

## **1. A NOTE FROM THE EDITOR**

This month's edition sees some interesting articles from our offices from all over the world. From the UK there is a brief report on the impact of the new Civil Procedure Rules that came into force on 26th April whilst in the United States we feature a report on the position of the Federal Highway Administration regarding trucker indemnities from intermodal equipment hirers. From Asia Pacific we learn of the potential problems faced by terminal operators who handle gas containers. These are just some of the articles that appear in this month's edition.

Don't forget, if you wish to enter into dialogue with us on any of these articles, we would be delighted to hear from you. Please write to us at: [news.ttclub@thomasmiller.com](mailto:news.ttclub@thomasmiller.com)

Please note that the views expressed in articles contributed by third parties do not necessarily reflect the views held by the TT Club.

Christine Williams

## **2. WHO'S AFRAID OF THE BIG BAD WOOLF?**

The New Civil Procedure Rules (CPR) or Woolf Reforms which came into effect in England and Wales on 26th April 1999 have been heralded as one of the most revolutionary reforms in civil litigation since the 19th century. It is too early to know how the CPR will work, but they are, from many points of view, revolutionary and will fundamentally affect litigation, as well as arbitration and claims handling and settlement.

Under the Woolf reforms, mediation is to be "encouraged" and "facilitated" by the judge. They have the power to stay proceedings and to urge lawyers into Alternative Dispute Resolution (ADR). They can also refuse costs to lawyers who do not consider it seriously. The basic idea behind these reforms is that the courts will now actively manage cases. Under the previous system, litigants could agree amongst themselves whatever time extensions they wanted. Under the CPR, it is the court that will determine the deadlines by which time documents must be submitted. Listed below are just some of the main areas in which the new CPR will impact on litigation:

### **Timetable**

Claims and defences must be made according to a strict timetable and must include a statement of the facts on which the party is relying and copies of relevant contracts or other critical documents. Tactical delays (including bluffing or stalling) by either side are no longer an option. The only way to gain tactical advantage is to assemble at the start all necessary documents and information necessary, including witness statements.

### **Statement of Truth**

All statements must be verified by a "statement of truth". Anyone knowingly verifying a false statement will be in contempt of court.

### **Disclosure**

The CPR substitute the word "disclosure" for "discovery". Parties are required to make a reasonable search for documents, which may affect their own or another party's case. There must be a disclosure statement stating (among other things) who searched for the documents, the extent of the search and whether the search was limited on grounds of reasonableness (and why).

### **Experts**

There are a number of changes concerning experts' reports, most of which emphasise the Court's new management function. The most significant of these is that instructions - written and verbal - are to be included in the report.

### **Settlement**

The Court can penalise by way of costs a party which wrongly declines an opportunity to settle. The English practice of payment into Court is extended by the CPR so that the

claimant can now make an offer to the defendant, as well as the other way round. Finally, a court will be guided by "proportionality" i.e. does the size, complexity or importance of the case justify the cost of a trial?

Generally speaking, it appears that the CPR will be more beneficial to claimants. However, if you are well prepared as a defendant, the changes are not that detrimental and in some ways may be beneficial. For example, where a claimant has "no real prospect of succeeding", then the claim is likely to be struck out.

Lord Woolf believes that it is not just the CPR on its own that will bring about the change in culture that the civil justice system requires but that it will be necessary for practitioners and judges alike to ensure that they are operated efficiently in order to achieve a quicker, cheaper and fairer disposal of disputes.

Contributor: Ian Hyslop/Christine Williams, TT Club - London

### **3. A LEARNING EXPERIENCE**

The TT Club is to participate in the third Insight into Transport Law and Insurance course which will take place in London between 12th -16th July and in Hong Kong towards the end of the year.

The course is aimed at the Club's members and their executives and is designed not only for those who are new to the industry but also for those who wish to refresh their knowledge. The 1999 course will be aimed at foundation level. A suite of Club specific programmes is being developed at introductory, practitioner and advanced levels to build on the foundations, which the Insight into Transport Law and Insurance provides.

It is an intensive five day programme in which there is an emphasis on the practical application of the topics covered through case study and discussion. Participants also receive course documentation to enable them to gain maximum benefit from subsequent review and study.

The course programme includes visits to Lloyds of London and the Baltic Exchange as well as a full social programme. However, places on the course are limited in order to provide attention to individual requirements.

All TT Club Members should have received a colour brochure giving details of the course. If you would like further information, please contact your Account Executive at the TT Club or the Training Department on +44 171 204 2359

Contributor: Sharon Lawton, Thomas Miller, Learning Centre - London

### **4. TT CLUB SPEAKS UP FOR INTERMODAL EQUIPMENT PROVIDERS**

In March 1997 the American Trucking Association (ATA) filed a petition with the Federal Highway Administration (FHWA) to require parties that tender intermodal equipment to motor carriers to ensure that the equipment was roadworthy. The ATA contend that motor carriers have no opportunity to maintain this equipment and that the parties who do have the opportunity, often fail to do so. The FHWA therefore sought information on the extent of the problem and public comments on the solution proposed by the ATA i.e. to mandate joint responsibility between "equipment provider" and the motor carrier for maintaining this type of intermodal equipment. The Advanced Notice of Proposed Rulemaking was published in the 17th February 1999 issue of the Federal Register and requested that comments be received on or before 19th April 1999.

The TT Club, through its regional offices in New Jersey arranged to comment on behalf of its members many of whom are major liner carriers, equipment leasing companies, terminals and other intermodal equipment providers. In its comments the Club provided an overview of

how equipment is interchanged with motor carriers. It pointed out that this interchange is usually pursuant to an interchange agreement between the highway motor carrier and the equipment provider. Under the terms of the interchange agreement, the motor carrier must inspect the equipment. The inspection is evidenced by an equipment interchange receipt. The receipt, which must be signed by the motor carrier's driver, not only certifies the roadworthiness of the equipment but also allows for notation by the motor carrier of any damage to the equipment at the time of interchange.

The motor carrier also has complete discretion to refuse the interchange of equipment. Thus, the motor carrier is the last safety check for the road-worthiness of intermodal equipment prior to its use on public roadways. This provides important safety protection to the public. The TT Club went on to add that "should the proposed amendments be enacted, not only would this very important safety check to the public be compromised, but the amendments would seriously interfere with the contractual duties and obligations between the motor carrier and the equipment provider under the equipment interchange agreement. The amendments are therefore not good public policy".

The TT Club also advised the FHWA that in over twenty years of providing insurance to equipment providers for chassis liabilities in North America it has defended its members in an excess of four hundred lawsuits concerning roadway accidents involving a motor carrier pulling the equipment provided by its members. In virtually all these cases the accidents were caused by the fault of the motor carrier and its driver or the driver of another vehicle, not the intermodal equipment. Less than one percent of these cases involved a defect in the equipment .

The FHWA has extended the comment period to 30th August 1999.

Contributor: Leo Kirchner, TT Club - New Jersey

## **5. BEWARE OF EXPLODING CONTAINERS**

One of the Club's members in Hong Kong was unfortunate enough to experience an explosion of a container loaded with gas lighter fuel at their depot last year. Subsequent investigations with the local Gas Authority revealed that a terminal or depot owner handling LPG containers should have obtained approval from the Authority to enable them to store such products. In Hong Kong it would appear that only the larger terminals have applied for this licence whilst the smaller ones have not done so.

The Gas Authority advises that under Section 3 of the Gas Safety Regulations Cap.51, storage of LPG containers exceeding 130 litres in capacity requires approval of an appropriate gas installation. Contravention of Gas Safety Regulations Cap.51 is an offence and will be subject to prosecution. The offender will be liable for a fine of HK\$25,000 and to imprisonment for up to 6 months and a further fine not exceeding HK\$2,000 per day if the offence is continued.

The Gas Authority urges all terminal operators handling these types of products to obtain the relevant storage approval.

The above requirement only concerns the handling or storage of containers containing LPG, natural gas, town gas, substituted natural gas or synthetic natural gas. For other categories of dangerous goods, the terminal operator should apply for a licence from the Fire Services Department.

Contributor: Patricia Ng, TT Club - Asia Pacific

## 6. [www.ttclub.com](http://www.ttclub.com)

Do have a look at the TT website. Over the past month or so, work has been carried out to upgrade the information on the Club's website. For example, the latest issue of Door-to-Door

is there and the Club's Stop Loss Information Sheets are being added. In the next week the Club's Financial Highlights for the year ending 31st December 1998 will be published and they will also be posted on the website. The next issue of House-to-House will be live on the web the same day that it is published as a magazine.

This work is being done for the benefit of the membership and for people who work with the Club. We need and appreciate feedback from the Club's customers and other contacts as to what they - you - would like to see on the website.

Please send any ideas or suggestions you have to:  
<mailto:shirin.haque@thomasmiller.com>">Shirin.Haque@ThomasMiller.com</a>]

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