

Welcome to the latest edition of TT Talk, number 65 in the series

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1. South African judge confirms that Warsaw convention rights are exclusive

It is not often that a case involving a passenger on a jumbo jet finds its way into TT Talk, but this is one of those rare occasions. The interest for cargo operators lies in the fact that, unlike their counterparts for other modes of transport, the air carriage conventions (Warsaw, Warsaw/Hague and Montreal 4, plus the 1999 Montreal Convention) all deal with both passengers and freight liabilities. Decisions relating to passenger carriage – as here - may therefore well have an impact on freight operations (and vice-versa).

In 2000, Mr Vincent Potgieter was a passenger on a British Airways flight from Cape Town to London when an argument with the cabin crew escalated into a serious altercation; as a result he was arrested when the aircraft landed in London. On his return to South Africa, Mr Potgieter sued the airline, alleging that he had been humiliated and degraded by the cabin staff's conduct and that his dignity had been severely impaired. British Airways argued that Mr Potgieter's contract of carriage was subject to the provisions of the Warsaw Convention, which rendered the airline liable only for death or injury to passengers, delay in transport and to loss of their baggage. As Mr Potgieter alleged no physical injury or hurt his claim was outside the provisions of the convention and must therefore fail.

The case was heard in the Cape of Good Hope Provincial Division. In his judgment, Mr Justice Davis, having carefully considered the decisions of the House of Lords in *Sidhu v British Airways*, and of the US Supreme Court in *Eastern Airlines v Floyd*, as well as some decisions of the Canadian courts, concluded that the causes of action permitted by article 17 of the Warsaw convention were indeed exclusive and that therefore Mr Potgieter had no valid claim. To the complaint by the plaintiff that this interpretation of the convention left him without any legal remedy and was therefore possibly in conflict with constitutional principles, Mr Justice Davis replied that exclusion clauses were an established feature of modern contract law and have found support even within the context of South Africa's constitutional jurisprudence.

By this judgment the court has upheld the position that air carriers are liable only if the claim falls within the scope of article 17 of the Warsaw convention, and has also confirmed that exclusion clauses in contracts are valid. These elements of the decision will affect also contracts for the air carriage of goods, the only caveat being that the Warsaw convention has been replaced, in over 60 countries now, by the untested Montreal convention 1999.

Those readers who are interested may wish to read the full text of the judgment on <http://law.sun.ac.za/data/Vincent%20Potgieter.DMD.doc>

2. Eurowatch expands into Russia

EUROWATCH, the pan-European counter-crime service, in which the Club's Managers have a minority stake, has announced the expansion of its coverage eastwards, with the addition of the Baltic States and Russia. The addition of these brings to thirty-one the total number of countries covered by the service.

This expansion in coverage comes just thirty months after the service started. Commenting on the expansion eastwards, Peter Vyvyan-Robinson, its London-based director pointed out that many multinational companies are now sourcing production in the countries of eastern Europe and Russia. The increased coverage offered by Eurowatch is in response to their security needs to protect their drivers, vehicles and freight on international movements to and from this region.”

Eurowatch gives international transport operators 24-hour access to police emergency services across Europe, available through a single telephone number. It is delivered through control centres located in each country which employ more than 700 people speaking a total of 24 national languages. The service is hardware-independent and integrates telematics and internet technologies to relay incident data to local police without delay. This enables police to respond much more effectively: Eurowatch proudly points out that every stolen vehicle reported to it has been recovered. In addition EUR 10m of stolen cargo has been recovered and more than 60 people in 10 different countries have been arrested. Cargo insurers are increasingly demanding that cargo be carried only on vehicles belonging to Eurowatch subscribers.

The Eurowatch service is accredited by Europol as a “centre of excellence”. The countries it covers are: Andorra, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Spain, Slovakia, Slovenia, Sweden, Switzerland and the United Kingdom.

For more information see www.eurowatchcentral.com or email lmccallum@eurowatchcentral.com

3. Ronald Hoernicke

A couple of weeks ago we said goodbye to our friend and network partner in Germany, Ronald Hoernicke, who has retired.

Born in Berlin, he decided on a maritime career and after leaving school, joined the nautical academy in Bremen as an officer cadet. He then spent thirteen years at sea with various shipping companies, including Stinnes Reederei and Leonhardt & Blumenberg, gaining his captain’s certificate. Not content with this, he then went to law school and qualified as a lawyer. This eclectic background of sea-going experience and the law led almost inexorably to a job in Pandi Services J&K Brons, a long-established firm of club correspondents, which he joined in 1978 becoming the director in charge of its Hamburg office.

When Ronald took up his position in Hamburg, the TT Club was almost ten years old and gradually developing its business in what was then West Germany. He became a great supporter of the Club and was instrumental in providing claims support to the Club’s members in West Germany, thus helping establish the Club’s position in the market. He knew, and was respected by, many influential people in the shipping world of West Germany, from pilots, coastguards and surveyors to shipowners and maritime lawyers. The range of his knowledge was as wide as his circle of contacts.

Following the unification of the two German states and the opening of borders in eastern Europe in 1989/1991 Ronald was very active in establishing and supporting new offices for Pandi Services in Rostock, Szczecin and the Baltic republics. In 1993 the Club acknowledged the trust it had in Ronald by appointing him to be one of the Club’s first network partners, giving him authority to handle claims on the Club’s behalf, rather than (as previously) simply reporting matters to the Club’s headquarters and asking for instructions. He flourished in this role and earned the support of members by giving them fast assistance when they needed it as well as supplying sound and unequivocal advice to help them out of problems.

In his private life he cherishes his motorcycle, on which he has travelled extensively throughout Europe (from northern Norway to the straits of Messina), but perhaps his greatest interest is in giving sail training to young people from disadvantaged backgrounds; something to which he has devoted much of his spare time. He is intending to devote his “third age” of retirement to this cause.

In saying goodbye, we thank Ronald for his friendship and valuable help to the Club over the years. He was always a reliable source of help and advice and a powerful assistant is helping us negotiate the jungle of German law. We are sorry that he is leaving, but are sure that we will not lose contact entirely. We wish him well.

4. TT Club outlook improved to positive by ratings agency AM Best

TT Club’s improving financial position has been acknowledged by industry ratings agency AM Best, which has revised its outlook on the mutual insurer’s rating from ‘*stable*’ to ‘*positive*’. This latest recognition of a rating of B++ (Very Good) marks further progress toward the goal of regaining an ‘A-’ rating.

5. 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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