

Welcome to TT Talk, No. 78 in the series.

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1. Chinese New Year

We wish all our readers in China and other Chinese communities around the world, a very happy new year on January 29. May the Year of the Dog bring you prosperity. Gong Xi Fa Cai!

The Club's offices in the region will be closed for the new year holidays. The closure dates and emergency contact arrangements are:

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Closed on Monday 30 and Tuesday 31 January.

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2. Judge rules on air waybill notice

At the moment, the rules governing air carriers' liabilities are complex, with five possible regimes:

- The unamended Warsaw convention of 1929
 - The 1929 convention as amended by the Hague protocol of 1955 ("Warsaw-Hague") ----
- The conventions as amended by the Montreal additional protocol No. 4 of 1975 ("MAP4")
- The Montreal convention of 1999 ("MC 1999")
 - None of the above (if carriage is to or from a state which has not acceded to any of the conventions).

The first three conventions have rules requiring the carrier to have a notice on the air waybill warning the client that carriage may be subject to the convention and that liability will "in most cases" be limited. If carriage is subject to either the 1929 or 1955 conventions, the omission of this notice means that the carrier will not be able to limit liability in the event of loss, damage or delay. If the carriage is subject to MAP4, the effect of the omission is minimal, while MC 1999 contains no specific provisions about warnings on liability limitations.

In September 2001, Bax Global undertook the carriage of 2178 kg hard disk drives worth USD 320,000, from Manila to Glasgow, a contract subject to the conditions of Warsaw-Hague. It issued an air waybill to the sender, Fujitsu, which bore on its face the words: "It is agreed that the goods herein are accepted in good order and condition (except as noted) SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required"

This text, or something very similar, appears on the IATA recommended form of air waybill, and on most other air waybills issued by carriers around the world. However, while most air waybills also carry on the reverse a clear "NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY" which goes on to repeat the words required by the convention, the Bax AWB did not. Instead it contained a number of contractual conditions which made reference to the conventions but not in the clear words of the convention. The "notice" mentioned in the statement on the front did not appear.

The consignment was lost in transit, and Fujitsu made a claim in the English commercial court for its value against Bax. At the end of last year, Mr Justice Christopher Clarke was asked to decide, on a preliminary point, whether the AWB complied with the requirements of Warsaw-Hague. If it did, Bax might be able to limit their liability (subject to other points being decided in their favour); if it did not, they could be fully liable for the loss. This point had not previously been contested in the English courts.

Having considered the history of the conventions and reviewed decisions in other English and US courts, the judge held that, while the wording on the face of the AWB promised a "notice" on the reverse (and that notice should have repeated the words set out in the convention), there was, in fact, no such notice and the document was therefore not in compliance with the requirements of the conventions.

Although 69 countries have now adopted MC99, there are still very many who have not. Because it is very difficult to determine quickly which regime applies to any particular movement, the contractual conditions printed on the air waybill must be a kind of "one size fits all" solution, but both the IATA and FIATA standard format air waybills meet the requirements. The Club recommends that all air waybill forms clearly bear both the warning on the face, and the notice on the reverse, as shown above. As Mr Justice Clarke commented, if the notice does not apply, no harm is done; if it is missing however, the carrier may face an expensive bill if something happens to the cargo during the journey.

The form of AWB normally used by Bax does in fact conform to the legal requirements and it is not clear why a non-conforming version was used by their office in Manila. Members should make sure that they do not fall into the same trap: they must check that all their offices only use air waybill forms which are either in the IATA standard format (or, for FIATA members, the FIATA format) or have been specifically approved by the Club. Any non-compliant air waybill forms should be withdrawn from circulation and scrapped immediately.

The text of the judgment can be read on:

<http://www.bailii.org/ew/cases/EWHC/Comm/2005/2289.html>

The list of states that now apply MC99 is available on the ICAO website at:

http://www.icao.int/cgi/goto_m.pl?/cgi/statesDB4.pl?en

3. China clarifies law on L/C fraud

While the Uniform Customs and Practice ("UCP") issued by the International Chamber of Commerce provide clear rules for bankers and traders to follow when dealing with letters of credit, they leave some issues, such as fraud, to be determined by the laws of the country concerned. This has become a problem for China, as up to now its law lacked clear and detailed provisions to deal with the issue. Since 1995 an increasing number of disputes on letters of credit have come before the courts there: the different approaches of different judges have led to confusion and uncertainty. With China now occupying such a prominent position in world trade, this situation clearly could not continue.

The Chinese Supreme People's court has now issued its "Regulations on issues related to the trial of cases of letter of credit dispute" to fill the legal gap. The regulations, which came into force on January 1, deal with issues of fraud and the right of the buyer to suspend payment under letters of credit.

In its most recent circular, the Shanghai law firm of Wang Jing & Co states that letter of credit fraud will fall under the general principles of civil fraud laid down in Chinese law and the aggrieved party may apply to the court for payment to be suspended. The courts will treat such claims in accordance with the property preservation provisions of the civil procedure law of the PRC. However, if the bank has already made the payment, the court has no power to interfere or suspend the transaction.

Wang Jing & Co comments that there is still some vagueness about some of the provisions, which need to be clarified, but in general the measures are a welcome statement of the law.

Further details can be obtained from the firm's website:
<http://www.wjnco.com/download/wjccircular0601.pdf>

4. ICHCA International conference in Singapore

The 28th biennial conference of ICHCA International will take place on 22- 24 March 2006 in Singapore. The theme of this year's conference is "Cargo handling in the globalised marketplace". For more details see the ICHCA website at <http://www.ichcainternational.co.uk/events.htm> or contact the secretariat rosemary@ichcainternational.co.uk

5. Lorry thefts in UK

In its latest bulletin, Truckpol, the UK partnership between the police and private industry aimed at reducing commercial vehicle theft, reports that in the last quarter of 2005 goods worth EUR 23.7 million were stolen in Britain. The value of vehicles stolen in the same period amounted to a further EUR 8.3m. High as these figures are, there has actually been a very welcome 17% reduction in the number of incidents since the same period in 2003. It is clear that drivers are becoming more aware of the threats and are alert to attempts by criminals to get their hands on their loads.

Truckpol confirms that organised criminal gangs are behind many of the losses, particularly hi-jacking and diversion of the load by deception, but notes that opportunist theft continues to pose a problem. Many vehicles or their contents have been lost because drivers have left keys in the ignition of unattended vehicles or the load compartment doors open while making deliveries. Fully loaded vehicles are often left overnight in insecure yards or even on the street. There have been a number of instances where thieves have simply arrived with their own tractor unit, hitched up to a trailer and driven away.

There has also been a noticeable increase in the amount of petty theft of mobile phones and personal belongings, both of which cause disruption to the driver and company. Locking the cab when leaving the vehicle invariably stops these types of thefts.

Portable satellite navigation systems are proving to be very attractive to opportunist thieves. Even where drivers hide the 'head' in the glove box for protection, the empty cradle stuck to the inside of the windscreen is an excellent indicator. Finally, Truckpol notes that there has been an increase in theft of vehicle components, such as headlights, bumpers (fenders), wheels and diesel fuel, almost entirely from quiet, poorly lit yards overnight or at weekends.

No doubt many of these stories will be familiar in other countries too. Once again, the moral is that security does not have to be expensive: awareness of the threats, locking the vehicle doors and using secure parking areas are often all that is needed.

A full copy of the report can be obtained from the Truckpol website at <http://www.truckpol.com/downloads.htm>

Members can also find loss-prevention advice for their drivers visiting the UK on the same site. Leaflets are available in most European languages and can be downloaded as required.

6. Susan Gilbow 1953 - 2006

It is with great sadness that we report the death of our dear colleague Susan Gilbow. She died peacefully at home in Florida on Friday 13 January at the age of 52 after a long and courageous battle with cancer.

A native of Baltimore, a graduate of Miami Dade Community College and a fluent Spanish speaker, Susan joined the Club's office in Miami shortly after it opened in 1987, working for members of the TT Club and the UK P&I Club, particularly those based in South America. She was well known for her feisty energy and enthusiasm and was highly regarded by the many members of the Club from all over the world with whom she came into contact.

We extend our deepest sympathy and condolences to Susan's family.

The funeral home has opened a book of remembrance, which can be viewed on-line. Readers who wish to record their own tribute to Susan are invited to visit: http://obit.boydfuneralhome.com/obit_display.cgi?id=280018&listing=Current

7. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

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