

Welcome to the latest edition of TT Talk, number 67 in the series

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1. FIATA warning on hazmat security

FIATA, the international umbrella organisation for freight forwarding associations, has published in the April edition of its magazine, FIATA Review, some timely advice to everyone in the transport chain about ensuring that hazardous goods are transported securely.

Secure transport is not quite the same as safe transport. Safe transport is concerned with ensuring that the hazards stay within the packaging and do not endanger the lives of transport workers or the general public. Secure transport is about looking after the consignment in transit and making sure it does not fall into the hands of terrorists or other criminals. As regular readers of this newsletter will recognise, the issue of safe transport has much exercised the Club over the past few years, and indeed, it has been the main focus of all the international and national regulations governing the transport of such material. Now, as FIATA points out, governments are becoming increasingly concerned at the prospect of hazardous material getting into the wrong hands.

The 13th revised edition of the United Nations' Recommendations on the Transport of Dangerous Goods has adopted a number of security-related requirements. These state that all personnel engaged in the transport or handling of dangerous goods must consider security requirements; that transit sites are, where possible, properly secured and are not accessible to the general public; that shippers should use only carriers who "have been appropriately identified"; and that training should include elements of security awareness. Within Europe, these requirements have been made mandatory in the ADR and RID regulations for road and rail transport, respectively. Similar requirements have been adopted as recommendations for transport by sea and air.

As FIATA points out, this is an issue which has to be handled by senior management. The regulatory community has decided to make these security provisions mandatory and, in doing so, have clearly been influenced by standards for the establishment of management systems. The regulations will undoubtedly have a large impact on the businesses of freight forwarders and logistics operators, carriers, warehouses and the chemical industry itself. Security and safety provisions should be dealt with together within company management systems to ensure the most effective result. Management should initiate appropriate instructions for security that are both effective and functional, and ensure that they are coordinated with existing systems.

FIATA concludes by pointing out that while the majority of incidents in the past have related to safety rather than security, we are now faced with the frightening possibility that deliberate misuse of one or more hazardous consignments could turn our society into a war zone.

The full version of the UN recommendations is available on:
http://www.unece.org/trans/danger/publi/unrec/rev13/13files_e.html

The authors of the FIATA article will be making a presentation on this subject at the FIATA world congress in Moscow in September.

2. Club in Munich and Antwerp

We were pleased to welcome a large number of members to our stand at the recent logistics show in Munich. By its presence at this prestigious occasion, the Club underlined its commitment to providing high-class insurance products to the transport and logistics industry.

This commitment is confirmed by our support for the Terminal Operators' Conference, TOC, which this year is being held in the Belgian city of Antwerp, from 14 to 16 June. Apart from the very important activity of sponsoring the coffee breaks throughout the three days of the conference, the Club's director of sales and marketing, Alan Wilkins, will be speaking in the afternoon session of stream B ("Integrating the maritime gateway and the hinterland") on 15 June. Alan's paper is on reducing risk in the end-to-end transport business.

Members who wish to attend the conference can obtain tickets from Alice Rymill in the Club's London office alice.rymill@thomasmiller.com

Further information about TOC and the conference programme can be found on <http://isg.toc-events.com/NASApp/cs/ContentServer?pagename=mtevents/home&mtevent=eurotoc05>

3. Court rules on contractual exclusion for high-value shipments

A recent decision of the English commercial court in *Datec Electronic Holdings Ltd v United Parcels Services Ltd* raises some important issues for freight forwarders and carriers dealing with high-value consignments.

Datec regularly used UPS to move consignments of electronic parts to customers all over the world and, as part of this agreement, gave UPS a consignment of three parcels of computer processors valued at UKP 240,000 for transport from the UK to Holland.

UPS's conditions of business stated that it would not accept shipments whose value exceeded USD 50,000; that if it inadvertently did so, it reserved the right to stop those goods in transit; and that in any event it excluded all liability for loss or damage of any such parcel. UPS relied on these conditions and rejected Datec's claim.

There was considerable discussion as to whether Datec knew of this restriction and whether UPS knew that some of Datec's parcels exceeded this value. There was conflicting evidence about the discussions that had taken place between Datec, its freight forwarders and UPS about this point. The evidence was based on meetings and discussions between the parties, but there was nothing in writing to show that Datec had been aware of the restriction, or that UPS knew that its limit was being breached. The judge held that, even though UPS had accepted parcels with a higher value, it had not done so knowingly and therefore had not waived its right to rely on the contractual restriction.

The restriction was valid as an express provision in the contract and would normally have been binding on the parties. However, the consignment in question had been moved by road from UPS's hub in Cologne, Germany to its destination in Holland and therefore the provisions of the CMR convention came into play. While it was perfectly legitimate under the convention for UPS to refuse to accept consignments that did not meet its own criteria, if it nevertheless carried them (with or without its knowledge) it could not, unless permitted by CMR, limit or exclude its liability: that was in direct contravention of Article 41. The claimants had alleged that the parcels in question had been stolen by the driver employed by UPS but the judge held that their evidence had not met the required standard of proof. There were no grounds to say that the loss had been caused by gross negligence on the part of UPS (which would have exposed it to unlimited liability). UPS was however liable under the ordinary provisions of CMR and was ordered to pay compensation of UKP 657.73 (about USD 1200).

Comments:

There was considerable discussion in this case as to whether UPS knew (or should have known, from accompanying documents, invoices etc) that Datec's consignments were in

breach of its limits. Had the evidence shown that it was aware of the values yet done nothing about it, the judge might well have held that UPS had waived its rights to rely on that particular limitation.

The lessons for forwarders and carriers are clear:

If your terms and conditions state that you will not carry certain items, you must make sure that you abide by those conditions. You should draw the attention of senior management to the issue and must also tell the client in writing that its shipments do not meet your criteria. You must not simply carry on regardless, ignoring the issue and hope that nothing will happen. This applies not only to valuable packages, but also to other items, such as dangerous cargoes, that you have specifically excluded in your trading conditions.

Apart from anything else, you should think about your liability insurance. The Club has agreed to insure your liabilities on the basis of your standard trading conditions and you may jeopardise your cover if you agree to carry something which you have said you will not normally move. If you want to handle or carry such shipments (or if you suddenly discover that you are handling them) you must alert your brokers and get them to check with the Club. The Club recognises the commercial pressures in circumstances like this (Datec was giving UPS up to 100 shipments a week and was therefore clearly a most valuable customer) and will always try to help find a financially acceptable solution but it must be consulted about your plans and agree extensions of cover before you start operations.

You should also be aware that, if any part of the movement is by sea or air (or by international road transport within Europe) the provisions of the relevant international convention will generally override any contractual restrictions you have on liability for loss or damage.

Thirdly, and almost as important: if you have a meeting with a customer write to them afterwards confirming the items discussed and the agreements made. You never know when you will be glad you did so.

For those interested in reading the full text of the judgment, it is available at <http://www.bailii.org/ew/cases/EWHC/Comm/2005/221.html>

4. Club asks for help

The issue of safe working conditions in ports and terminals has to be kept under constant review. As handling operations become ever more complex, and as traffic volumes increase, there is no room for complacency. An issue of particular concern to the Club at the moment is that of lifting people, whether for maintenance of structures, for securing containers in stacks, or for any other purpose. The Club, in conjunction with the international safety panel of ICHCA International, is undertaking research with a view to producing a best practice guide, and is asking for members' assistance.

In many countries there are already regulations governing the way people can be lifted and we wish to take note of those regulations in the safety briefing booklet, but in others there are remarkably few legal requirements relating to the safety of dock and terminal workers.

As part of our preliminary investigation, in the next few days we are sending out to a selected group of members a questionnaire asking for information on current practices and what, legal requirements have to be observed. If you are one of the lucky recipients of the questionnaire, we would be very grateful for your time in completing it, and for your help in returning it to us. Thank you very much in advance.

For further details please contact Helena Workneh helena.workneh@thomasmiller.com

5. No licence, no insurance, no battery

Our friends, the hazardous goods specialists at ility Engineering in Tampere, Finland, have been collecting information about the dangers posed by mobile (cell) phones, in particular reporting incidents involving allegations of exploding batteries and investigating whether using a phone while refuelling a vehicle at a filling station is indeed hazardous.

One incident they report stands out among this catalogue: after a man was arrested following a chase at 130 kph (80mph), officers at the police station gave him a cordless phone to call his wife. However, instead of making the call, the man removed the cover and swallowed the battery. He was then taken to hospital, from where he escaped but was subsequently recaptured. In court he admitted to having no insurance, no licence, failing to provide a breath specimen, dangerous driving, causing actual bodily harm, escaping from police custody and criminal damage after fleeing from the hospital, and was jailed for two years. The court heard that after he escaped from his guard, he went to a bar and boasted of his exploits to fellow drinkers. It was also told that the man suffered no ill-effects from ingesting the battery, which passed harmlessly through his system two days later.

The defending lawyer said his client had swallowed the battery because he had been worried about how his wife would react to his arrest.

<http://www.saunalahti.fi/ility/>

6. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information on them, or have any comments you would like to make, then e-mail the Editor at tt.talk@ttclub.com. We look forward to hearing from you.

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