

Welcome to the latest edition of TT Talk, number 32 in the series.

Contents

1. Personal effects shipments - beware Consumer Protection Legislation
2. Carriers held responsible for misdelivery from customs warehouses in Chile
3. The "fireworks scam"
4. TT Club launches self-analysis system for checking security compliance
5. Conclusion

1. Personal Effects Shipments - beware Consumer Protection Legislation!

In our last edition, we published some advice that Harry Lee from the TT Club office in Hong Kong had recently given to a Club Member there on the risks involved in handling consignments of personal effects. That has prompted Mike Foster, of TTMS(UK) to comment that, in the UK at least, bills of lading for shipments of personal effects will be subject to the Unfair Terms in Consumer Contracts Regulations of 1999. Mike reminds us that

under the Regulations, a contractual term is not binding on a consumer if it is unfair. A term is unfair if:

(a) it has not been individually negotiated (e.g. drafted in advance and the consumer is unable to influence its substance); AND

(b) contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer

Schedule 2 of the Regulations gives a non-exhaustive list of examples of terms that may be unfair. These include terms that

(a) inappropriately exclude or limit the legal rights of the consumer in the event of total or partial non-performance or inadequate performance by the supplier

(b) irrevocably bind the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract

(c) exclude or hinder the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration.

The regulations do not apply to international conventions to which members of the European Union, such as the UK are party. That means that they do not apply to bills of lading to which the Hague-Visby Rules apply. Conversely, they would apply to a contract of carriage, such as a waybill, to which the Rules do not apply. Food for thought!

2. Carriers held responsible for misdelivery from customs warehouses in Chile

The English Court of Appeal recently delivered judgment in the case of P&O Nedlloyd BV v. Utaniko Ltd; DKBS 1912 and AKTS Svenborg (trading as Maersk Line) v. East West Corporation - sometimes known as the "Chilean Customs case". The Court of Appeal agreed with the judge at first instance that the carrier was to be held responsible for the delivery of cargo at the Chilean port of discharge, without production of the original bill of lading, even where the delivery was effected by a customs' warehouse operator to whom the carrier had been obliged to deliver the goods, pending completion of customs formalities. The ground of the decision was that the carrier had failed to instruct the warehouse operators to ensure that delivery was given only on sight of an original bill of lading.

There is a fuller report on the case at the Editor's website - DMC's CaseNotes. You can access the report at

http://www.onlinedmc.co.uk/east_west_v__dkbs_1912_cofa.htm

3. The "fireworks scam"

One of our regular correspondents has sent us another cautionary tale as follows:

"As Port manager for a large container carrier, I had the opportunity to dine with our Far East Sales manager during a trip he had made, visiting various ports in the United States. One conversation led to another and eventually to a large importer of fireworks into the southern US. He told me that the owner of the importing firm had recently experienced some big losses while gambling in Macau.

Several months after this conversation, I received a call from the fireworks importer. He told me that there was a major problem with 10 container loads of mixed fireworks that had recently arrived soaked with water, and that his losses would be high, in the region of US\$120,000. After looking at the bill of lading, I noticed that all the consignments had been loaded in 40' containers that had just been manufactured and were carrying their first load of freight.

Feeling very suspicious, I went with my operations manager to the importer's facility to view the condition of the cargo. Only two of the units had been stripped; water stains and moisture were prevalent in most of the cartons. Eight had not been stripped and the fireworks occupied more than 90 percent of the cube of each unit. To confirm the condition of the containers, we climbed into each unit and slid from back to front, with doors basically closed, to insure there were no leaks near the top rails - the units were aluminium and riveted, as opposed to the all steel construction we have today.

We saw nothing that would have allowed for the degree of wetting that existed and explained this condition to the importer. I said that we looked forward to receiving his claim and we went on our way.

Several weeks later I received a claim for slightly more than US\$120,000 for wet fireworks. This was forwarded to our Corporate Loss Prevention and Claims department, along with a report on our visit to the importer's premises and a mention of the conversation regarding the owner's substantial gambling losses in Macau.

Some time later I was advised there had been a fire next to the warehouse storing these fireworks in China and they had been wetted down to prevent explosion. The importer had then purchased them and shipped them with the intent from the beginning of defrauding the shipping company. Needless to say, that was one claim that didn't get paid!"

That just goes to show the value of lateral thinking!

4. TT Club launches self-analysis system for checking security compliance

For those readers whose companies are Members of the TT Club, make sure that you take advantage of the Club's latest offering in the field of transport security compliance. It consists of a web-based "DIY" ("do-it-yourself") interactive tool which enables Members to ensure that they become and remain compliant with US and other international legislation relating to transport security. Accessed through the TT Club website, the interactive service is fast and free to registered users.

As a result, TT Club Members can now identify areas within their business processes that may be falling foul of the increasingly stringent and complex regulations being implemented, particularly by the US government, in the search for greater protection from the threat of terrorist attacks. "This initiative will immediately benefit Members worldwide who trade with the United States, or whose cargo is carried on ships transiting US ports," commented Andrew Webster, TT Club's London-based Loss Prevention Manager.

"From the time the IMO (International Maritime Organisation) amended the SOLAS Chapter 11 regulations, we knew we had to recognise proactively the new security climate we all now operate within," said Mr Webster. The analysis tool is accessed via the online services section of the TT Club's website at <http://www.ttclub.com> and requires that Members register for access.

Depending on their individual analyses, Members then have the option of determining and implementing necessary corrective measures themselves, or seeking further advice from their local TT Club office. Where appropriate, the Club can put Members in touch with reputable external security consultants for specialist assistance.

5. 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

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. You can also read this newsletter and past issues on our website: <http://www.ttclub.com>

If you do not wish to receive future editions, please reply to this message and include the word "REMOVE" in the subject line. If you have received this edition via someone else and you would like your own personal copy in future, please send your name, company name and e-mail address to: tt.talk@ttclub.com

If you would like to receive further editions in Microsoft Word, please reply to this message and include "MS Word" in the subject line.