lading is issued after the contract of carriage is well on its way to performance.

It is important to note that maritime transport broadly falls under a contractual arrangement commonly known as contract of affreightment. However, such contracts traditionally fall under two distinct embodiments:

(a) Those embodied in charter parties.
(b) Those evidenced by Bills of Lading.
Wilson (2004:3) explains that, where the ship-owner agrees to make available the entire carrying capacity of his vessel for either a particular voyage or a specified period of time, the arrangement normally takes the form of a charter party. On the other hand, if he employs his vessel as in the liner trade, offering a carrying service to anyone who wishes to ship cargo, then the resulting contract of carriage will usually be evidenced by a bill of lading. The liner trade is that kind of ocean cargo transport services whereby vessels of a particular shipping line ply an advertised route regularly. We can cite modern day container vessels plying the oceans as a typical example of liner trade services being run by renowned Shipping Companies like Maersk Line, Zim Lines, Mediterranean Shipping Company (MSC) and CMA-CGM.

D'Arcy, Murray and Cleave (2000), outline how the bill of lading functions in maritime transactions as follows:

(a) As formal receipt by the ship-owner acknowledging that goods alleged to be of a stated species, quantity and condition are shipped to a stated destination in a certain ship, or at least received in the custody of the ship-owner for the purpose of shipment.

(b) As evidence of the contract of carriage, repeating in detail the terms of the contract which was in fact concluded prior to the signing of the bill.

(c) As document of title to the goods enabling the consignee to dispose of the goods by endorsement and delivery of the bill of lading.
It is important to note that the bill of lading is governed by either one of four international carriage regimes which are:

(a) The Hague Rules,
(b) The Hague-Visby Rules,
(c) The Hamburg Rules and
(d) The Rotterdam Rules.

Suffice it to say however that unlike The Hague, Hague-Visby and Rotterdam Rules which has been in existence for decades, the Rotterdam Rules entered into force as recent as 1st November 2010, having been signed by the 20th consenting maritime nation in October 2009. This notwithstanding, the Rotterdam Rules will have a practical effect only when the signatory countries which include Ghana, enact national legislation to give it a local force. Brown (2010). Until this happens, Ghana as a maritime nation remains a subscriber to the Hague Rules which is incorporated into what is known as the Bill of Lading Act, 1961 (ACT 42). Various maritime nations and therefore Shipping Lines or Carriers in like manner also subscribe to one of these four international carriage regimes. However, the most frequently subscribed is the Hague-Visby rules.

Shipping Lines do not operate in isolation like ‘trotro’s’ which pick and discharge passengers and goods with ease anywhere on their route. In maritime transport, the Carrier, which is also called the Line, needs to set up offices at all the ports it plies across the world to load and discharge cargo so that the complexities of berthing, discharging and loading, cargo release and the general management of containers and other logistics can be well coordinated. The Shipping Line can set

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1 Trotro is a local expression for mass transport in Ghana.
up the offices in its name or appoint a third party to act on its behalf. Offices or representations such as these are usually referred to as Shipping Agencies.

The functions of the Shipping Agency are varied and enormous; spanning across areas like Ship Operations, Documentation, Marketing, Disbursements and Cargo Release among others. The present study focuses on the functions of Shipping Agencies related to documentation of cargo release. It is in this function that the bill of lading and its associated fraud comes to the fore.

Fraud is a phenomenon that permeates society the world over. It generally has to do with ‘deliberate misrepresentation’ which causes another person to suffer damages, usually monetary losses. It has been defined by the Compact Oxford Dictionary and Thesaurus as “The crime of deceiving someone in order to get money or goods.” It further gave alternate meanings to fraud as deception, sharp practice, cheating, swindling, trickery, embezzlement, deceit, double dealing and chicanery. The setting up of Serious Fraud Offices as state institutions by many countries is an indication which lends credence to the fact that the phenomenon of fraud can assume serious proportions to the extent that it requires not just the effort of the security agencies to deal with it, but a specialized agency as well.

Section 16, page 23 of The Criminal Code, 1960 (Act 29) of the Republic of Ghana defines fraud as “an intent to defraud by means of forgery, falsification, any gain capable of being measured in money, or the possibility of any such gain, or other unlawful acts at any person, expense or to the loss of any other
persons.” It further gave three illustrations to drive home actions that constitute fraud as follows:

(a) A unlawfully alters B’s will so as to increase or reduce the amount of the legacy left by B. Here A is guilty of forgery with intent to defraud although A may have no interest in the matter.

(b) A unlawfully alters the date on a bill of exchange for the purpose of postponing the time at which he or any other person may be called upon to pay it. Since such postponement may be a gain to A or to such other persons, A is guilty of forgery with intent to defraud.

(c) A forges B’s signature to a deed, not for the purpose of gain to himself or any other person, but for the purpose of falsely charging B with the forgery. Here A is not guilty of forgery with intent to defraud, but he is liable to be punished for fabricating evidence.

1.2 Statement of Problem

Even though the rules governing maritime transport require extensive documentation, Brown (1998:6) notes that the simplicity of the documentary system makes it vulnerable to abuse. Falsified bills of lading have found their way into the system, and goods have indeed been delivered to bogus consignees upon presentation of falsified bills of lading. He further notes that whilst it may be difficult to combat direct fraud in the use of documents, a system whereby goods are actually delivered to the consignee's address may possibly cut out the use of false bills of lading.
The phenomenon of theft and related activities might never go away as long as humanity exists. Swindling or '419' in our local parlance is classified under confidence tricks by anti-fraud experts. It is a big time fraud syndicate that has gained international awareness and it cuts across all spheres of endeavor. Swindlers have found the world of international trade and especially shipping highly lucrative, with the bill of lading being at the centre of affairs. Perpetrators are not the kind of thieves little minds could identify with. We are talking about so called business men and chief executives who would be the last imaginable to ever pass for a thief, a swindler or a fraudster.

Signum Services in an article posted on the U. K. P&l Club’s website (www.ukpandi.com)² note that the ease with which forged bills of lading were being accepted in a West African country to secure the release of lading containers resulted in their being commissioned to enquire into the problem. The source indicated that as many as twenty-nine forged bills of lading had been accepted during the period of enquiry, with many more detected in a prior period. Though they did not publish the monetary value involved, it is no denying fact that it runs into millions of dollars, viewed against the background that the value of cargo that a 1 x 20 footer container can contain could range from tens of thousands to hundreds of thousands of dollars, depending on the type and nature of cargo (www.ukpandi.com).

² Access to this site was made on 21st March 2009.
They noted that the 'profits' derived from obtaining cargo by fraud using forged bills of lading are very high and rate of detection within a reasonable space of time before the perpetrators disappear into thin air is almost zero. The shipping agency then finds itself at the centre of the brawl for having released the cargo against fraudulent documents in the function of his duty.

In Ghana, as elsewhere around the world, one of the main problems encountered by the international trade community is the need to trade original documents of title (the Bill of Lading) for payment (Lake, 2000). The bill of lading document needs to be physically transferred to the final consignee, possibly along a chain of buyers and banks. For this reason, a number of problems are associated with it, including high administrative costs related to the issuance, processing and transfer of paper documentation and additional costs due to delayed arrival of the document at the port of discharge, in particular where travel times are fast, as in short-sea shipping, and in an extreme case the use of forged bill of lading for the release of cargo which comes with huge cost implications. While in practice, a carrier may frequently agree to release the goods against a letter of indemnity, this may seriously compromise the position of an unpaid seller or bank and may expose the carrier to a claim for mis-delivery (UNCTAD, 2004). Against this background, this study seeks to understand the nature and form of bill of lading fraud at the port of Tema, identify the perpetrators and also delve into how the problem can be minimized if not eliminated.
1.3 Objective of the Study

The main objective of this research is to investigate the phenomenon of bill of lading fraud among shipping agencies at the port of Tema and understand the measures that can be put in place to minimize or combat it. In addressing the above objective, the following specific issues are discussed:

(a) The nature and form of bill of lading fraud perpetrated through the port of Tema.
(b) The major perpetrators of bill of lading fraud at the port of Tema.
(c) The loopholes in the administrative procedures by ship agents/shipping lines to ensure the security of their bills of lading.
(d) Recommend measures for improving the detection of bill of lading fraud.

1.4 Justification for the Study

The value of cargo under a single bill of lading could be worth more than what a shipping agency and her insurers as well as the Carrier they represent could afford to bear. The sheer amount of claims alone can have very serious repercussions on the agencies' ability to survive. This is a challenge for which reason they have to be up in arms to block all avenues by which bill of lading fraud can be perpetrated on them.

The findings and suggestions to be made in this research could help management of shipping agencies who are seeking a means to improve upon their documentation procedures, pay more attention to details and monitor the behavior and functions of their staff responsible for cargo release. More
importantly, the study will add to the existing stock of knowledge on bill of lading fraud in Ghana. Judging from the functions of the bill of lading as enlisted earlier, one can conclude that it is a very powerful document in the hands of a shipper or a consignee to negotiate payment through the issuance of letters of credit which must conform strictly to the specifications on the bill of lading. Some of the known fraudulent acts associated with the bill of lading include misdating, incorrect description of cargo, incorrect port of shipment and indication of false clauses on the bill of lading. The emphasis of this study is on forgery: i.e. of the bill of lading form and/or the information and signatures on it in order to steal the cargo by deception perpetrated against the release officer.

1.5 Scope and Limitations of the Study

Ghana has two seaports, which are Tema and Takoradi where release of cargo against presentation of the bill of lading takes place. This study focused on Tema, specifically on major shipping lines within the port of Tema. These selected shipping lines are listed in table 3.1 on page 32. The choice of Tema was informed by the fact that it handles 80% of the nation's import and export and therefore most probably offer a wider spectrum for such study. Other stakeholders like Destination Inspection Companies, Customs, Port Authorities and Freight Forwarders who could also fall victim to the bill of lading fraud, and or act as abettors were not covered because the sole custody of the cargo rests mainly with the shipping line from the time of shipment to the time of delivery.
1.6 Organization of the Report

The study has been divided into five distinct chapters. Chapter One introduces the study area and includes background to the statement of the problem, objective, justification, scope and limitations of the study.

Chapter Two discusses a review of the relevant literature with the view of identifying key issues such as the nature and form of bill of lading fraud, the security of the bill of lading and cargo release procedures which delves into how the problem arises and could be solved.

Chapter Three incorporates information on the study area and sample size, sampling procedure and research design, data collection methods and instruments.

Chapter Four involves the analysis of the field data and presentation of the findings.

Chapter Five summarizes the key findings from chapter four, discusses conclusions and advises recommendations for decision-making.
CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction

In this chapter, relevant literature has been reviewed with the view of ensuring that key issues on the subject of bill of lading fraud are understood. In doing so, care has been taken to ensure that the specific objectives of the study are adequately taken care of in the literature review. It is believed that, an adequate understanding of issues in the specific objectives will help in addressing the general objective of the study. Consequently, the chapter has been divided into three (3) sub-sections, with each section dealing with specific aspects of bill of lading fraud. The chapter ends with a brief overview of cargo release procedures and how frauds are perpetuated at the port of Tema.

2.2 Importance of the Bill of Lading in Maritime Transport

The bill of lading according to Zekos (undated) has become a fundamentally vital document in modern international trade and commerce. Zekos notes that, the bill of lading is ‘indispensable to the conduct and financing of business involving the sale and transportation of goods between parties located at a distance from one another’. Generally, the bill of lading serves three purposes, namely:

- As contract for the carriage of the goods,
- As acknowledgement of receipt, and
- As documentary evidence of title.
Because of its importance in the maritime transport industry, Zekos observes that the bill of lading cannot be treated as an ordinary document. As a ‘commercial document, it is issued in one jurisdiction’, but the ‘delivery of the goods under its terms, is completed in another, while any dispute resulting there upon is litigated in a third jurisdiction’.

The analysis provided by Zekos also reveals that in recent years, the paper based documentation as presented with the bill of lading has been subjected to some criticisms. These criticisms have often centered on excessive time in sending documents from the point of shipment to the destination point. The late arrival of the bills of lading has subsequently been observed to cause congestion at destination terminals. With the late arrival of bills of lading, release of goods to consignees is delayed, and demurrage costs increase. This situation creates opportunities for fraud associated with the bill of lading. Even when data is stored on a magnetic media, it can easily be altered without leaving physical traces of tampering, meaning that fraud may also occur even with the use of electronic data processing.

Other studies have corroborated the views expressed by Zekos in relation to the bill of lading. Youssef (1999:52) for instance confirms the importance of the bill of lading in maritime transport by noting its three basic functions as:

a) An evidence of the contract of carriage (i.e. contract between the carrier and the shipper for the transportation of the goods),
b) A receipt issued by the carrier to a shipper for goods received for transportation, (i.e. a proof of delivery of the goods on board the vessel) and,

c) Evidence of title to the goods proving ownership of the goods in case of disputes, and when transferring rights of the paper document on the goods to another party.

Thus Youssef (1999) observes that in maritime transport arrangements, the bill of lading is prepared in accordance to what has been stated in the letters of credit. She further notes that the bill of lading is essential for attaining proper trade transaction. If it is made out to a named consignee, then only the consignee can take delivery of the shipment. A transfer of ownership can be made only through a declaration of assignment. If they are made out to order, then the party to whom they are endorsed with the word "delivered to" or "to the order of" has the right to take delivery. This type of bill can be transferred by the consignee by simple endorsement to be endorsed prior to surrender if it is payable "to the order of" in order to obtain merchandize.

One key requirement for the issue of bill of lading is to indicate clearly the destination of the merchandize (i.e. the port of discharge or address for inland movements). What is written in the bill of lading leads to the discharge destination of the goods. For this reason, the accuracy of it is very important. For instance, a mistake could mean that a cargo would be delivered to a wrong person/institution. In such a situation, it is very difficult and practically impossible to move the cargo once it has been discharged in a particular area. It becomes even more difficult when the cargo is stowed with other cargoes in a container for
a given destination. The discharge destination is therefore critical in the preparation of the documents.

The method of transportation is usually specified by the type of bill of lading that is used for the transaction. When an intermodal application is used, all the combinations and types of bill of lading that are covered in the transaction (whether in land, ocean or air) should be mentioned on the forms used for export documentation.

To determine the tariff and the total cost of the movement of the goods, it is very important to have a clear and accurate description of the cargo (exact weight and proper measures). All other information which will enable the carrier to apply a tariff has to be mentioned. For example, the description of the goods if any special requirements exist, particularly in connection with hazardous goods should be made. Special storage (cool, frozen, fragile, etc), special handling or any other requirement should be mentioned in the bill of lading in order to facilitate proper storage and off-loading. In addition, packages, if any, should be numbered to assist the carrier in identifying all the merchandise. Similar to the packing list, the number of packages should be mentioned to indicate to the carrier how much merchandise is being transported. The bill of lading should also indicate if the freight is to be pre-paid or collected upon arrival of the goods at destination. In simple terms, the bill of lading must meet all the requirements of the letter of credit, otherwise discrepancies will occur and payment will be delayed. It should be issued by the carrier with a "clean" indication on the bill,
which means that the goods were received by the carrier in "apparent good order and condition", without damages or other irregularities. (UN, undated: 48-51)

In writing on the law and practice of international trade, D'Arcy, Murray and Cleave (2000) reiterate that traditionally, international carriage of goods has been done on the basis of paper work, by using transport documents, although the nature and form of these documents have changed over time. They explain the course of business in the carriage of goods by sea, illustrating with the case of a United Kingdom exporter. The exporter is obliged by his contract of sale with the overseas buyer to arrange for the carriage of goods by sea to the place of destination. If the exporter wishes to carry out this task personally, s/he enters into a contract with a ship-owner. At this point, the ship owner undertakes to carry the goods in his ship from the port of dispatch to the overseas port of destination. This contract is known as a contract of carriage by sea. The remuneration paid to the ship-owner by the exporter is called freight, the ship-owner is the carrier, and the exporter is referred to as the shipper. However, in some instances, intermediaries such as a forwarder may be used to procure freight space for the cargo, while the ship-owner may also employ an agent (the loading broker) to obtain cargoes for his ship.

Whichever path the exporter and the carrier decide to take in order to ensure that cargoes are delivered and received, there are paper documentations involved and the bill of lading is one of such documents. Upon loading of the cargo aboard a ship, the shipper or his agent completes a multiple set of original bills of lading
in respect of the consignment aboard the ship. The particulars of the bills must agree with the details of the consignment. The bills are then signed by the ship-owner or his agent and handed over to the shipper. Where the goods are sold under letters of credit, the bills of lading and other documents are couriered to the negotiating bank, which also delivers them to the consignee.

On arrival of the consignment at the destination port, the consignee presents the bill of lading and other documents to the shipping agent for delivery of the consignment. The responsibility of the ship-owner does not end when the ship arrives at the destination port, but only after the goods are duly delivered to the consignee in accordance with the provisions under the contract of carriage. It is important therefore to note that it is in these processes that bill of lading fraud may occur, especially in situations where shippers, consignees, and even other fraudsters in the marine transport system decide to short-change the system.

2.3 The Nature and Form of Bill of Lading Fraud

Bill of lading fraud is real, and forms an aspect of what UNCTAD\(^3\) describes as Documentary Risk in Commodity Trade. According to UN (undated: 46), the bill of lading is the most important document likely to be used in documentary fraud, due to its multi-purpose functions such as has already been described earlier. A seemingly simple document with such a strong legal backing will definitely be susceptible to forgery. Just as counterfeit money or currency can be used to

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\(^3\) UNCTAD is abbreviation for United Nations Conference on Trade and Development.
purchase any commodity if undetected, in the same vein, a forged bill of lading can be used to obtain cargo fraudulently.

Brown (1998) acknowledges that in recent years, the simplicity of the documentary system has made it vulnerable to abuse and that false bill of lading have often been presented to shipping agents by fraudulent consignees. The profitability of the fraud makes the fraudsters put in adequate resources to clean their tracks to the extent that they are not traced when the fraud is detected. Some culprits also refuse to own up. In addition, the security agencies are also ill equipped to track down perpetrators of frauds of this nature.

2.4 Types of Bill of Lading Fraud

2.4.1 Documentary Fraud

A number of fraudulent activities relating to bill of lading come under documentary fraud. Mukundan (2003) indicated that, the circumstances surrounding the occurrence of these activities serve as important pointers to the meaning proffered to them, and offered one common scenario in which fraudsters often select commodities in great demand and offer them at reasonable prices using convincing documentation. Sometimes, brokers who are used to sell the goods either know that the transaction is fraudulent or do not care whether it is or not. When the transaction crashes, the broker protests his innocence and reminds all the parties that he, too, is an innocent victim. Seldom, if ever, will he agree to pay his commission. He noted that over the last few decades, documentary fraudsters have accumulated vast sums of money from
manipulating documentary letters of credit and it is appropriate to look at these instruments to examine their flaws.

Mukundan (2003) has documented some spectacular cases of documentary fraud in recent times. These have been reviewed from page 19 to page 23. He made mention of one case in which the Central Bank of the United Arab Emirates suffered losses of some US$650M while in another case in 2002, losses amounted to US$450M with one bank being hit for more than US$200M. It is impossible to estimate the total losses due to fraud around the world as a significant proportion of cases go unreported. Documentary fraud affects all commodities but palm oil has been one of the most popular commodities to be affected (Mukundan 2003).

2.4.2 Situations under which Buyers could be defrauded.
In this case, Mukundan (2003) explained that sellers present false documents confirming that the cargo has been consigned to the buyers and loaded on board the vessel. The documents are credit-complying and the negotiating bank pays out to the sellers. Due to the transit time between the load port and the discharge port, it takes many weeks before the buyers realize that no cargo has been shipped and that the documents negotiated through the banking systems are worthless. Fraudulent sellers often operate by contacting buyers to sell a quantity of goods to them and request that a letter of credit be opened in their favour. Once this has been effected, the fraudulent seller may ship complete rubbish to
the buyer, ship goods of lesser quantity or quality or ship absolutely nothing at all.

2.4.3 Situations under which Sellers could be defrauded

In this situation of sellers being defrauded, Mukundan (2003) noted that under Documents Against Payment (D/P), sellers ship the cargo and send original documents to the collecting bank, usually in the buyer's country. Meanwhile, they also send 'non-negotiable' copies of the bills of lading to the buyers to advise them of the vessel carrying the cargo. Based upon the non-negotiable bills of lading, the buyers prepare a false 'original'. This is presented to the shipping agent when the vessel arrives at the discharge port, and a delivery order is obtained which is used to clear the cargo out of the port. This fraud enables the buyers to bypass the original documents awaiting payment and collection at the collecting bank. By the time the seller realizes his documents are overdue for collection, the cargo and the buyer have often disappeared. In this scenario, the shipping company may face a claim from the seller for delivery of the cargo without presentation of the original bill of lading.

2.4.4 Situations under which Fraud could be perpetrated through standby letters of credit.

In this scenario, Mukundan (2003) indicated that a standby letter of credit is drafted as a loan transaction, whereby the issuer agrees to pay the beneficiary upon presentation of documentation indicating that the account party has defaulted on a payment obligation. This is used primarily to finance or secure underlying intangible or money indebtedness undertaken by the account party. Thus, while the traditional commercial documentary letter of credit acts as a
payment mechanism triggered by the presentation of documents of title and other backing documents, the standby letter of credit usually only comes into play (if at all) when some default happens, usually the issuing bank’s customer. What makes the standby letter of credit so vulnerable to fraud is that all that is very often required to effect payment is a written statement from the beneficiary who, if unscrupulous, has a golden opportunity to manipulate the standby letter of credit to his own advantage by filing an untrue statement of entitlement. (Mukundan:2003)

2.4.5 Fraud associated with the Non Vessel Operating Common Carrier (NVOCC) and the Free on Board (FOB) shipment

A Non Vessel Operating Common Carrier is a company which takes on the liabilities of the carrier but may not always have assets or insurances in place to meet all of its liabilities. A cargo owner is best protected if he is holding a bill of lading issued by the ship owner or other carrier with enough capital to meet his claims. A seller who deals with a buyer on documents against payment basis and then ships FOB with a Non Vessel Operating Common Carrier appointed by the buyer is particularly vulnerable to fraud. The seller loses control of the cargo and, in the event that the buyer refuses to pay for it, is left with the option of enforcing his rights against the Non Vessel Operating Common Carrier under the bill of lading. (Mukundan: 2003)
In answer to the question as to what steps can be taken to avoid becoming a victim of these frauds, Mukundan (2003) was right on the point that there are many different types of fraud found throughout the world, but they all have one common characteristic: the fraudster preys on the gullibility and greed of his victim. He elaborated that there are usually tell-tale signs or warning signals at the very outset of a fraudulent transaction that should alert a potential victim that there is something not quite right with the deal. All too often, these are disregarded by the victim, who is instead consumed by the prospects of making a fantastic profit. These warning signals include:

- The offer of a commodity which is in great demand but not readily available at an unusually low price by a company with whom the victim has had no previous dealings and about which little is known.
- A request for unusual payment conditions including advance fee for port expenses, administration costs etc.
- The use of names that resemble, but are not those of, well-known trading houses.
- The use of pressure for the fast acceptance of offers and for letters of credit to be opened.

Apart from watching out for the warning signals, would-be victims can also take a number of steps to avoid falling into the fraudster's trap. Checks that buyers can make should be on: the background of sellers, through banks, embassies and other trade sources, requesting a full set of documents of title to the goods for
presentation under the credit, requiring the provision of a performance bond from the supplier's bank, calling for inspection, analysis, weight and other certificates to be issued by independent third parties, checking that the vessel nominated to perform the voyage has the capacity to carry the particular cargo, arranging for a cargo surveyor to go to the loading port to examine the cargo and supervise the loading operation. Additionally (and if practical), buyers should provide for a cargo surveyor to remain on the vessel during transit. (Mukundan: 2003)

2.5 The Ship Agent and Security of the Bill of Lading

The ship agent is also called the shipping agent. Branch (2007) notes that, an agent is a person who acts for, or on behalf of another (the principal), in such a manner that the principal is legally responsible for all acts carried out under such agency. He describes the agent as representing the ship owner/master at a particular seaport, either on a permanent or temporary basis by acting as follows: notifying the arrival and departure of vessels; accepting vessels for loading, discharge, repairs, storing and victualling, arranging berths, tugs, harbour pilots, launches, etc and ordering stevedores, cranes, equipments, and so on. He further mentions 'in port' activities which include ensuring the requirements of the master, such as bunkers, stores, provisions, crew mail and wages, cash, laundry, engine and deck repairs, and crew repatriation; completion of customs, immigration and port health formalities; hatch and cargo surveys; collection of freight; collection and issuing of bills of lading; completion of manifests; notorial and consular protest, marketing and sales role in accordance to the guidelines
laid down by the principal, and responsible for the welfare of the ship and its passengers.

While Moshi (2000) describes a shipping agency as the business of one company rendering delivering shipping services on behalf of the ship owner with the right and obligations for both parties specified and signed by the parties involved in the agency agreement, Sell (1975) views the shipping agent from a legal perspective as:

‘a relationship that exists between two parties that enter into agreement, whereby one of the parties, called the Agent agrees to represent or act for the other called the principal, subject to the principal’s right to control the agent’s conduct concerning the matters entrusted to him’.

The UNCTAD Minimum Standards describes the shipping agent as any person (natural or legal) engaged on behalf of the owner, charter or operator of a ship or of the owner of the cargo in providing services. These services include the following: negotiating and accomplishing the sale/purchase of a ship, negotiating and supervising the charter of a ship, collections of freight and / or charter hire where appropriate and all related financial matters, and arrangement for customs and cargo documentation and forwarding of cargo.

The importance of the ship’s agent is therefore enshrined in the functions and the liabilities entrusted to him by the ship owner. This is because the ship owner needs a representative who understands the local situations like marketing and port conditions, to take care of his ship in the foreign port and to handle all the necessary work for the ship owner (Moshi, 2000).
Moshi (2000) again observes that countries in the world do not impose professional qualification for ship agents. However, there are some implied requirements to be attained by a ship agent including sound financial base, sound professional, marketing, local procedural and technical knowledge, and reliable office.

In the opinion of Moshi (2000), lack of uniformity in existing standards prompted UNCTAD, in collaboration with other organizations to prepare a set of minimum standards as a non-mandatory model to be applied to the ship agency business as a guideline to help national authorities and professional associations establish their own standards. They are aimed at upgrading business standards of intermediaries, and focus on professional qualifications, financial qualification and professional conduct. For example Article 3(1) of the minimum standards stipulates among others that, in order to be professionally qualified, the shipping agent must have the necessary experience in the profession for at least three years in a responsible capacity with a qualified shipping agent; must have passed such professional examination(s) as required by relevant national authorities/professional associations.

The financial qualifications required by the minimum standards are aimed at preventing the operation of financially unstable individuals or entities, by requesting shipping agencies to have adequate financial resources and to be adequately insured against professional liabilities. The minimum standards also promote high level business ethics and professional conduct. Article 5 requires
the agent to discharge his duties to his principals with honesty and integrity, apply a standard of competence to perform in a conscientious, diligent and efficient manner, observe all national laws and other regulations relevant to the duties he undertakes, and exercise due diligence and care to guard against fraudulent practices.

The importance of a bill of lading in international commerce and the ease with which fraudsters succeed in laying hands on blank bills of lading, or the ease with which it was negotiated means that its security is critical in the operations of shipping agents.

2.6 Cargo Release Procedures

This section presents a summary of the procedures employed by shipping lines or their agents in releasing cargoes to consignees. It touches on various scenarios in the process and concludes with the various means by which fraudsters outwit the process in order to perpetrate their intended fraud.

2.6.1 Scenario 1: Release of cargo with original Bill of Lading

1. Consignee approaches the shipping line with an original bill of lading.

2. The shipping line (release officer) checks authenticity and if the details conform to details on the manifest. All things being equal, the bill of lading details must not contradict the manifest details and vice versa. The details
being referred to include the shipper's name and address, name and address of consignee and notify party, and the description, weight and other details of the cargo.

If the release officer is convinced about all the above, then he will go ahead and release the cargo to the importer who is usually the consignee, and in the case of "TO ORDER" shipments, the notify party. Prior to this, the importer must have obtained an invoice and paid for all local charges accrued on the shipment. These are usually container administrative fees, demurrage, and freight collect charges.

2.6.2 Scenario 2: Releasing cargo without presentation of Bill of Lading

This scenario is usually called telex release, sea waybill or express release. Communication is now by email due to technological advancement, but the use of the name telex derives from the old telex/telegraph communication. This release does not entail presentation of bill of lading, but is done by any one of the following:

(a) When the manifest indicates Sea waybill.
(b) When the manifest indicates Express bill of lading or Express release.
(c) When an email instruction has been received from the port of loading authorizing that cargo to be released without presentation of bill of lading, or cargo should be released on/against telex.
Under release without presentation of bill of lading, the consignee is made to fill an indemnity form and endorses it appropriately. It is to indemnify the carrier and his agent from any liability in case of any problem such as someone showing up later with a bill of lading for the same cargo. The consignee is also made to identify himself with recognized identification, a copy of which is kept on the file of the shipping agent.

When cargo is to be released as described above, the onus rests on the shipping line to furnish the importer with a copy of the bill of lading endorsed for him to do all his processing at all the stakeholder points (such as the destination inspection agency or the customs).

2.7 The occurrence of fraud in the cargo release procedure

Sometimes the consignee and his shipper have some credit arrangement whereby he ships the cargo down whilst he awaits payment. If the cargo is consigned straight to the consignee, the shipper does not dispatch the bill of lading to the consignee until he has received payment. If it is 'to order' shipment, he lodges the bills of lading with his banker who in turn sends it to the consignee's local bank in Ghana. There is the trust/agreement that the bank would protect his interest by not giving out the bill of ladings until they have received payment on behalf of the shipper. Most of the time, as a form of confirmation that the shipment has been effected, the shippers fax a copy of the bill of lading to the consignee. It is this copy that the consignee can use to forge the original bill of lading to steal the cargo if he intends to, because it contains all
the cargo details/information. This can occur if the consignee manages to get the shipping line to give accept for processing copy bill of lading and he does his processing with it. He may choose to bypass the shipping line and rather forge the signature and stamps of the release officer onto the Delivery Order. If he gets an internal collaborator to put the shipping line’s seal on the delivery order, then the fraud will go through. He may also get a collaborator at the terminal to make the fraud successful without the shipping line’s seal.

Alternatively, the consignee can convince the shipping line in Tema to furnish him with a copy of the bill of lading to use for his processing. He can then forge the endorsed copy bill of lading to steal the cargo. Thus, it is not prudent for a shipping line to issue a bill of lading to consignees without checking on their credibility. Even upon certification of a consignee’s credibility, issuance of bill of lading copy must be applied for by the consignee or his agent officially. In the event of anything going wrong, one should then be able to trace the steps. It is worth noting that there are sometimes internal collaborators in the shipping line who help in the perpetration of the fraud.

2.8 Electronic Data Interchange

There is an EDI system being used by port communities which should ideally curb these fraud incidents drastically. However there is the problem of the system not functioning correctly sometimes, so the manual system still comes to play creating the opportunity for the fraud.
CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents and discusses the methodological framework employed in this research. This consists of information about the description of the target population, the sampling technique and method, data collection methods and instruments used.

The essence of this study is to examine the challenge bill of lading fraud poses to shipping agencies at the port of Tema. It sought to provide baseline information on bill of lading fraud. In doing so, the study employed qualitative research methods designed to be descriptive and exploratory. This could not be achieved by one qualitative method. Consequently, the study triangulated various qualitative research approaches at various stages of the study. The term triangulation describes a growing family of approaches and methods 'combined so that the strengths of one method overcome the weaknesses of another method' (McIntyre, 1999). The qualitative methods triangulated in this study are the use of interview and focus group discussion (FGD) which was supplemented with informal discussion and observation. The search for knowledge in educational research has been characterized by two different views of social sciences: the positivist and the interpretative view. Qualitative research shares the theoretical assumptions of the interpretative paradigm, based on the notion that social reality is created and sustained through the subjective experiences of people involved in communication and attempts to accurately describe, decode,
and interpret the meanings of phenomena occurring in their normal social contexts.

They involve investigating the complexity, authenticity, contextualization, shared subjectivity of the researcher and the researched, and minimization of illusion. It is less likely to impose restrictive a priori classification on the collection of data. It is less driven by very specific hypotheses and categorical frameworks and more concerned with emergent themes and idiographic descriptions. It is hoped that this study will generate insights and pave way for further studies in the dynamic processes that inform the occurrence of bill of lading fraud at the port of Tema and Ghana in general.

3.1.1 Study Area

Tema is a city on the Atlantic Ocean coast, east of the capital city of Accra, in the region of Greater Accra, in Ghana, West Africa. Originally a small fishing village, it grew after the construction of a large harbour in 1961 and is now the nation's largest sea port. It is also home to an oil refinery and is an important centre of manufacturing. It is linked to the capital by railway and a highway. The port of Tema is one of Ghana's two deep seaports; the port of Takoradi is the other. The city is geographically positioned on the Greenwich Meridian; latitude 0 degrees and longitude 0 degrees. Due to its unique geographical location, it prides itself as the centre of the world. It has a population of 209,000 (2005). 80% of Ghana's import and export is handled by Tema.

3.2 Target Groups, Sampling and Sample Size

The study was conducted at the port of Tema. Twenty four (24) shipping agencies were identified as operating in Tema. Of these, purposive and snowball sampling were used to identify those liner shipping agencies who could meaningfully contribute to the phenomenon of the study by virtue of knowledge and experience. The researcher finally ended up with twelve (12) shipping lines. These shipping lines or agents are listed in Table 3.1. Of the twelve selected agencies, staff of the Freight departments, Customer Service, Sales/Marketing and Operations department were identified as relevant departments that have a direct link with the phenomenon under study, hence a derived population of 201 people of which a sample of 32 people were selected which constitutes 15.92% of the population.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Shipping Agency/Line</th>
<th>Population</th>
<th>Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MSC Ghana Limited</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>PIL Ghana Limited</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Delmas Ghana Limited</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>Otal Ghana Limited</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>CMA – CGM</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Blue Funnel Ghana limited</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Maruba Ghana Limited</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Nordana</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>9</td>
<td>Mesina Ghana Limited</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>Mol Ghana Limited</td>
<td>25</td>
<td>3</td>
</tr>
<tr>
<td>11</td>
<td>Zim Lines Ghana</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>12</td>
<td>Gold Star Line</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>201</strong></td>
<td><strong>32</strong></td>
</tr>
</tbody>
</table>

Table 3.1: Shipping Agency/Lines Selected for the Study
This all embracing criteria was informed by the fact that qualitative study is more conceptually dense and potentially more useful when based on widely varying instances of the phenomenon being studied. Therefore, this all inclusive criteria allowed the researcher to get a wide array of research respondents who provided rich descriptions of the phenomenon being examined, and who had the capacity to provide full and sensitive descriptions of that experience.

As indicated above, sampling procedures for this study included purposive, and snowball techniques. Purposive sampling is based on selecting a sample from which the most could be learned about the research question. Snowball sampling is a technique connected to purposive sampling whereby the researcher asks participants to recommend other individuals who may provide rich information regarding the research questions.

The adoption of these sampling techniques was largely due to the fact that the study subjects are not randomly distributed throughout the population. This therefore required of the researcher to use personal judgment to select the respondents for the study, as advocated by Bailey (1994). Kumekpor (2002) also indicates that in applying the purposive sampling technique, the units of the sample are selected not through random procedures but by intentionally picking them. This is because of their characteristics or they satisfy certain criteria which are typical or exhibit most of the characteristics of interest to the study. Certain criteria such as experience and willingness to talk were used to select the
shipping lines. Having selected the shipping lines, those agents who were willing to participate in the study were selected.

In picking a sample size for qualitative study, Alreck and Settle (1985) propose a sample size of 10% as representative of the entire population. For Kwafia (2006), anything ranging from 1-5 percent of the population should be adequate. Fraenkel and Wallen (2002), on the other hand, claim that there is no clear-cut answer to the question on sample size selection. In their opinion, the best answer lies in a sample which is as large as the researcher can rely on to obtain the needed data with affordable time and energy. According to them, the sample size should not be too small or too large; they recommend, instead, that researchers should endeavour to obtain as large a sample as they reasonably can have.

In all, a total of thirty-two (32) respondents were selected for the study. The sample size is deemed adequate because it follows the qualitative research tradition of choosing a smaller sample with the aim of developing an in-depth understanding of the phenomena under study. Representativeness of the various shipping lines selected was not adhered to strictly. Nevertheless, a sample of 32 respondents of key persons directly involved in the issuance and control of bill of lading should be adequate for some cautious generalizations.

3.3 Data Collection Method and Instrument

A methodological triangulation of interview and focus group discussion was used to gather information for the study. The selection of these methods was informed by the ease of administration, ease of eliciting response, validity and reliability of
the instrument, practical limitations of time and cost and more importantly, the fact that this work is more qualitative. These methods are discussed below.

3.3.1 The In-depth Interview

The major instrument used in gathering data for the study was the interview. Data was collected from some of the respondents with the use of interview. These interviews varied according to content such as seeking factual information, or opinion or attitudes (Kvale 1996:101). An interview as a research tool may range from structured interviews, in which questions are asked and the answers are recorded on a standardized schedule, through less structured interviews in which questions may be modified or added in the process; to entirely informal interviews based on key issues raised in a conversational way. In view of the fact that a structured interview does not allow flexibility to explore interesting issues that arise, and an unstructured interview does not provide enough focus, a semi-structured interview consisting of both open ended questions and closed ended questions was used. Kvale (1996) explains that semi-structured interviews differ from structured interviews in that there is a certain openness to changes of sequence and forms of questions.

According to Seidman (1998) the root of in-depth interviewing is an interest in understanding the experience of other people and the meanings they make of that experience. The semi-structured interview provided flexibility in the order and wording of questions.
Notwithstanding, interviews are beset with some weaknesses. They are time-consuming and energy-sapping. Also, requirements of the knowledge of the respondents' language can pose a problem in some instances. Such situations may require interpreters who may introduce further problems. This problem was easily done away with because all the respondents spoke in English. There is also the imposition of the researcher's views over the interviewee which does not allow the respondent to answer questions at his or her leisure. Additionally there could be for example, poor recall of facts or falsification of facts, (Sarantakos 1998) which undermines the reliability and validity of the study results. The interview data were collected from the shipping line agents using a semi-structured interview. The reason was to allow the respondents to express their own perspectives in their own words and in open-ended and non-directive ways.

Each interview began with some preliminary remarks to create a relaxed atmosphere and a trusting relationship. The purpose of the study was explained to the informants and they were assured of confidentiality of the information they were to give. The consent of the interviewees was requested before an interview was done. The interview explored various areas of the activities of shipping agencies. The same questions were asked of each participant, with follow-up questions according to the flow of the interview. The follow-up responses opened up new avenues of inquiry in subsequent interviews. Each interview session lasted between 20 - 35 minutes. Most of the interviews were recorded manually whilst a few were taped.
3.3.2 Focus Group Discussions

Another instrument used to collect data was the focus group discussions. This instrument was used to get further insights into the experiences, thoughts and concerns of the agents. Three group discussions each made up of five (5) shipping line agency staff were held. Topics discussed in the discussion groups were generated from the interview questions. The discussions which took place at an open yard within the port were tape recorded.

3.3.3 Complementary methods

The in-depth interview and the focus group discussion methods were supplemented by observation and some informal discussions. The observation method was also used to observe the cargo release process of the shipping agencies, the manner in which the agencies conducted their activities, and more importantly how bill of lading fraud occurs. According to some social researchers, observation is an important supplementary technique for research that is based on interviews. It guides the interviewer in knowing questions which may need further exploration, when it might be helpful to encourage the participant or when to abandon a line of questioning.

Additionally, informal discussion encounters with shipping agents were undertaken. These informal discussions and relations were tremendously useful. They facilitated access to some unusual but useful information. In mainstream qualitative studies, the general pattern has been to utilize a single approach, such as participant observation or interviews or both. This study however made use of other unusual forms, for as suggested by Creswell these unusual forms
create reader interest', and help 'capture useful information that observation and
interviews may miss' (Creswell, 2003:118).

3.4 Validation of Instruments and Problems Encountered on the Field

The instrument used in collecting data was the interview guide, which listed
areas where the researcher wanted to explore. Before the actual data collection,
the interview guide was subjected to pre-testing to ensure consistency in the flow
of the questions.

Even though this was done, during the data collection exercise, a number of
problems were encountered. The first was the fact that most of the respondents
were busy with their work schedules and therefore making adequate time for
interview or focus group discussion was a challenge. The researcher however
managed to overcome this problem through re-scheduling of meetings where it
became necessary. Moreover effort was made to ensure that the interviews did
not take too much of respondents' working time.

Secondly, some of the respondents were reluctant to share information that they
thought was confidential. In such instances, respondents were assured of the
maintenance of their confidentiality and that the study was only for academic
purposes. This diffused their apprehensions and helped the successful
completion of the field data collection.
3.5 Data Analysis

Concepts are the basic units of analysis and therefore conceptualizing the data became the first step in the analysis (Strauss & Corbin 1990). First, coding was used to identify concepts from transcripts of interviews and discussions. The transcripts were reviewed one by one, and line by line for generation of categories. Labels were written down besides the categories so that different categories that represent same concepts and ideas were summarized into themes. As the categories became more refined, themes, patterns and regularities developed. Through this, the materials were organized into a manageable form and meaning put into the data. In simple terms, the analysis of the data took the form of retelling the story of the respondents with specific emphasis on significant statements that had bearing on the focus of the study and its objectives. These statements were extracted and treated within the context of the study objectives. They were then interpreted to make generalization possible.
CHAPTER FOUR
PRESENTATION OF FINDINGS

4.1 Introduction

This study focused on the challenge bill of lading fraud poses to shipping agencies at the port of Tema. In specific terms however, the study is guided by four (4) main issues, namely, to examine the nature and scope of bill of lading fraud perpetrated through the port of Tema, determine the major perpetrators of bill of lading fraud, examine the administrative procedures shipping agencies have put in place to ensure security of their bill of lading, and finally, recommend measures for improving the detection of bill of lading fraud in the operation of shipping agencies at the port of Tema.

In pursuing these issues, the study employed the qualitative research methodology. This however could not be achieved by a single qualitative method. Consequently, the study used in-depth interviews and focus group discussions (FGDs) and supplemented by observations and informal discussions. In-depth interviews were undertaken with key informants from shipping operation practitioners and three (3) focus group discussions (FGDs) conducted. Each FGD involved five (5) discussants of various operational backgrounds. Simultaneously taking place with interviews and FGDs were observations and informal discussions. These methods were tremendously useful. They facilitated access to some unusual but useful information. The procedures for sampling were purposive and snowballing.
This chapter is a detailed presentation of the findings from the study. It begins with the presentation of the general characteristics of the agencies or respondents of the study, followed by the nature and form of bill of lading fraud at the port, perpetrators of the fraud, administrative procedures shipping lines have put in place to ensure security of their bill of lading, as well as recommended measures for improving the detection of bill of lading fraud at the port of Tema.

4.2 Some Demographic Characteristics of Respondents

Knowledge of the characteristics of the study group was important. For example, it helped to understand the dynamic imperatives that inform the occurrence of the bill of lading fraud phenomenon. It also helped to appreciate the differences and similarities that exist among the various shipping lines from which respondents of the study were drawn. The study involved twelve (12) shipping lines operating at the port of Tema. These twelve (12) shipping lines have been presented in table 3.1 in chapter three. All the twelve shipping lines were visited, and principal persons interacted with.

4.2.1 Respondents' Operational Areas and Experiences

In the course of gathering the data, interactions were made with shipping line operators with diverse backgrounds. They included people in Sales departments as sales managers, Imports and Freight departments as import managers, freight managers and shipping assistants, and Customer Service departments as customer service executives. Majority of the individuals whose views are presented below however, are freight managers and freight assistants. It is these
shipping professionals who are responsible for the issuance and receipt of bill of lading, and are in constant interactions with the phenomenon of bill of lading fraud. The experiences of the respondents in their positions were very rich. Apart from the few who had been in their positions for less than five (5) years, the rest of the respondents indicated that they had high level experience of the requirements of their positions. In Table 4.1, I present the years of experience of interview respondents of the study.

<table>
<thead>
<tr>
<th>Years of experience</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 Years</td>
<td>3</td>
<td>9.4</td>
</tr>
<tr>
<td>2-4 Years</td>
<td>5</td>
<td>15.6</td>
</tr>
<tr>
<td>5-7 Years</td>
<td>5</td>
<td>15.6</td>
</tr>
<tr>
<td>8-10 Years</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>11-13 Years</td>
<td>7</td>
<td>21.9</td>
</tr>
<tr>
<td>14+ Years</td>
<td>4</td>
<td>12.5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>32</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Field Data Collection, May 2009

**4.2.2 Education and Training of Respondents**

As practitioners of shipping operations, respondents of the study were asked the level of education or training they had attained in the profession they practice. The data reveals that, by far, a majority of the respondents had high level of formal education in their chosen areas. Almost all respondents had tertiary training in the field of shipping operation. There were some respondents with Bachelor's Degree and Higher National Diploma (HND) in shipping management, port and shipping administration and port operations. There were a few others
with professional certificates and post-secondary training certificates in various port operation activities including freight management (release and forwarding), and import and export operations. In Table 4.2 below, the education and training background of the respondents are presented.

<table>
<thead>
<tr>
<th>Years of experience</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate (Freight Management)</td>
<td>2</td>
<td>6.3</td>
</tr>
<tr>
<td>Certificate (Import/Export Operations)</td>
<td>3</td>
<td>9.4</td>
</tr>
<tr>
<td>HND (Port Operations)</td>
<td>7</td>
<td>21.8</td>
</tr>
<tr>
<td>BA (Shipping Management)</td>
<td>9</td>
<td>28.1</td>
</tr>
<tr>
<td>BA (Port &amp; Shipping Administration)</td>
<td>11</td>
<td>34.4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>32</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Field Data Collection, May 2009

4.3 Understanding the Nature and Form of Bill of Lading Fraud

This section of the data analysis and discussion explores bill of lading in general and introduces the fraudulent acts associated with it. It begins with what goes into the preparation of the bill of lading, and also describes the types of the bill of lading in use in the operation of the shipping lines. Following this is an introduction to the bill of lading fraud, the conditions under which the bill of lading fraud occurs, and the kind of the bill of lading fraud perpetrated at the port of Tema.

4.3.1 Preparation and Forms of Bill of Lading

Understanding the nature and form of bill of lading fraud requires that, the preparation of the bill of lading document is equally understood. Attempt to understand bill of the lading preparation process was therefore done in this study
to put the discussion in proper context. As such, the study participants (respondents of interviews and focus group discussants) were queried on what goes into the preparation of a bill of lading document.

First, the data reveal that, preparation of a bill of lading begins after some activities related to shipping operations have been undertaken. This includes booking of space by a customer on a vessel. This paves the way for the provision of empty container(s) for packaging of consignment for onward shipment. Thereafter, a shipping instruction is prepared containing such particulars of the customer (it could be the shipper or forwarder), the name and address of the consignee, the port of loading, port of destination, name of the vessel, vessel number, freight charged and where it is to be paid, and expected time of departure. In addition to this information, the shipping instruction provides details of the consignment including its content, quantity, weight, volume, seal number, and container sizes, among others.

This information is used to generate booking for the cargo to be transported to the destination port. A bill of lading is then generated with the information on the shipping instruction form. It is then signed and stamped by the appropriate officer. The bill of lading constitutes receipt of cargo. The customer may take a copy of it even before all payments are made. After payment of all freight and other costs, three original copies are made available to the shipper or his forwarder acting on his behalf. The shipper then posts these three original bills of lading to his consignee at the port of discharge. The shipping agency also
furnishes the master of vessel and the port of discharge/destination with non-negotiable copies alongside the cargo manifest.

There are a number of bills of lading. In the focus group discussions undertaken for the study, respondents were made to discuss the various bill of lading types available. These FGDs yielded some dimensions of the understanding of bill of lading. For instance, mention was made of a through bill of lading, combined bill of lading, ordinary bill of lading, carrier's bill of lading, house bill of lading and clean bill of lading. The clean bill of lading for example was explained by a participant to mean that information given to the carrier or his agent at the time of transacting the business, and which was used to generate the bill of lading corresponds with the physical detail of the cargo. For instance, seventy (70) cartons of soft drinks can not be said to be more or less at a later date. If that happens, the bill of lading will be said to be unclean in that it will contain a restrictive clause asserting the disparity.

4.3.2 Bill of Lading Fraud at the Port of Tema

Respondents were made to explain what they understood to be bill of lading fraud. The general understanding was that, bill of lading fraud is the altering of information on a receipt of transaction (bill of lading) or a situation where a person forges a carrier's bill of lading and presents it at a destination office for claim of cargo. In a somewhat similar manner, some respondents were of the view that, bill of lading fraud is the release of consignments without the original bill of lading. The forgery associated with bill of lading, as indicated in the first
explanation of bill of lading fraud, could take the form of falsification in signatures, or any unauthorized alteration whatsoever on the bill of lading in terms of quantity, freight payment terms et cetera in order to evade payment and/or obtain cargo by deceit. In actual fact, the alteration could be in relation to any of the information provided on the document. However, much of the falsification is related to signatories and name of the cargo receiver. Some statements made during in-depth interviews that reflect respondents' understanding of a bill of lading fraud are reported:

A bill of lading fraud is the use or attempt to use a forged bill of lading to secure release or claim ownership of goods shipped. Bill of lading frauds are likely to occur when bill of lading is to the order of a bank.

A bill of lading is termed fraud when the customer, that is shipper or consignee, alters the information on the bill of lading.

In focus group discussions, it was realized that, a better understanding of bill of lading fraud could only be provided if the purpose of the document is properly understood. To this end, discussants were committed to explaining the purpose of the document. It was indicated that, the bill of lading performs three major functions. First, it serves as a receipt for cargo delivered to a carrier for onward shipment to another destination. Secondly, it is considered a document of title, which means that the holder of the bill of lading is the owner of the cargo, and lastly a document of contract, which also means that the parties involved have agreed on the terms and conditions of the transactions and that any breach will amount to a breach of contract. In serving these purposes then, fraud could
occur if the information on the bill of lading are altered, or the freight payment terms evaded. Alternatively, bill of lading fraud could occur if the cargo is released without the original bill of lading.

Certain conditions make the occurrence of bill of lading fraud possible. In an opinion sharing interaction with interview respondents and focus group discussants, it became apparent that one of the surest conditions which give rise to bill of lading fraud is the failure to pay freight by the consignee before the cargo arrives at the port of the destination country. This condition was cited by a number of interview respondents. In the process, as intimated by one interviewee:

_The document (referring to bill of lading) can be forged as though freight and other costs have been paid, and later presented for the delivery of the cargo._

Another condition for the occurrence of bill of lading fraud relates to mismatch of the description of goods on the manifest and what the container contains. As an example, a customer may make shipment of consignment containing personal effects or second-hand clothing. If at the port of delivery the customer makes alterations to the bill of lading description and succeeds in getting it released to him/her (e.g. the container contains vehicles instead of personal clothing), the process involves forgery of bill of lading. There are other conditions that make the occurrence of bill of lading fraud possible. One focus group discussant intimated that, in a situation where the original bill of lading gets lost, it could land
in the hands of a miscreant who may use it to claim the cargo. Interview with one of the Freight Manager provides insight on this:

A guy was supposed to be receiving a container loaded with goods and shipped from the U.K. The bill of lading was submitted here, but when the ship arrived, the said container did not contain anything. Meanwhile the shipper had given the consignee a bill of lading that had indicated that the container contains some goods. Since the bill of lading issued by the Shipping Line indicated that the container was ‘said to contain’, the Shipping Line was not liable because she (the shipping Line) was not there when the container was loaded with the said goods. The line only indicated on the bill of lading, what the shipper said was contained in the container. This is a case of fraud perpetrated by a shipper against a buyer who might have paid money to the shipper.

What the above means is that a fraudster gave false information with regards to the contents of a container, to a shipping line on his shipping information form. The said information was used by the shipping line to prepare the bill of lading, which was given to the shipper. The shipper then gave the original bill of lading to the consignee, who might have been made to believe that goods have been stuffed in the container, and which he may have paid money for. On arrival of the ship at the port of Tema, the consignee presented the original bill of lading to the shipping agent, upon which the shipping agent released the said container. On opening the container, it was found to be empty. This is a typical case of bill of lading fraud perpetrated by a shipper who is an obvious fraudster.

An interviewee reported a case in which an importer of 12 X 40’ (refrigerated) containers approached him offering a large sum of money if he would release the cargo to her. She confided in him that she had only made part payment of the value of the cargo and until she had been able to make the full payment her
shipper was not going to give her the original bill of lading. She however needed to sell the goods that had arrived in order to get money to pay the shipper the balance owed him. He blatantly refused her offer.

According to him, he was intrigued when the woman returned later in the day to see the expatriate Managing Director of the shipping company with the issue. He was intrigued because importers and clearing agents who get themselves embroiled in deals usually deal with the sector managers and schedule officers. To go to the extent of taking this to the MD showed a situation of abject desperation. According to the interviewee, the MD turned her request down and pointed out to her that what she wanted to do was a criminal act punishable by law and that she ran the risk of being prosecuted and also being blacklisted by the carrier.

When asked if anything could have been done under the circumstance. The answer was an outright no. The way out was for the importer to pay the shipper and obtain the original documents. The interviewee intimated that he took measures to ensure the safety of the cargo in question, in that, with the kind of desperation exhibited by the importer, forging the original bill of lading to outwit the release officers was not farfetched. Measures taken and which were minuted in the manifest were;

1. That the cargo should only be released against presentation of the original bill of lading.
2. That no copy bill of lading should be issued to the importer for processing.

3. That release of the cargo should be referred to him personally.

4. That an instruction has been given to the officer at the terminal to keep an eye on the containers. He elaborated that it was a form of restriction put on the physical containers so that any attempt to move them without due process would be reported to the office with immediate effect.

When asked whether it could really be possible for the cargo to be moved when the shipping line had not released it, the interviewee responded “anything is possible in Tema”.

He explained that these days there were quite a number of slot arrangements between various lines. He gave the example where he could buy a Kenya Airways ticket here in Ghana and yet the physical airplane he boards at the Kotoka International Airport to his destination could be KLM. This is made possible because there is a slot agreement between Kenya Airways and KLM. He said such slot agreements exist between shipping lines as well. If the importer should approach a slot partner who agrees to help her take delivery of the cargo, all that the slot partner needed to do was to re-manifest the cargo on another vessel. This in itself is an act of fraud. He explained that when the slot partner had gotten the duty from the importer, he would release the cargo without the original bill of lading. By doing this he would not be following laid down release procedures.
That is the scenario under which cargo can physically disappear from the port when the shipping line responsible has not released it. The interviewee believed that with the measures he took, no amount of machination on the part of the importer could work. Asked if the importer could not be helped in this situation, the interviewee retorted that "we cannot release cargo without the original bill of lading. Such an action would be an indictment against the shipper, the line and our own selves as an agency."

He mentioned that shipments, and for that matter, containers are usually tracked on the internet. Thus a shipper who tracks his shipments regularly can easily find out if the shipment has been released or not. If he finds it released when he still has the original bill of lading in his possession, that becomes an automatic claim against the carrier and agency. Even if no financial loss is realized, it can be grounds for a case to be established against due process not having been followed.

Another intriguing finding was given by an interviewee who said his signature was forged to take delivery of two reefer containers from the port. The culprits were in the process of taking delivery of the third container when they were apprehended. Narrating the incident, he said the so called consignee called at his office to check on the arrival of her containers. She was furnished with the ETA which bore a future date. She then said she would like to take delivery of the containers upon arrival but she did not have the bill of lading in her possession. According to her, she had paid part of the value of the cargo and she had
information that the supplier was trying to sell the cargo to another party if she did not pay up the difference by a certain date.

The interviewee said he gave her a brief education of the shipping business and reiterated to her that she could not take delivery without an original bill of lading. She then left and he did not hear from her again until he was told that customs had intercepted a reefer container upon a tip off by the true consignee. Apparently, the supplier had transferred the cargo to someone else and furnished that person with a full set of 3/3 original bills of lading, which gave him title to the cargo. It was this new consignee who gave the tip off that his cargo was being taken out of the port. Upon investigation it was realized that the first of two reefer containers had been successfully taken out of the port fraudulently.

Investigations revealed that the release officers' signature had been forged on the manual delivery order. The interviewee explained that a presentation of an original bill of lading was to obtain a delivery order. It therefore made sense that a fraudster who is not in possession of the original bill of lading would rather side step it and forge signatures onto a delivery order since after all the ultimate intent of bill of lading forgery is to obtain the cargo. The interviewee said his shipping line notified the Ghana Ports and Harbours Authority (GPHA) about the incident as the containers were in their custody at the time the fraud was committed. GPHA set up a committee of enquiry into the matter but the interviewee had not
as at the time of the interview been made aware of the findings. He intimated the matter was currently in court.

4.3.3 Bill of Lading Fraud: More Empirical Evidence from the Port of Tema

More empirical evidence of the occurrence of bill of lading fraud were reported in the data collection process. These cases were not many though, but they offered good grounds for understanding the nature of bill of lading fraud away from those existing in the available literature. These cases were few because of the sensitive nature of the phenomenon, as well as the criminal intent associated with it. From both in-depth interviews and focus group discussions, participants provided concrete cases of the occurrence of bill of lading fraud at the port of Tema. Three cases of this phenomenon are presented as illustrations.

Firstly, and the most common is related to the shipment of stolen vehicles. The data show that, some criminals steal vehicles in western countries and in shipping these vehicles to Ghana through the port of Tema, they indicate ‘other’ items on the shipping instruction form (e.g. perfume products). On arrival at the port of Tema (the destination port), the manifest information must correspond with the declaration made by the consignee. At this point, the consignee negotiates for compromise of port officers to change the items declared originally. When the process gets this way, a new bill of lading (fraudulent one of course) is prepared to indicate the stolen items (vehicles) and is therefore used for the release of the cargo.
The second empirical evidence of bill of lading fraud is the release of cargo without original bill of lading document. This was one of the most frequent cases observed in interaction, conversation, interview and discussions with the study respondents. This occurs when original bill of lading gets misplaced and falls into the hand of a miscreant. In this case, the miscreant can present the bill of lading document to claim ownership of the cargo. In this case, the bill of lading changed hands, and was used for criminal purpose. First, the cargo owner loses the whole consignment, a situation which presents huge financial loses. Secondly, the miscreant makes undeserved gain. He or she may sell the items cheaply.

The third empirical evidence of bill of lading fraud is in relation to forgery of the document. This occurs in most cases in relation to forgery of authorizing signatory or signatories to make claim of the genuineness of whatever transaction the document is being used for. There are other instances where forgery/alteration is made in quantity of items on board the vessel. As indicated by one freight manager, some bill of lading forgeries affect the entire document. Here, as indicated by the manager, a whole counterfeit bill of lading document is prepared and presented with the intent of clearing the cargo. This case is often difficult to detect as every detail provided on the document appears to be genuine. In other words, there would be no evidence of alteration on the document and yet the authenticity of it can not be established. This case often requires additional effort to ensure detection.
4.4 Bill of Lading Fraud: Frequency of Occurrence and Liabilities

In the course of data collection, specific attempts were also made to understand the frequency at which bill of lading fraud occurs at the port of Tema as well as the liabilities of such acts on shipping agencies. These issues were pursued with representatives of shipping lines who are the interview respondents and focus group discussants of the study.

It was realized that, the frequency of occurrence of bill of lading fraud was very much specific to organizations. In other words, different organizations have different experiences of the frequency with which bill of lading fraud occurs. This notwithstanding, an attempt at synthesizing the data has been made. In general, the data suggests low frequency of the occurrence of bill of lading fraud. It is possible for shipping lines to operate for about five years without experiencing any bill of lading fraud. This however is not to suggest that the phenomenon does not occur. It occurs in some organizations and thereby presents liability challenges to such organizations. Sometimes, as argued by a few respondents, bill of lading fraud can occur every year. The rule here is about what security measures are in place to effect bill of lading fraud detection and also to prevent bill of lading fraud from occurring in the operation of shipping lines. In the table below, we present the cases of the occurrence or frequency of bill of lading fraud occurrence in some shipping lines.
Table 4.3: Distribution of the Occurrence of Bill of Lading Fraud in some Shipping Lines

<table>
<thead>
<tr>
<th>Shipping Lines</th>
<th>Frequency of Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMA-CGM</td>
<td>Once since 2008</td>
</tr>
<tr>
<td>African Steamship (Hull Blyth)</td>
<td>Twice in the past 3 years</td>
</tr>
<tr>
<td>Mediterranean Shipping Company</td>
<td>Once since 2007</td>
</tr>
<tr>
<td>Delmas (CMA-CGM)</td>
<td>Once in the past 4 years</td>
</tr>
<tr>
<td>Hoegh Auto Liner (Antrak Ghana Ltd.)</td>
<td>Three times in the past 13 years</td>
</tr>
<tr>
<td>Mesina lines (Antrak Ghana Ltd.)</td>
<td>Twice in the past 13 years</td>
</tr>
<tr>
<td>Nordana (Antrak Ghana Ltd.)</td>
<td>Twice in the past 13 years</td>
</tr>
<tr>
<td>Mol Ghana Limited</td>
<td>Once in the past 5 years</td>
</tr>
</tbody>
</table>

Source: Field Data Collection, May, 2009

Even though the data in Table 4.0 above may suggest that bill of lading related frauds do not occur frequently at the port of Tema, it is important to note that where a fraudster succeeds in perpetuating a single bill of lading fraud, the liabilities to be borne by the shipping line or its agent could run into several thousands and millions of dollars, depending on the cargo involved. For instance, in the Wednesday, March 10, 2004 edition of the Ghanaian Times, it was reported that Star Assurance, an insurance company paid a claim totaling $50,760.00 to SDV Ghana. According to the report, the payment was in respect of professional indemnity as a result of goods cleared with false documents.

In a related scenario, a shipper in India through its legal counsel wrote a legal notice to a group of shipping lines and their agents claiming an amount of Rs. 58,28,520/- within thirty days from the date of receipt of the legal notice. The
claim was for default/deficiency in service, breach of trust, cheating and conspiracy. (See appendix III for details).

Touching on liabilities incurred by her company, a Freight Manager in one of the in-depth interviews made the following statement;

An incident occurred when a customer managed to clear his goods without an original bill of lading and without paying demurrage charges. The company ended up losing a lot of money as a result. All this was done with the connivance of staff members.

What the above statement means is that in some instances, bill of lading frauds are perpetrated with the connivance of unscrupulous employees of the shipping agencies.

It was also reported during one of the in-depth interviews that a shipping agent incurred liabilities running into over half a billion dollars. The said company has been paying the liability since 2006. This shows the extent to which a single bill of lading fraud can put a ship's agent into a serious financial crisis. This situation indeed calls for a serious scrutiny of the use and security of the bill of lading.

4.4.1 Perpetrators of Bill of Lading Fraud

It is understood from the review of literature that the bill of lading fraud has been on the increase in recent years, and has resulted in shipping lines and their agents incurring huge financial liabilities. The study therefore sought to understand who the perpetrators of the bill of lading frauds are, and the purpose for doing so.
An interesting case which was reported by one respondent during the field work was about a supposed shipment of copper cathodes from Tema to Shanghai in which the supposed consignee was being given some phone numbers to call and get confirmation on the shipment details. The interviewee however detected that the bill of lading was fake. He gave the following analysis:

(a) The bill of lading number did not conform to the standardized way of numbering bills of lading by the respective shipping line.

(b) The shipping line in question as a matter of policy did not carry bulk cargo.

(c) The contact number given in the said email was not known to the CMA CGM group, neither does any staff exist by the name mentioned.

(d) The said signature was unknown to the CMA CGM group to which Delmas belongs.

This is purely a fraudulent shipper making frantic efforts to defraud a seemingly unsuspecting consignee by proving to him that his cargo has been shipped. If his due diligence check had not revealed the fraud, he would have ended up parting with funds for no goods shipped.

In a related case, an interviewee narrated an incident where his colleague in the same organization confided in him that he had been approached by a man of foreign nationality offering to pay him USD50,000 if only he would give him a full set of blank 3/3 original bills of laden, well stamped and signed. He turned down
the offer he said. This is an indication that bill of lading fraud is rife in Tema and as the literature review suggested, is prominent in the shipping industry. The gentleman who was made the offer could have accepted it and with that quantum of money made his way out of the country with his entire family long before whatever fraud the supposed fraudster used the original blank endorsed bill of laden for could be uncovered. The fraudster himself, more so being a foreigner, would have long disappeared.

An interviewee gave a harrowing experience of a bill of lading fraud that was perpetrated on his company, SDV Ghana Ltd. According to him, the fraud could have been averted had they acted swiftly on an instruction coming from their sister agency in Nhava Shiva, India. The instruction as he puts it was that a 1 X 20' full container load said to contain 325 pieces of 100% cotton printed bedcovers and pillow covers in transit to Togo were to be shipped back to the port of loading, Nhava Shiva. Though the instruction had not been made explicit, the intention had been suggested in previous communications whereby the Mumbai agency had asked for the tracking status of the cargo. The arrival of the cargo in Tema had been captured affirmatively to the Port of Loading (POL) and they asked that the cargo be put on hold.

According to the interviewee, such instruction, as per their normal practice, should have been minuted on the cargo manifest used in cargo release. This was
not yet done at the time the fraud was perpetuated. Had it been done, it would have been discovered at the time of release that there was an 'embargo' on the cargo. He said what would have happened under such a circumstance was for the release to be held back and a mail sent to the port of loading notifying them that they had been approached by the consignee with the original bill of lading asking to take delivery of the cargo on which they had placed the embargo and that they should advise. He said they could have asked the port of loading to check with the shipper who could then check with his bankers if payment had been received for the shipment. A response in the negative would then have exposed the fraud as the presenter of the original bill of lading could have been arrested for fraud.

The interviewee conceded that the forged bill of lading against which the cargo was released was indeed a forgery of near perfection and it would ordinarily not have been detected without any tip off. Asked if any disciplinary measure was instituted against him and/or his company he admitted that his benefits for that year was frozen and the company after a series of legal threats had to pay for the value of the cargo. He however stated his job was saved because his company had an insurance policy that covers acts of such nature whereby employees in the discharge of their responsibilities are protected when mistakes of such nature are committed. This policy according to him is called Professional Indemnity. This was an eye-opener in that P&I clubs are usually the institutions known in shipping circles to be responsible for insurance claims.
It suggests therefore that a shipping agency can have insurance policies to cover their staff in the event of any unintentional act of theirs culminating in financial loss to the shipping agency. The interviewee said that Star Assurance Company on behalf of the shipping agency paid a whooping sum of USD50,760.00 to the shipping agency as claims to the shipper.

On whether the incident was reported to the police, he replied in the affirmative and did say that the clearing agent was arrested but somehow maximum cooperation on the part of the police was not forthcoming and eventually the case died a natural death. This brings to mind the assertion by Brown (1993) that false bills of lading have also found their way into the system and one hears reports where these bills have been presented to shipping agents by bogus consignees who take delivery of goods at discharge ports and are not seen again.

Generally, bill of lading frauds can be perpetrated by all stakeholders in the shipping transaction, but major perpetrators identified by respondents in both the focus group discussions and in-depth interviews are; the forwarding and clearing agent, exporters and importers, consignees and their agents. It appears from the responses that clearing and forwarding agents who seem to have conspirators within the industry connive with their conspirators to perpetrate bill of lading fraud.
The main reason for engaging in bill of lading fraud was to gain financial advantage over others in the transaction, or to amass wealth illegally. Thus, in some instances, it is done to avoid the payment of demurrage to the shipping line, or avoid the payment for the consignment. In such instances, the person who receives the consignment through the forged bill of lading steals the cargo and evades payment to the shipper. Below are some statements made in respect of why people engage in bill of lading fraud.

*To earn some money at the expense of the shipper, carrier, or bank.*

*To beat the system, that is, take release of cargo without going through the proper channels.*

*People engage in bill of lading in order to make cheap money.*

*People do it because they want to get quick money.*

Another reason why a person may engage in bill of lading fraud is to make huge profit on the goods imported. This is especially the case when a bill of lading is altered to evade the payment of freight and other charges to the shipping line. Another picture which was presented during the focus group discussions is where individuals who want to secure a visa to travel abroad sometimes manage to secure a forged bill of lading on which they indicate that they are importers. The forged bill of lading is then presented to the high commission or embassy of the country they intend to travel to for a visa.
4.5 Procedures for Ensuring the Security of Bills of Lading

In view of the fact that a blank bill of lading in the hands of an unscrupulous person could result in huge losses to a ship's agent, there is the need for proper handling. The study therefore examined the kinds of procedures put in place by ship's agents included in this study to ensure that their blank bills of lading are safe and secure. In the focus group discussions and the in-depth interviews, respondents were asked to describe how their organizations ensure the security of their blank bills of lading.

The responses reveal that even though most of the organizations do not have laid down procedures as far as the security of blank bills of lading are concerned, the bills are normally kept under lock and under the responsibility of a manager – usually the freight or export manager. The idea is to ensure that the bills do not end up in the hands of unauthorized persons, who may release them to fraudsters for financial gains. Below are statements made by respondents in relation to the above;

*Our blank bills of lading are kept in a lock. The key is kept with the manager alone and since his credibility is at stake, he makes sure that they are properly controlled.*

*The bill of lading is kept under lock and the key with a responsible officer who will not condone with those who need them for fraudulent purposes.*

Apart from keeping the bills under lock, it also came out that they are serially numbered, with all the numbers recorded and accounted for as they are used. Any gap detected is reported to all the agents of the shipping line across the
world where the line operates. In so doing, all the bills of lading are tracked. The statements below were made by respondents and they confirm the above;

Our bills of lading are kept under lock, under the care of a manager. Their serial numbers are recorded. As and when they are used, records are kept on them.

The bill of lading is kept under lock by the Freight Manager. They are also numbered and so any gap identified means a missing bill of lading. There is however strict checking.

Moreover, in printing the bills of lading, some of the organizations also incorporate some security features, which the organization alone knows about and which are detected upon subjecting the bill of lading to electronic detectors. Accordingly, agents that have managed to put such procedures in place are better able to ensure the security of their bills.

The company has the machine used in detecting altered bills of lading. Like the fake currency detector, this machine is able to detect forgeries on the bill of lading.

In other instances, signatories to the bills are limited and specimen circulated to all the agents of the shipping line across the world. In doing so, any bill submitted for release of cargo is checked against the authorized signatures. Any inconsistency is queried and verified for the appropriate action to be taken. Authorized signatories are also held responsible for their signatures and the viability of the bills they sign. As a result, they are careful and ensure that the bills go to authorized persons.

In spite of the above measures to ensure the security of blank bills of lading, some of the respondents also noted that lapses exist in their organizations.
These lapses are due to the fact that most of the procedures are human centered and human beings may be open to influences from potential fraudsters. Some respondents made the following statements when asked whether they perceived the administrative procedures in dealing with bill of laden related fraud to be adequate;

One cannot assure of a secure system because it is human beings who operate the system.

There are laxities because for effective monitoring of bills of lading, there should be limited signatories. Here, new signatures appear every now and then and we don't have limited authorized signatories.

Consequently, respondents were asked to indicate what administrative procedures they thought could help insulate bills of lading from fraudulent acts. In response, varied responses were given, among which are; the education of staff on the importance of the bill of lading and the need to safeguard it, effective management of its printing, storage, and usage, the use of electronic devices in order to generate the bill of lading, the provision of more information about the consignee on the bill of lading in order to facilitate easy location, motivation of staff, and embossing security features on the bill of lading when printing. It was also suggested by a respondent that the bill of lading should be designed and saved on a computer so that the shipping instruction details can be inputted directly onto it before printing. In this way, customers cannot have access to the blank bill of lading.
CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

In the preceding chapter, primary data gathered from the field have been analyzed in the light of the specific objectives of the study. In the present chapter, key findings from the analyses of primary data are summarized and conclusion based on the findings drawn accordingly. The chapter concludes with some recommendations for policy actions. Viewed against the intensification of the inter-connectedness of the world, the increase in international commerce and Ghana's effort to make its ports the gateway to the West African sub-region, there is greater need to significantly reduce, if not entirely eradicate the incidence of bill of lading fraud at the port of Tema. This calls for policy initiatives, which may require restructuring the legal framework within which shipping agents operate at the port of Tema. Moreover, since the ship agents have significant roles to play in the logistics chain, it is essential that they position themselves properly in order to become competitive, reliable, and insulated against the cancer of bill of lading fraud.

5.2 Summary of Findings

The analyses of data on the demographic characteristics of respondents revealed that most of them are shipping or freight managers or assistants, who directly deal with bills of lading. Thus, they are well positioned to comment on the issue of fraud related to bill of lading. Not only do they have direct insight into the issue under discussion, but most of them have also worked in the field for more
than five years. This further echoes the fact that they have experience and know
the nature and form of bill of lading frauds perpetrated through the port of Tema.
In terms of their educational backgrounds, the analyses also revealed that
majority of the respondents were educated to the tertiary level, which also explains why they hold such key positions in their organizations. The
demographic background of the respondents therefore provides a picture of
individuals who understand the importance of the bill of lading in international
commerce and are therefore in a better position to comment on any aspect of its
usage.

Following from respondents demographic characteristics, the analyses of data
also revealed that respondents have a good knowledge of the nature and form of
bill of lading fraud. This was highlighted not only in their description of what goes
into the preparation of a bill of lading but also in their knowledge of the conditions
under which bill of lading frauds are perpetrated. For instance it came to light that
shipping lines use the information provided on the shipping instruction form by a
prospective shipper to prepare the bill of lading. Consequently, where the shipper
provides any information which does not tally with the physical characteristics of
the goods to be shipped, a misrepresentation would have occurred on the bill of
lading and constitutes fraud.

It was further noted that the bill of lading frauds encountered often at the port of
Tema in recent times are related to stolen cars from abroad. This happens when
people steal cars abroad, pack them in containers and declare to the carrier that
the container contains some other goods, say second hand fridges. The shipping line then issues a bill of lading which indicates the contents of the container as second hand fridges. On arrival at the port of Tema, the shipper or his agent, with the connivance of port officials and officials from the ship agent tries to forge or alter the bill of lading to indicate that the container has cars and then clears it from the port. Also noted in the data analyses is the forgery of original bill of lading signatures and stamps, as well as the forgery of documents in order to outwit the system. These call for pragmatic actions to detect such forgeries and to arrest and prosecute offenders.

In relation to the frequency of occurrence of bill of lading fraud, it was established that even though shipping agencies do not encounter such situations frequently, they do occur occasionally and sometimes result in huge financial liabilities to the ship agent involved. Even though such liabilities may be absorbed by the ship agent's insurance company, the significant amounts of money involved should provoke serious considerations for ways of reducing, if not eliminating, the incidence of bill of lading fraud at the port of Tema.

The study further establishes that given the nature of the transaction of international commerce, bill of lading fraud may be perpetrated by all stakeholders in the chain. However, major perpetrators are importers and exporters, and their clearing and forwarding agents. However, they only succeed through their collaboration with 'insiders' within the system – banks, ship agents,
customs, and port official. The issue at stake is therefore deeply rooted and requires a holistic approach in finding solutions.

On the administrative procedures for ensuring the security of blank bills of lading, what emerged in the data analyses was that most ship agencies do not have documented procedures in dealing with the security of their blank bills of lading. What seems to be the case is that, by convention, the bills are usually kept under lock and placed under the responsibility of a manager. The said manager ensures that any gap in the process of using the bills is immediately reported and all other agencies under the carrier in question are notified for tracking. Even though this may sound plausible, in practice, laxities exist and this calls for further strengthening of the system in order to provide the much needed security of bills of lading.

In strengthening the security of the bills of lading, respondents also suggested, among others, that consideration be given to education on the importance of the bill of lading, the management of its printing and usage, introduction of electronic means of preparation of the bill of lading, and the use of electronic devices to detect forged or altered bills of lading.

5.3 Conclusion

In view of the summary of findings above and in the light of the objectives of this study, it is clear that the issue of bill of lading fraud is a challenge not only to the ship's agent, but also to all stakeholders in the international commerce system. This study only delved into one aspect of the problem, but in the process other
relevant issues like the role of other stakeholders in the perpetration of bill of lading fraud have been highlighted. This raises serious concern for a third world country like Ghana, which has just attained middle income status. In that context, the study concludes that; whilst it is important to promote the country as the gateway to the West Africa sub-region, it is even more important to ensure that our ports are not used for the perpetration of fraudulent activities through falsification of bills of lading. This study therefore holds the view that, Ghana needs to go back to the drawing board and rethink its development priorities so that we do not put the cart before the horse.

The importance of having right systems at all levels of activities in the shipping industry can therefore not be overemphasized. All stakeholders are called upon to put their hands on the plough to remove the cancer of bill of lading fraud that may be costing individuals, organizations and the nation at large, several thousands and millions of dollars. There is no more time to spare; the time to act is now.

5.4 Recommendations

Having identified key issues from the analyses of data and the conclusion drawn above, the study recognizes that several policy implications are associated with the findings and conclusion. To this end, some recommendations are made here for policy action. These recommendations may not cover all the available options, but it is hoped that they provide a framework that may be worthy of consideration by policy makers in the shipping industry.
A comprehensive overview of the operations of the shipping industry should be initiated by the sector ministry. This should incorporate a review of the legal framework, both international and national which govern the operations of the shipping industry in Ghana. This would provide an empirical basis for the formulation of appropriate modus operandi for the industry that would address the issue of bill of lading fraud. Even though this study has already highlighted some issues in the industry as far as bill of lading fraud is concerned, it did not consider in detail the legal framework that governs the operations of the shipping industry.

Secondly, it is recommended that the printing and supply of bills of lading by shipping lines and their respective agents should be governed by their quarterly requirements so that their usage may be properly monitored on a quarterly basis. This would ensure that the bills are not misused.

Moreover, there should be incorporation of security features that are not known to the public except the respective liners, in the design and printing of all bills of lading. If this is made mandatory, it will help in detecting fraudulent bills of lading. If possible, all shipping lines can collaborate and support some security printing companies to handle the printing of such bills.

A critical pre-condition for the introduction of mandatory security printed bills of lading should be the acquisition of the requisite fake bills detector, which has
been found to be in use in some shipping agencies. This should also be mandatory within the new legal framework that has been proposed earlier.

In the present era of Information and Communication Technology (ICT), it may be important to consider the introduction of electronic bills of lading, which may not be printed and filled manually. This will reduce the paper work involved in the preparation of the bill of lading, reduce forgery of the bill of lading and save ship agents from incurring liabilities that could cause their collapse. A review of the functions and/or activities of the Bill of Lading Electronic Registry Organization (BOLERO) will serve as a good guide in such a venture.

The shipping lines and their respective agencies should also be encouraged by the Shippers' Authority to take a critical look at the training and development of their human resources. The study also recognizes a direct correlation between a motivated human resource and productivity. The shipping lines therefore stand to gain if it invests in the motivation of its personnel. This is because a de-motivated worker is like a cancer that gradually eats up the organization until it can no longer survive. Motivation of personnel may be in the form of encouraging them to pursue further studies, and recognizing them when they have done same, providing clear-cut policies on promotion and showing no favouritism, encouraging and rewarding initiatives that produce benefits to the organization.

Even though a sound financial base is one of the pre-conditions for the selection of a ship's agent, in view of the high amounts of money incurred as liabilities in
cases of unlawful or wrong release of cargoes without original bills of lading, it is important that all ship agents ensure that their agencies as well as their staff are well insured with reputable and trustworthy insurance companies. This would cushion them should there be any occurrence of bill of lading fraud.

Finally, it is important to recognize that given the time and resource constrains within which this study was conducted, there are obvious limitations. Some of which may be the limited scope of the study, which also affected the sample size. These limitations not withstanding, the study has succeeded in highlighting critical issues related to bill of lading fraud. A further study that increases the scope to include all stakeholders in the study is therefore recommended. This will help interrogate the perpetuation of bill of lading fraud through all the stakeholders. For now, there is sufficient evidence to conclude that bill of lading fraud is real and it is posing a serious challenge to the ship's agent at the port of Tema.
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APPENDIX I: INTERVIEW GUIDE

REGIONAL MARITIME UNIVERSITY

Thesis Title:
THE CHALLENGE BILL OF LADING FRAUD POSES TO SHIPPING AGENTS AT THE PORT OF TEMÀ

INTERVIEW QUESTIONS FOR SHIPPING AGENTS

| My name is **CYRIL LARYEA**. This research is being carried out for academic purposes as part of requirements for the award of Master of Arts (M. A.) Degree at the University of Ghana, Legon. The purpose of the research is to find out if shipping agencies represented in Tema face the problem of bill of lading related fraud with its associated consequence of claim in their day to day activities of releasing cargo and what measures can be put in place to minimize or combat it. In answering these questions, you, on behalf of your organisation, are consenting to participate in the study. Please feel free to express yourself as accurately as possible to the questions. We are interested in your personal viewpoints. Responses will be confidential and will not be distributed to outside parties. |

1. Name of the Organisation: .................................................................

2. Name of the Section/Unit: .................................................................

3. Sex of Respondent: .................................................................

4. Number of years in the organisation: .................................................................

5. Present rank or position: .................................................................

6. Level of education/Qualification attained: .................................................................

7. Explain what goes into the preparation of a bill of lading

8. What type(s) of bill of lading do(es) your organisation use?

9. What is a bill of lading fraud?

10. Please explain two (2) conditions under which bill of lading fraud occur?

11. In your view, what are the bill of lading frauds that are perpetrated at the Tema port? (Find out if they are different from other bill of lading frauds).
12. How frequently does bill of lading fraud occur in your organization?

13. Has your organization incurred any liabilities as a result of bill of lading fraud? Explain in detail.


15. Who are the people you think are the major perpetrators of bill of lading fraud that occurs at the port of Tema?

16. In your view, how does your organization ensure the security of blank bills of lading?

17. In your view, do you think administrative procedures of your organization in dealing with bill of lading work to prevent bill of lading fraud? Explain.

18. What administrative procedures do you think can protect bill of lading from fraudulent acts? (Mention specific procedures).

19. Please explain the administrative procedures available in your organisation for ensuring the security of bill of lading. (Please be detailed).

20. In your personal opinion, what do you think can be done to improve detection of bill of lading fraud in your organisation?

21. In your personal opinion, what do you think can be done to improve detection bill of lading fraud at the Tema port?

22. In your personal opinion, what do you think can be done to prevent bill of lading fraud in your organisation?

23. In your personal opinion, what do you think can be done to prevent bill of lading fraud at the Tema port?

End of interview. Thank You Very Much
APPENDIX II: FOCUS GROUP DISCUSSION GUIDE

REGIONAL MARITIME UNIVERSITY

Thesis Title:
THE CHALLENGE BILL OF LADING FRAUD POSES TO SHIPPING AGENTS AT THE PORT OF TEMA

QUESTION GUIDE FOR FOCUS GROUP DISCUSSION (FGD) WITH SHIPPING AGENTS

My name is CYRIL K. LARVEA. This research is being carried out for academic purposes as part of requirements for the award of Master of Arts (M. A.) Degree at the University of Ghana, Legon. The purpose of the research is to find out if shipping agencies represented in Tema face the problem of bill of lading related fraud with its associated consequence of claim in their day to day activities of releasing cargo and what measures can be put in place to minimize or combat it. In answering these questions, you, on behalf of your organisation, are consenting to participate in the study. Please feel free to express yourself as accurately as possible to the questions. We are interested in your personal viewpoints. Responses will be confidential and will not be distributed to outside parties.

Name of the Organisation, sex of discussants, the section/unit, Number of years in the organization, present rank or position, level of education/qualification attained

1. Explain what is meant by a ‘bill of lading’.
2. Explain what goes into the preparation of a bill of lading.
3. Forms of bill of lading?
4. Explain what a bill of lading fraud is?
5. Conditions under which bill of lading frauds occur?
6. Types of bill of lading frauds perpetrated at the Tema port?

6. Kind of people who engage in bill of lading fraud?
7. People who are major perpetrators of bill of lading fraud at the port of Tema?
8. Different bill of lading frauds perpetrated by different people?

9. How can the bill of lading be protected from fraudulent acts?
10. How can administrative procedures of shipping lines and ship agents prevent bill of lading fraud?

11. Administrative procedures that can protect bill of lading from fraudulent acts.

12. Administrative procedures available in organizations for ensuring the security of bill of lading.

13. What can be done to improve detection of bill of lading fraud in organisations?

14. What can be done to improve detection bill of lading fraud at the Tema port?

15. What can be done to prevent bill of lading fraud in organisations?

16. What can be done to prevent bill of lading fraud at the Tema port?