

**Welcome to the latest edition of TT Talk, number 55 in the series
October 20, 2004**

Contents:

1. Vertical tandem lifting: a clarification
2. Chinese People's Congress rules on non-negotiable bills of lading
3. Logistics contracts and insurance: Club workshop at Intermodal Exhibition
4. Consumer goods moving too fast
5. That "boaring" judgment again
6. Conclusion

1. Vertical Tandem Lifting: a clarification

In TT Talk No. 53 we wrote that vertical tandem lifting should only be used for handling empty containers, as the connecting locks were not designed to carry the weight of loaded containers.

Andrew Webster, our Director of Loss Prevention, who represented the Club at recent hearings of the United States OSHA (Occupational Safety and Health Administration) in Washington DC, points out this is not completely correct as the International Standards Organization has amended its standard on the handling and securing of freight containers. The standard now permits the handling and securing of freight containers vertically linked together provided that:

1. no more than three boxes are lifted together

AND

2. the total gross mass (weight) does not exceed 20,000 kg

AND

3. the units are all connected by inter-box connectors (now known as liftlocks) which comply with ILO convention 152.

The International Safety Panel of ICHCA International Ltd has developed guidelines on how VTL operations may be carried out safely. These include a proviso that no VTL operations may take place without the agreement of the terminal operator, his employees, the shipping company and the relevant enforcement agency.

The recent hearings in Washington were OSHA's proposals for a new law on VTL operations. The legislation would be based largely on the ISO standard and the ISP guidelines. In response to this initiative and in the knowledge that VTL operations are currently being undertaken in some parts of the world, the Club amended its rules on 1 July 2004. The new rule requires members to comply with industry and national standards when carrying out vertical tandem lifts.

It is against this background that the TT Club would like to hear from members about their current use of VTL. Please respond to Andrew Webster by email to riskmanagement@ttclub.com.

We apologise for any confusion that may inadvertently have been caused.

2. Chinese rules on non-negotiable bills of lading

The question of entitlement to delivery under a "straight" (non-negotiable) bill of lading (that is, one addressed to a named consignee, rather than "to order") continues to occupy the attentions of courts around the world. On the one hand there is what might crudely be called the US position: that the named consignee is entitled to demand delivery even though he does not have an original bill of lading in his possession. Other jurisdictions take the view that a bill of lading is always a document of title, no matter how it is made out, and that the consignee – even if specifically named in the address box – must still present an original bill before he can take delivery. These opposing views clearly create lots of difficulties for carriers, whether shipowners

or NVOCs, and the Club has consistently advised members to proceed with the greatest of caution when agreeing release of cargo carried in accordance with a "straight" bill.

The law firm of Wang Jing & Co in China has recently reported an important development on this question under the Chinese judicial system. China's main legislative body, the Commission of Legislative Affairs of the National People's Congress, has recently reached consensus that, in all future cases where the Chinese maritime code is applicable, cargo delivery may only be made against the surrender of an original B/L, regardless of whether it is a "straight" bill or an "order" bill. In other words, the Chinese courts have lined up with the second group.

This is a welcome clarification of the position in the People's Republic of China. A previous Supreme Court judgment stating that "a straight bill of lading is not a document of title", resulted in much argument as to whether a delivery under a "straight" bill could still be made without it being surrendered. This recent consensus has now answered this question and confirmed that surrender of a non-negotiable bill of lading is necessary under the Chinese maritime code.

Further details are available from Wang Jing & Co's website on <http://www.wjnco.com/download/wjccircular0401.pdf>

3. Logistics contracts and insurance

More and more freight forwarders and transport operators are rebranding themselves as "logistics service providers": a trend which the Club has not ignored. While, in some respects, the logistics service provider is doing much the same job that he did in his previous incarnation as a freight forwarder - getting goods from A to B as quickly and economically as possible - the LSP is also entering new territory. Clients are seeking to outsource the logistics function, leaving it to the service provider to undertake many tasks that are outside the scope of the traditional freight forwarder. Operating distribution warehouses, picking and mixing consignments for deliveries to retail outlets, stock-control and managing the flow of returned goods are all part of the range of services demanded by clients nowadays. Gone too, is the ability of the forwarder/LSP to incorporate his standard trading conditions into the contract: big customers have a tendency to produce their standard contract form and to invite the LSP to sign it on a "take it or leave it" basis.

Many of these contracts contain onerous conditions relating to liability: the customer is also seeking to offload his insurance burden at the same time as outsourcing his logistics operation. Customers therefore seek to make the LSP liable for the full value of all cargo loss and damage (usually up to quite high "limits"), whether or not the LSP was at fault. Unfortunately, just as there is no such thing as a free lunch, there is no such thing as free insurance: whether the premium is paid by the customer direct to his insurers, or indirectly via the LSP as part of the agreed price, someone has to pay.

The Club's standard cover for transport operators is based on an agreement that members will incorporate their standard trading conditions in all their customer contracts. If therefore you have a client who wishes you to take on a greater degree of liability, you must ask your broker or underwriter to confirm how much extra the additional cover will cost.

The Club is holding a workshop to discuss these thorny issues at the Intermodal Transport and Logistics Exhibition which will take place in Copenhagen, Denmark from 2 to 4 November. The workshop, at 16:30 on Wednesday November 3, will be chaired by the Club's deputy chairman Mr Bernd Menzinger and will include contributions from Craig Neame, of the London law firm Holman Fenwick & Willan, Alan Wilkins, sales director of TTMS (UK) Ltd and Hergen Tantzen of the German logistics consultancy Lighthouse GmbH. The workshop is open to anyone attending the exhibition.

The Club will also have a stand at the exhibition so even if you cannot attend the workshop, please feel free to drop by exhibition stand A44 and see us.

We have a number of complimentary tickets for the exhibition available on a first-come, first-served basis. If you would like a ticket, please send an email to Alice Rymill in London at alice.rymill@thomasmiller.com

Further details of the exhibition can be obtained from the Club's website at <http://www.ttclub.com>
or from the exhibition organisers at <http://www.intermodal-events.com>

4. **Consumer goods moving too fast**

In the high pressure world of FMCG (fast-moving consumer goods) consignments are often switched to new delivery points at the last minute, as the sales organisation tries to take advantage of sudden fluctuations in demand. Very often everything is done by phone, with very little written confirmation. Thus it was no surprise for a member of the Club when he received a phone call from a customer asking for a shipment of fashion goods to be delivered to an address in the north of England. Equally he was not alarmed when, an hour later, he got another call countermanding the first delivery instruction and asking for the load to be taken to an address in London instead. The driver was given the new instructions but, when he arrived at the street in question, he could not find the exact address. While he was looking for it, he was approached by a man with a clipboard who asked if he had the consignment of fashion goods, which the man identified in some detail. The man then explained that the company's unloading bays were fully occupied with other deliveries and that therefore the consignee would unload the urgently-needed shipment right there on the street. This was duly done ... and it was not until an hour or so later, when the member received yet another call from his customer, asking why the delivery to the north of England was overdue, that everybody realised they had been the victims of a carefully-organised theft. The fast-moving goods had, by that time, moved even faster and have never been recovered.

Confirmation in writing of instructions given over the telephone may be irksome in a world of tight deadlines and quick responses, but you should try to persuade your client that it really is his interest that he confirms his requirements by fax or email. If the client will not confirm his instructions to you, you should send him a note setting out the details. Not only can you avoid small operational misunderstandings on dates, times and addresses but you may well also thwart the efforts of well-organised thieves who are maybe operating with "inside information". Once again, the Club's message is "know your customer".

5. **That "boaring" judgement again**

A full report on the decision in *Netstal v Dons Transport*, reported in TT Talk No. 53, has now been posted to David Martin-Clark's website DMC's CaseNotes at http://www.onlinedmc.co.uk/netstal-maschinen_v_dons_transport.htm

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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TT Talk is a free electronic newsletter published as occasion demands, by the TT Club,
International House, 26 Creechurch Lane, London EC3A 5BA, United Kingdom.