

## **Welcome to TT Talk, No. 71 in the series.**

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### **1. Club issues windstorm stoploss bulletin**

Like many other insurers, the Club has spent the last six weeks picking up the pieces after the destruction wrought by hurricane Katrina.

With remarkable prescience, only a few weeks before Katrina struck, the Club released an initial version of a new stoploss bulletin relating to windstorms. While we cannot truthfully say that it would have reduced the losses from something as ferocious as Katrina, the bulletin nevertheless serves as a useful checklist to all members who are faced with the imminent arrival of any sort of storm. When high winds can demolish a multi-million dollar crane in just a few minutes, turning it into a jumbled pile of steel girders, it is not surprising that a severe storm is one of the most costly incidents the Club faces. They are not good news for members either, as a demolished crane means there will be no revenue from that berth for some considerable time.

The stoploss bulletin is not just aimed at those who may suffer hurricanes, typhoons and similar severe tropical storms: it is equally valid for those who live and work in more northern or southern latitudes who may be faced with deep depressions and storms with high winds, particularly in the winter. The bulletin has been written with the assistance of experts who have studied storms and technical people who have dealt with the aftermath.

It can be found on the secure section of the Club's website at [www.ttclub.com](http://www.ttclub.com)

### **2. Steal early for Christmas**

With only nine weeks left before Christmas stores in high streets and shopping malls are now well into the process of stocking up for the expected sales rush. Warehouses are beginning to fill up and greater amounts of consumer goods are on the move. While consumers are urged to start their shopping early to avoid the last-minute rush, so criminal gangs are also getting ready for their seasonal attacks on goods in transit.

Breaking into warehouses, while still popular, is giving way to cleverer, more devious methods of removing cargo from its legitimate owners. We have reported previously on various versions of the "round the corner" scam, where loads are diverted to another discharge point by someone official looking, standing around at the correct delivery address. Eurowatch, the Europe-wide truck surveillance system, reports a recent warning issued by TruckPol, the department of Scotland Yard dedicated to fighting road freight crime, on yet another version of this tactic.

Rather than divert cargo before it is delivered, the gangs have begun to employ legitimate hauliers to collect the cargo for them. The scam is simple: armed with specific information about stock (obtained as before through placing numerous calls to carriers and warehouse staff), the thieves will either observe a delivery or, knowing when it is due, place a call to the warehouse supervisor, purportedly from the customer, within a few hours of its arrival. On the pretext that the goods were defective or delivered in error, they will then arrange for them to be picked up again. A local transport company is then contracted to do a cash-on-delivery collection, for delivery to a specific address. The thieves stay in contact with the trucker by

mobile phone during the collection and trip to the new delivery point. When he arrives, the driver will be directed to some other location on a simple pretext ("warehouse full", "urgent delivery" etc) where he will be met by another van driver. The load is transferred in the street, the courier is paid cash and the thieves disappear. The "pay as you go" unregistered mobile phone will be discarded and a new one bought for the next job. The police comment that this kind of operation is extremely difficult to combat, given that targets are selected from across the country, local haulage companies are employed and that the load is met and transferred in the street at any time of day.

TruckPol suggests that any requests to come and collect stock that is "defective" or "delivered in error" received within a few hours of a delivery be treated as suspicious and verified with your regular and trusted contact in the customer's office by land line to his known phone number before it is authorised, particularly if a local haulier is to be employed to do the movement on a COD basis. As TruckPol advises, any call of this type or of a similar nature should be treated with scepticism until confirmed with the appropriate people. It should be remembered that these gangs change their tactics as soon as they become aware of industry's knowledge of them. You and all your staff should be on your guard against these and any similar attempts to divert or steal cargo.

### **3. DHS under fire - again**

The US Department of Homeland Security is not only taking a lot of criticism about its response to the Katrina disaster; it also under fire from members of the House of Representatives who are complaining about its failure to develop rules on the screening of air cargo. The Democrat members of the House Committee on Homeland Security, led by Mississippi congressman Bennie G Thompson, has called on the department to implement final rules to improve air cargo security as a matter of urgency. Under the provisions of the Intelligence Reform and Terrorism Prevention Act 2004, the DHS should have completed writing the rule by 15 August. This was in response to the findings of the 9/11 Commission that, while passengers and their baggage are routinely screened, in the US much of the cargo travelling on those same aircraft are not. With over a million tonnes carried as airfreight on passenger and cargo planes each year, the threat posed by unscreened cargo is obvious. Rep. Thompson said that it was essential that the US authorities acted to secure air cargo as quickly as possible and asked the DHS to explain the delays in issuing the rule.

### **4. US court rules on customs misdeclarations**

We are grateful to Peter Quinter of the law firm of Becker & Poliakoff for drawing our attention to the decision of the US court of international trade in the case of United States v Pan Pacific Textile Group Inc.

Pan Pacific was approached by a Mr Juang, who was a freight forwarder but not a customs broker. He offered to act as the importer of record and to file entries on the company's behalf, in dealing with Pan Pacific's importations. Having received a power of attorney from Pan Pacific, Juang then filed entries with customs in his own company's name. In doing so he not only misdescribed the cargo to circumvent quota restrictions but also declared lower values in order to pay less duty. Pan Pacific never instructed Juang to make these unlawful statements to customs, but was nevertheless prosecuted by the authorities. Finding Pan Pacific liable, the court declared that it was irrelevant whether or not Pan Pacific had authorised the unlawful conduct, it was a matter of public policy that liability for unpaid duties be extended to innocent parties who were in any event 'traditionally liable' for such payments. The court also noted that if it allowed importers to shelter themselves from the illegal actions of agents or brokers, it would create an incentive for bad behaviour. "Allowing such protection for importers would discourage care on their part in selecting their agents, and would thus provide more opportunity for dishonest middlemen".

## 5. Liability when staff steal

Peter Jones reports a recent South African case on his Forwarderlaw website, where the issue was whether a company could rely on its trading conditions to limit or exclude liability for consignments stolen by its staff. Writing in the bulletin, William Fullard of Fullard Mayer Morrison comments that many forwarders believed that they were not liable at all if goods were stolen by an employee but points out that in South African law there is legal precedent for the view that an employer would be liable for the loss of goods entrusted to its safekeeping if an employee breached that duty of care by stealing the customer's goods.

The courts have however decided that an employer can, by agreement, contract out of liability for such thefts. It is not even considered to be contrary to public policy since the thefts are not for the benefit of the employer.

As with most other forwarding contracts in South African, in Goodman Brothers (Pty) Ltd v Rennie's Group Ltd, the relations between the two companies were subject to the conditions of the South African Association of Freight Forwarders. Rennie's driver and his assistant collected a consignment of watches from Johannesburg airport for delivery to the customer's premises. The employees then stole the consignment en route.

The forwarder contended that clause 17 of its trading terms and conditions absolved it of liability. Clause 17 reads as follows:

### "GOODS REQUIRING SPECIAL ARRANGEMENTS

"Except under special arrangements previously made in writing the company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the customer nevertheless deliver such goods to the company or cause the company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the company shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods"

The court accepted that the watches constituted valuables and that no special arrangements had been made for handling them. The court found that clause 17 did exempt the forwarder from all liability, even for losses caused by its employees stealing the goods. Had special arrangements been made, the forwarder would have been in a position to protect itself against the dishonesty of its employees by taking out fidelity insurance, or by taking additional precautions for the safe conveyance of the watches, but that such measures would have incurred an increased cost to the customer. One of the judges commented that a right-thinking community would understand and accept as fair a decision by a clearing agent that, as it was only being paid at the rate for cargo of ordinary value, it could not afford to pay for additional security measures to protect high-value cargo and that it was therefore going to exclude liability for risks which arose from the nature or value of the goods.

[http://www.forwarderlaw.com/library/view.php?article\\_id=339](http://www.forwarderlaw.com/library/view.php?article_id=339)

## 6. 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](mailto:tt.talk@ttclub.com). We look forward to hearing from you.

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