

## Welcome to this Edition of TT Talk, number 20 in the series

### Content

1. Three Original Bills of Lading + One Unoriginal Fraudster = Serious Trouble for the Freight Forwarder!
2. Don't be bullied by your customer!
3. NVOCs face regulation in China
4. Carriage by Air - Montreal Additional Protocol No.4
5. Conclusion

### 1. Three Original Bills of Lading + One Unoriginal Fraudster = Serious Trouble for the Freight Forwarder!

Andy Trasler, of TTMS(UK), sends us a timely reminder of the dangers that a freight forwarder runs in giving delivery of cargo on behalf of NVOCs or other ocean carriers, when more than one original bill of lading has been issued. Here is an extract from his note:

Freight forwarders, acting as agents on behalf of NVOCs or other ocean carriers for the release of cargo at destination must be alert to the number of original bills their principal has issued. Ideally, if three originals have been issued, all three should be handed over to obtain release of the cargo. While it is strictly not necessary for the consignee to hand over all three (the wording on the bill normally states that if any one original is handed over, all the others are void), it is an important anti-fraud measure to get them to do so.

Over the years a number of Members of the TT Club have been caught out because a consignee - receiver of a number of different shipments - has deliberately used the existence of several original bills of lading to obtain cargo without paying for it. He presents a single original from a set of three, and (correctly) obtains release of the consignment - Consignment 1. A few days later he presents another original from the Consignment 1, pretending that it is actually the bill for a second (similar) consignment - Consignment 2. The release clerk is rather busy and fails to spot that the bill of lading number and the container number are not the same as the ones on the copy in the file; consequently he or she issues a delivery order for Consignment 2. Some time later, the shipper asks what has happened to Consignment 2, as his bank is still holding the three originals... By this time, the "buyer" has long since disappeared, leaving the agent with a bill for the total value of the consignment and a claim which is practically indefensible.

There are some simple steps which you can take to prevent your company becoming another victim of fraudsters and confidence tricksters:

- When you receive the file copy of the bill of lading from your principal, check how many originals have been issued.
- Try to get the consignee to give you all the originals before releasing the cargo.
- You cannot insist on receiving more than a single bill, but if the consignee refuses outright to give you the extra originals, do make a check on what other consignments he may be receiving at the same time. Make a note on the other files to be especially cautious when checking documents.
- Always check that the bill of lading number, the container number (or the consignment marks and numbers), the carrying vessel and the description of the goods shown on the original bill correspond exactly with the copy bill in the file. If in doubt, do not sign the delivery order, but refer the matter to a senior manager for guidance.
- Never, never, release cargo against a bill that has been faxed or sent as an e-mail attachment, or against a photocopy. Always demand the original documents.
- Issuers of bills of lading can also help by issuing only one original unless there is a specific request from the shipper for more. Even then a little education can go a long way; it only takes a small change in the letter of credit to substitute 'one original' for 'three originals'!

- And, if you do find that a consignee has obtained goods by presenting the wrong bill of lading, you should report it to your local police force as well as to the Club as soon as possible. Obtaining goods by fraudulent misrepresentation is a crime in most countries. "Theft" is actually a better name for it. Let's help stamp it out!

## **2. Don't be bullied by your customer!**

Of course, the customer is 'always right' but that does not mean that the service provider must agree all the terms the customer demands - particularly when they relate to changes to standard trading conditions. Shippers are increasingly trying to save money on their own cargo insurance by demanding that their carriers delete the limitation provisions and sometimes the defences from their standard trading conditions, and accept instead full responsibility for any loss or damage occurring during transit. Agreeing to these demands may be expedient in the short term, as it may secure the business, but it can be disastrous in the longer term. Sooner or later, a massive claim will arise, for which the service provider will have no defence. True, his insurer, if it has agreed the change in the trading terms, may pay the claim in the first place, but that is not the end of the story. When the time for renewal comes, the insurer may decline to renew, or offer terms that the business cannot afford. And without insurance, the business cannot trade.

Have a look at the article by Blair Basham, in the March 2002 edition of Risk Management Magazine, entitled 'Risk Transfer Fallacies in Shipping'. The full text, reproduced with kind permission from Risk Management Magazine's March 2002 issue can be read at:

<http://www.ttclub.com/ttclub.nsf/ByKey/AMIR-59HD96?OpenDocument>

The Risk Management Magazine website is at:

<http://www.rmmag.com>

## **3. NVOCs face regulation in China**

Only now is the freight forwarding world beginning to appreciate the full impact of Order No 335 of the State Council of the People's Republic of China, signed into effect by Premier Zhu Rongji in December last year. It is titled "Regulations of the PRC on International Maritime Transportation" and it sets out to regulate the activities of all international carriage by sea operators, non-vessel transport operators, ship agency operators and ship managers doing business in China.

As regards NVOCs, the Order requires that, to undertake NVOC operations, a company must be established in China, must submit the form of its bill of lading and provide security to the competent authorities, (Articles 7 and 26). The amount of security is RMB800,000, plus RMB200,000 for each branch office, (Article 8). The requirements apply to those NVOCs who do not operate in China but with their house bill of lading issued by designated local agents.

The competent authority will publish the names of NVOCs that have successfully completed the registration process, (Article 8). Freight rates, both those agreed with the customer and those agreed between NVOC and ocean carrier, must be submitted to the authorities for record, (Article 20).

Article 27 forbids the following:

- rendering services at a rate lower than normal and reasonable level which impedes fair competition;
- giving discount to shipper outside accounting books in secret to canvass for cargo;
- abusing advantageous position to impose discriminatory rate or other restrictive condition;

other acts that damage the counterparties or jeopardise the order of international carriage by sea market.

Finally, Article 43 gives the authorities power to halt unregistered operations and to impose fines to a maximum of RMB500,000.

The approximate rate of exchange is 8RMB/1USD.

Club Members needing further information about Order 335 are recommended to contact Edgar Wong at the Thomas Miller office in Shanghai. His email address is [edgar.wong@thomasmiller.com](mailto:edgar.wong@thomasmiller.com).

#### **4. Carriage by Air - Montreal Additional Protocol No.4**

One of the significant changes introduced under Montreal Additional Protocol No. 4 (MAP4) is that the old Warsaw Convention limit of 250 Gold Francs per kg is replaced by the rather more easily calculable 17.00 SDRs, and that this now constitutes the maximum liability for cargo claims. It is no longer possible to breach limits by pointing to technical omissions in the air waybill, or by allegations of gross negligence/wilful neglect. Neither is it possible to agree different limits by private contract.

As with all other air conventions, MAP4 applies only when both the sending and destination states have ratified the convention. The current list of countries that have adopted MAP4 is available on

<http://www.icao.int/icao/en/leb/mp4.htm>

#### **5. Conclusion**

We hope that you will have found the above items interesting. If you would like to have further information on any topic, or have any comments you would like to make, then e-mail the Editor at [tt.talk@ttclub.com](mailto: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](mailto: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.