

Welcome to the latest edition of TT Talk, number 54 in the series
September 22, 2004

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1. Just what is a Hague Rules package?

Iain Sharples from the Clubs office in Sydney reports on a recent case in which the Australian Federal Court had to consider the perennially contentious issue of what constitutes a package under the Hague-Visby rules. The case arose under the Australian Carriage of Goods by Sea Act 1991, which broadly incorporates the Hague-Visby rules into Australian law.

The dispute was about a cargo of posters that had been exported from Australia in a container and suffered damage during the voyage. The bill of lading recorded the cargo as one container said to contain more than 200,000 pieces posters and prints. The cargo insurer claimed against the carrier under subrogation for what it alleged was the value of the cargo.

The Hague-Visby rules give two alternative methods for calculating the maximum amount of the sea carriers liability, one based on weight, the other on the number of packages and whichever is the higher applies. The two calculations resulted in wildly different amounts as often arises in these cases. The important point for the court to consider was how many 'packages' had been shipped.

At first instance the court decided that the number of packages for the purposes of limitation under the Hague-Visby rules was the number of pieces recorded on the face of the bill. This meant that the carrier was unable to limit its liability. However, it was able to reduce the amount of compensation by successfully arguing that the value of the cargo at the time of the loss was significantly below the level that was claimed by the cargo insurer.

The cargo insurer appealed this point and the shipping line appealed the package limitation argument.

The appeal court held that the number of pieces recorded on the bill was not the number of packages for the purposes of limitation. The court's view was that the term as packed used in article IV rule 5(c) was important. The recording of the number of pieces did not identify how those pieces were packed - such as the number of cartons, bundles or pallets for example. Included on the face of the bill of lading was a column headed 'number of packages' and this recorded the number of packages as one. In addition there was a note at the foot of this column recording the total number of packages as one; the shipping line also argued that a clause on the reverse of the bill of lading stating the container was to be considered a package was also relevant. The court decided that the carrier could base his liability on the weight of the cargo packed in the container, rather than use the much higher figure based on the number of individual items.

This decision may well be appealed by the cargo interests but in the meantime shipping lines and NVOCs should note the significant reduction in exposure that proper completion of the face of the bill of lading can provide. Bills of lading should always be accurate but you must also consider how the number of packages, particularly in shipper packed containers, should be represented. NVOCs in particular are often caught between the sometimes competing demands of the

customer's letter of credit requirements, the need for accurate descriptions, and the desire to reduce potential exposure to liability claims in the event of an accident. If these competing demands cannot be resolved, the Club's advice is that you should try to ensure that the buck does not stop with you: make sure that whenever possible the details recorded on your house bill are identical to those of the ocean bill. You should check the draft ocean bill of lading thoroughly before agreeing it with the shipping line.

If there is a difference in the way the number of packages is recorded on the various bills of lading there could be a significant shortfall between an NVOC's liability to its customer and the amount it can recover from the next carrier up the chain, whether that is the shipping line or the NVOC's co-loader. Apart from anything else, members of the TT Club will jeopardise their cover if they allow such discrepancies to arise. You could therefore be faced with a triple whammy: increased liability to the customer, a shortfall in the recovery from the sub-contractor and no compensation from the Club either.

The full decision of *El Greco (Australia) & Anor v. Mediterranean Shipping Co. SA* is available at http://www.onlinedmc.co.uk/el_greco_v_msc.htm

2. ICHCA Safety Panel

In June 1990, the then council of ICHCA (the International Cargo-Handling Co-ordination Association), realising that there were no international provisions on health and safety relating to cargo handling, decided to establish a panel to address the subject. They invited Mike Compton to become chairman and thus the International Safety Panel was born. Its aim is to advise and assist the cargo handling industry on health and safety matters. From the core group of invitees who came together in January 1991, the panel has grown to 48 members from 24 different countries or international organisations.

A basic principle of membership was established at the outset: all members are invited as individuals, the criteria being that they have experience, expertise and knowledge in the subject or specific aspects of the subject and, most important of all, that they will collaborate and take part in the panel's work. The panel quickly decided on a strategy of three elements - advice publications, research and training. This has led to the production of 19 safety briefing pamphlets, nine research papers, three technical advice papers and two pocket cards, all of which are available electronically, with many more being developed. The panel meets three times a year: it is a measure of its international element that the 42 meetings so far have been held in 29 different locations in 16 countries.

With expertise in many, diverse and sometimes quite specialised aspects of ship and port operations, including (among many others) engineering, automation, salvage, port state control, health and safety, dangerous goods and containers, the panel has become a well respected group and its output is accepted as being both valuable and authoritative.

The TT Club has had representatives on the panel for some years. Currently Andrew Webster is one of three deputy chairmen. For more information on the panel's work contact ICHCA by email at info@ichcainternational.co.uk

www.ichcainternational.co.uk

3. Ammonium Nitrate reclassified

The U.S. Coast Guard is proposing to add ammonium nitrate and ammonium nitrate-based fertilizers, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, to its list of "certain dangerous cargoes", requiring 96 hours notice of arrival in US waters.

In a statement, the USCG explained that this change “is necessary to promote maritime safety and security ... by increasing [our] ability to maintain awareness of these cargoes”. The “temporary final rule” should come into force on 17 September and remain valid until 20 March 2006. The change of definition means that some ships and port facilities that were previously exempt from maritime security requirements will now come under those regulations and must develop and implement security plans.

Ammonium nitrate is widely used as the basis for fertilisers, but has also been the cause of some of the world’s worst transport accidents. In 1947 over 600 people in Texas City were killed and large areas of the town devastated when two ships, GRANDCAMP and HIGH FLYER, both loaded with the product, blew up. More recently, 17 people – including seven firefighters, two journalists and the local mayor - were killed in Romania when a truck carrying ammonium nitrate fertiliser exploded in May this year. The blast caused a 10-metre deep crater and extensively damaged nearby houses.

The US authorities’ move is understandable as this kind of readily-available fertiliser has been frequently misused by terrorist groups as a basis for highly destructive home-made explosives.

Public comments on the change of definition must be submitted to the Coast Guard by 16 Nov 2004 and should be identified by the docket number USCG-2003-16688. Comments may be sent by e-mail to the Department of Transportation’s docket management facility <http://dms.dot.gov>

For more information, contact Lieutenant Kimberly Anderson of the USCG at (+ 1) 202 267 2562.

4. Happy hour attempted in Manitoba: one man hurt

Although your editors doubt that readers of TT Talk would ever contemplate such a thing, just in case you are tempted to cook up marijuana at home you should perhaps first consider the fate of a man in Winnipeg, Canada, who - as reported on the Hazworld website <http://www.hazworld.com> - was hospitalised with second-degree burns after a back yard shed exploded at his parents' residence.

Winnipeg police said that the injured man was in the process of making marijuana oil when the explosion occurred. A police spokesman said he was allegedly “cooking some marijuana and it went kaboom. I don't think it cooks all that well in a closed up shed. It's not a good thing to do because it goes boom.” A fire department paramedic spokesman said the man was blown six metres away from the shed and added “it's a very hazardous business to be in. Whatever he was using as a solvent ignited and he got the explosion from that.” According to the website, isopropyl alcohol is typically used to extract marijuana oil from marijuana, but it is believed the man was using another substance in the cooking process. The parents’ reaction is not recorded.

5. Corrections & clarifications

In our item on the dead Belgian boar in TT Talk No 53, we referred to “Kay Pysden of the London law firm Davies-Lavery”. We wish to make clear that, while it is correct that Ms Pysden was a partner in Davies-Lavery at the time of that case, in which she acted successfully for the defendants, she has since moved to her own practice in London, Pysdens Solicitors.

<http://www.pysdens.com>

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.

Andrew Trasler
Editor
on behalf of
TTMS (UK) Ltd London

David Martin-Clark
Legal Editor
Shipping & Insurance Consultant
Maritime Arbitrator
Commercial Disputes Mediator

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