

Welcome to the latest edition of TT Talk, number 34 in the series.

Contents

1. Dangers from "Unknown" Shippers in Lahore, Pakistan
2. TT Club loses the battle, but wins the war in Genoa!
3. Straight B/L held to be subject to Hague/Hague-Visby Rules
4. Conclusion

1. Dangers from "Unknown" Shippers in Lahore, Pakistan

Mr Zahid Mehmood, the Manager of Star Logistics International, freight forwarders in Lahore, has sent us the following item on the dangers of accepting consignments from "unknown" shippers.

"I read your TT Talk Edition regularly and I wish to share an incident with you, which I have seen at Lahore Airport. Please also share this with your readers so that they can also be careful about booking freight from "unknown" shippers.

A shipment came to a forwarder in Lahore (Pakistan) for booking. He checked the shipment thoroughly in his warehouse as the shipper was new to him. He also used his export licence to book the shipment, as his client had no licence for exports. Next morning he took the shipment to the airport for customs clearance. There he found the staff of the Anti-Narcotics department, who had the permit to check his shipment. He gladly allowed them to check the shipment before the starting of custom formalities/procedure.

They opened the cartons of the shipment and emptied the cartons on the ground. They searched the whole shipment and found nothing. Then they cut the package material and found drugs (white powder) in the packaging cartons. They arrested the forwarder and went to his office to catch the client, but he had escaped. The forwarder was in great trouble as the drugs had been shipped using his papers and he had no evidence to show that this shipment did not belong to him. He was put in jail and his office was sealed.

The forwarder's check of the consignment in his warehouse did not extend to the packing. He only viewed and checked the goods; he did not cut the packaging cartons. Actually the packaging cartons are seven-ply and the drugs were found packed between the third and fourth layer.

Every forwarder in Lahore is now fearful that the same will happen to him. In Pakistan, forwarders do not have the technology to check/scan the packing of shipments; neither are they allowed to tear the packing, as the airline will refuse to accept the damaged cartons. Forwarders are now not accepting shipments from new customers especially where the customer has no documents to export them. As a result, new exports are facing great problems. This problem is not only in Pakistan but could occur anywhere in the world, especially in third world countries.

In our company I have adopted the following procedure for the new customers booking.

- i. Address and contact numbers of the new customer will be verified first.
- ii. All his export documents will be verified from his Bank and other departments of the Government from where these are issued.
- iii. The new customer will join the Custom Clearing staff at the time of clearance.
- iv. The new customer has to produce a favourable reference from a regular exporter, well known in the market.
- v. The shipment will be fully checked in the warehouse, including the cartons and packaging material. Where there is doubt, the weight of empty packaging will be confirmed and the layers of the cartons will be checked.

I request you to share this with all your readers so that they can be aware of potential problems with new customers and do their best to avoid such a situation as the forwarder faced here in Pakistan in this case."

2. TT Club loses the battle, but wins the war, in Genoa!

Andrew Trasler, of TTMS(UK) reports on recent legal developments in Italy, in relation to a claim brought against one of the Club's terminal operator members there. He writes:

"For what is thought to be the first time in Italy, the court of appeal in Genoa recently upheld the principle that a terminal could benefit from the Himalaya clause in its shipping line client's bill of lading conditions. [A Himalaya clause is a standard term in a carrier's bill of lading which provides that the carrier's servants, agents and sub-contractors - such as the terminal operator in this case - shall have the same defences and limitations of liability in respect of claims for cargo loss and damage as the carrier itself]

The claim revolved around damage to a piece of machinery that allegedly occurred while it was on a terminal operated by a TT Club member. The line's bill of lading conditions included some provisions dealing with the carrier's duty of care in the periods pre- and post-carriage when the cargo was on a terminal. The bill of lading also incorporated a traditional Himalaya clause.

Proceedings were issued by cargo interests sixteen months after the date of the machinery's arrival in the port of discharge, and were therefore out of time under the bill of lading conditions. The claimants argued that they had no contract with the terminal and were claiming against it under the ordinary law of tort. The Club lawyers argued that they were indeed bound by the contractual terms of the bill of lading, which included a requirement to litigate in London under English law; therefore the Italian courts lacked jurisdiction. Additionally, the claim was out of time under the contract and, in any event, the member could benefit from the line's limitations of liability.

The lower court agreed that the Italian courts had no jurisdiction and dismissed the action, but the claimants appealed. The appeal court judges held that the terminal could normally rely on the terms of the carrier's bill of lading, so long as the bill clearly defined a journey (or a period of responsibility) that encompassed the passage of the goods across the terminal, or storage there. In other words, if the bill of lading were for a multi-modal transport on door-to-door terms, the claimant was bound by the terms of his contract with the carrier, including the Himalaya clause and conditions relating to jurisdiction.

In this case, however, the bill of lading was for port-to-port movement and the court interpreted the relevant bill of lading conditions as restricting the carrier's responsibility to the "tackle-to-tackle" period. Even though the carrier had added a Terminal Handling Charge to the basic freight, this did not mean that he was contracting for the terminal operations either directly or as an agent for the terminal operator. Had the operator produced evidence to show that the line had paid the THC to him, or some other contractual document demonstrating the relationship between the terminal and the line, the court agreed that it would have upheld the Himalaya and jurisdiction clauses. However, in the absence of such specific agreement, the Italian courts were indeed competent to hear the dispute. The case has now been remitted back to the lower court to hear arguments on the merits.

This result is in line with other decisions in civil law countries around the Mediterranean: frequently the courts are only prepared to uphold a Himalaya clause or the jurisdiction clause in the bill - or both - if there is a contract between the terminal and the ocean carrier, under which the carrier agrees to give the terminal the protection of its bill of lading conditions. This sort of contract is needed to close the gap: without it, the Himalaya clause may be ineffective."

3. Straight B/L held to be "bill of lading or similar document of title" under the Hague/Hague-Visby Rules

In a landmark decision delivered on 16 April this year, the English Court of Appeal held, in the case of J.T.MacWilliam Co Inc (Boston) v. Mediterranean Shipping Co. S.A - "The Rafaela S" - that a straight bill of lading (a non-transferable bill of lading made not to a named consignee) was a "bill of lading or similar document of title" for the purposes of the Hague and Hague-Visby Rules. Until this decision, the English authorities had tended to point to the opposite conclusion.

In reaching its conclusion, the court of appeal accepted that a straight bill of lading had to be presented to the carrier in exchange for the goods and was, therefore, a "document of title" as far as the consignee was concerned, even though he could not transfer rights in the goods to others by endorsement of the bill. In this case, there was an "attestation" clause on the face of the bill, which required one of the bill of lading set to be surrendered "duly endorsed" in exchange for the goods. But the court indicated that it would have come to the same conclusion, whether the attestation clause were there or not. In reaching its decision, the court referred to the judgment of the Singapore Court of Appeal in the case of APL Co. Pte Ltd v. Peer Voss, reported in Edition 27 of TT Talk last November, where the carrier was held not entitled to deliver cargo carried under a straight bill of lading, without presentation of the bill by or on behalf of the named consignee.

For further information on the Rafaela S, decision, refer to the note on the case on the Editor's website, DMC's CaseNotes @ [http://www.onlinedmc.co.uk/macwilliam_v__msc_\(cofa\).htm](http://www.onlinedmc.co.uk/macwilliam_v__msc_(cofa).htm)

Latest information is that the case will be appealed to the House of Lords, the ultimate court of appeal under the English system.

4. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information on any of 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.

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

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