Welcome to the latest edition of TT Talk, number 29 in the series.

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1. Straight bills of lading - readers' feedback on APL v Voss item in TT Talk 27

The first feedback came from Chris Gillespie, CEO of freight forwarder Gillespie Munro in Montreal, Canada, a former President of FIATA and long-time Member of the TT Club. He writes:
"I thought I would take this opportunity to drop you a note and in particular comment on the "straight b/l" item.
Unless I have not read it correctly the one item that appears to be missing in the analysis is whether or not "ORIGINALS" of this b/l were ever indicated as having been issued.

[On this point, original bills of lading were issued in this case and were held at all times by Mr Voss. The bills contained a clause reading:
"A set of three originals of this bill of lading is hereby issued by the carrier. Upon surrender to the carrier of any one <u>negotiable bill of lading, properly endorsed</u>, all others shall stand void." Emphasis added.]

Basically we have adopted an approach that says, that regardless of how the b/l is consigned or what it is called, if originals have been issued we require one for release."

In the light of the decision of the Court of Appeal in Singapore in the APL v Voss case, that seems a sound approach to adopt.

The second item of feedback came from a reader in Singapore, who said:
"I am a documentary credit specialist and wish to find out from you what is a Surrender Bill of lading? I saw this as part of a term in a Letter of Credit issued by a Thai Bank to a local exporter where it was mentioned under special conditions that Surrender B/L are acceptable."
Research within the TT Club and with some other experts has not produced a definitive answer to this question. It is not, so far as we can tell, a standard INCOTERM but diligent research by Ian Hyslop, the Legal Director of the TT Club, found a reference to it on the site of Westpac Institutional Bank at

http://www.wib.westpac.co.nz.

There a Surrrender Bill of Lading was described as a bill of lading used in a documentary credit transaction where it is agreed that payment by the importer will be delayed, pending maturity of the draft which is funding the transaction. The carrier, or other party holding the bill, is required to "surrender" it, usually on the inistruction of, and against an indemnity from, the shipper. If any of our readers know differently, please get in touch with us!

2. Another scam on shipping lines

The reader who kindly contributed an item under this heading in TT Talk Edition 27, has told us another tale. It goes as follows:
"Several years ago I received a call from a consignee in the United States advising us that their product (brake shoe/parts) had arrived from Italy. After breaking down one of the pallets and viewing the contents, they had found the brake shoes affected by flaking rust. He advised the value of the shipment was approximately US$42,000 and, if the remaining contents were in the same condition, they would be

unsuitable for use and the load would be considered a total loss. I asked that samples of the deteriorated brake parts be sent to me and that I be kept advised of their further findings.

After further investigation, we found that the load had been in our possession for less than 30 days. It was, therefore, virtually impossible for that type of deterioration to have occurred whilst the goods were under our control. However, it would become our responsibility to defend the claim when/if it was filed. We duly received samples of the damaged shoes, followed shortly by notice from the shipper in Italy, advising of rusting damages to the shipment and that the consignee was rejecting the entire load.

During the interim, the container had been returned to the pier and we confirmed there was no damage or deterioration to the unit that would have allowed for salt water ingress. Furthermore, it had not been stowed in a position on the ship where it could have been affected by water rising in the hold.

While we were examining the parts, we found a mark under the rust that showed the origin of the item to be China. After much effort we determined that the parts were initially manufactured in China for destination Italy. The vessel carrying the cargo from China had caught fire off Yugoslavia and, after heroic efforts, by the crew, the fire had been extinguished and the ship safely made port. Much of the cargo on board had been salvaged and some, unscrupulous, enterprising, individual or organization had bought the damaged parts, repackaged them and then sold them to an unsuspecting US customer.

Needless to say we rejected the claim based upon our findings and to my knowledge never received another shipment from that shipper again."

3. Update on shipments of personal effects to the US

Patrick Bush, Loss Prevention Officer at Thomas Miller (Americas), the Club Managers, in New Jersey, has commented on the position of shipments of personal effects under the new Customs Security regime in the United States. This follows from an item in TT Talk 27 raising the question whether the controls on personal effects shipments were as stringent as on other cargo. Pat says, in a message dated 1 November:

"I have just called my contacts in US Customs, who advise that, while you may list 'Personal Effects' on the bill of lading, you must also include a list of exactly what your personal effects are. In addition, you can bet that your personal effects will not be so personal after US Customs inspects the contents! They are not leaving any stone unturned..."

4. UK Court finds nine month time limit in BIFA Conditions unreasonable

In the recent case of Granville Oils & Chemicals Ltd v. Davies Turner & Co Ltd, an English regional Mercantile Court held that the nine month time limit for suit contained in the standard trading conditions of the British International Freight Association (BIFA) was unreasonable and therefore unenforceable. In the case in question, Davies Turner contracted with Granville on BIFA Conditions to arrange for the packing and carriage of a consignment of return paint products from Kuwait to the UK. Davies Turner also agreed to arrange cargo insurance on 'all risks' terms. That was not done; instead, the cargo was insured on more restricted terms. The consignment arrived damaged at destination; the damage was attributed to 'insufficiency of packing'. That might have been an insured risk under the all risks terms, but it was not insured under the restricted cover. By the time that Granville became aware that cargo underwriters had rejected their claim, the nine month time limit for suit under the BIFA conditions had almost expired. Granville commenced proceedings subsequently, after the expiry of the nine month period. Davies Turner tried to rely on the nine month limitation for suit. The judge held that this clause was unreasonably wide and draconian in its effect. Whilst some form of time bar might be reasonable for some forms of liability, it was not fair for a time bar of nine months to apply to 'all liability whatsoever howsoever arising in respect of services provided'. He held accordingly that the clause was void under the Unfair Contract Terms Act 1977 and that Davies Turner could not rely upon it.

This case has potentially serious consequences. Conditions similar to the BIFA Conditions have been adopted by a number of other freight forwarding associations worldwide. In addition, a nine month time bar is a common provision in many bills of lading, particularly those based on the UNCTAD/ICC Rules, such as the FIATA FBL. [The UK Unfair Contracts Terms Act does not, in general, apply to negotiable bills of lading and other contracts of carriage of goods by sea.]

It is not yet certain whether the judgment can be appealed.

For more detail, a note on the case will be available from Tuesday 17th December 2002 at the website DMC's CaseNotes at
http://www.onlinedmc.co.uk/granville_oils_v__davies_turner.htm

As we publish this edition, we have just learned that the High Court of Singapore, in the case of Press Automation Technology Pte. Ltd. v. Trans-Link Exhibition Forwarding Pte Ltd, has declined to apply the nine-month time limitation for suit in clause 30 of the Singapore Freight Forwarders Association Standard Trading Conditions. It did, however, uphold the financial limit of S$5.00 per kilo, maximum S$100,000, under clause 27 of the Conditions. We will report more fully on the case in a later edition of TT Talk.

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.

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