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**1. ICHCA International 2010 Biennial Conference**

26-29 April 2010 - Casablanca, Morocco

ICHCA International is the only independent world-wide, non-governmental, non-profit organisation dealing specifically with the handling and movement of cargo. ICHCA and the TT Club have worked closely for many years and both are focused on driving safety and efficiency in the supply chain.

The International Safety Panel (ISP) and TT jointly publish good practice guides, pocket safety cards and many other safety documents. This work is only possible due to the extensive network of experts drawn from TT and ICHCA membership who contribute to the compilation and editing of all publications.

The Club encourages attendance at ICHCA's biennial conference being held this year between **26 and 29 April in Casablanca**, Morocco. The conference is the only event organised by the international cargo transport *industry* and not by commercial conference organisers. Consequently the focus is on efficient and safe cargo handling, practical ideas and new technologies.

The conference, while aiming to highlight essential operational efficiency improvements, will focus on continent-wide rail, road and port coordination and collaboration. Invitations are being extended to sea / road / rail / air cargo and passenger operations, so that all may benefit from the conference.

In conjunction with the main conference, meetings of the International Safety Panel, the ISP Environmental Sub-Group and the International Security Panel are timetabled for delegates at the biennial conference. Members of these panels represent a substantial cross-section of senior experts and professionals from all sectors of the cargo transport industry globally. These panels have been established to provide consulting services and informative publications dealing with technical matters and relevant news.

The TT Club recommends any company involved in the handling or movement of cargo (forwarding, logistics, terminal and ship operators) to become a member of ICHCA in order to share information relating to safe and efficient operations.

For more information about the 2010 Biennial Conference refer to either [www.ttclub.com](http://www.ttclub.com) and click the Events button or go to: [www.ichca.com](http://www.ichca.com)

## **2. US advice on carriage of batteries for recycling**

Dr Chris Foster of Dr J H Burgoyne & Partners LLP has drawn attention to the US Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) advice issued concerning transportation of batteries for recycling and disposal following a number of serious incidents. PHMSA noted an ongoing trend of serious safety problems and non-compliance regarding the classification, packaging, marking, labelling, documentation, and transportation of spent batteries in commerce. Investigations revealed a number of safety issues, including:

1. Large numbers of used batteries, of many different types, are collected in large containers that do not adequately prevent damage to the batteries or prevent their release during transportation.
2. Outer packages are not marked and labelled as required to indicate that they contain batteries; the shipments are not described as required on accompanying shipping documents.
3. No action is being taken to prevent a short circuit, such as separating the batteries by placing each one in a separate plastic 'baggie' or taping the terminals of the battery.

The following weblink provides the complete advice.

[http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/2009\\_Battery\\_Safety\\_Compliance\\_Advisory.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/2009_Battery_Safety_Compliance_Advisory.pdf)

It should be noted that PHMSA issued a final rule requiring full compliance from 1 January 2010. While this is obviously specific to US regulation, the safety principles will be valuable in other jurisdictions.

## **3. Looking at shipper responsibilities**

Peregrine Storrs-Fox, the TT Club's Risk Management Director, comments:

Experts continue to be worried by the twin problems faced by the unitised cargo industry arising from the lack of correct information supplied by shippers and consolidators. The concerns over both weight and contents was discussed by the International Safety Panel of ICHCA International at a recent meeting.

At present, there is considerable concern regarding the mis-declaration of container weights and the Panel emphasised that the basic obligation to provide the correct information rested with the shipper or consolidator. Although the scale of the problem was not accurately known, the UK's Maritime Accident Investigation Branch report on the MSC Napoli clearly indicated that the stability and even safety of the ship could be affected. The incident investigation established that 20% of the deck stow differed by more than three tonnes from the declared weights. Shippers should be made aware of their obligations and that this is best done by the shipping company when the booking for the voyage is taken.

Terminals and shipping companies should together decide whether there is a need to check the weight of containers and, if so, how that might be done. In some instances, a weighbridge certificate could be provided with the goods as they come to the terminal whilst in other circumstances a weight check on the terminal via a terminal weighbridge or terminal equipment using sensing devices might be possible.

The other aspect concerns dangerous goods and the Panel acknowledged that the 34th amendment of the International Maritime Dangerous Goods Code (IMDG Code) became mandatory from 1 January 2010, including the provision relating to the training of shore-side workers. Forwarders and carriers should ensure that shipper customers are made aware of the requirement to provide 'function specific' training to their staff and seek confirmation that this has been done. Both ICHCA International and the TT Club have recommended the Exis Technologies e-learning package (<http://www.imdgc-learning.com>) as an effective support in achieving this requirement.

#### **4. Delivery under a 'Straight' bill of lading under Canadian law**

TT Talk Edition 127 of 4 March 2010 published an article by US attorney-at-law Conte Cicala on 'Delivery under a 'Straight' bill of lading under United States law'. In contrast to US law, which generally permits delivery without presentation of a 'straight' bill of lading, Canadian law requires surrender of one original 'straight' bill of lading in return for the goods.

This position has been reaffirmed in June 2009 by the Federal Court of Canada (a superior court with nationwide jurisdiction) in *Cami Automotive v Westwood Shipping Lines*. Mr Justice Blanchard, when required to classify a Transport Operator's carriage document either as a 'Straight' bill of lading or as a sea waybill, referred to 'The Rafaela S' (UK House of Lords 2005) and explained that a bill of lading might be either negotiable or non-negotiable, but that in either case the bill was a document of title and therefore had to be presented at the port of delivery to ensure the delivery of the goods. The judge also cited the Federal Court judgement of 25 June 2008 in *Timberwest Forest v Pacific Link Ocean Services* in support, where Mr Justice Harrington said that 'a fundamental aspect of a contract of carriage covered by a bill of lading is that the carrier, or its agents, delivers the cargo to the holder of the bill'.

As Canadian law requires surrender of a 'straight' bill of lading for delivery, but allows delivery under a sea waybill without such presentation, distinguishing the two is critical.

In *Cami Automotive v Westwood Shipping Lines*, Westwood assumed liability for carriage of palletised assemblies and modules by sea from Nagoya (Japan) to Seattle, then by truck to Vancouver and finally by rail to Toronto. The train operated by Canadian National Railway derailed in northern Ontario. Cargo interests sued Westwood for USD1.213 million. The classification of the document as a sea waybill allowed Westwood to rely on the US COGSA 1936 with its limit of USD500 per package, with the result that Westwood was able to rely on a total liability limit of just USD50,000.

Mr Justice Blanchard scrutinized the front of the Westwood carriage document (to determine whether the Hague-Visby Rules applied by force of law) and concluded that the document was not a 'straight' bill of lading but a sea waybill based on the following entries on the front of the document:

- The word 'waybill' appeared in the top-left corner (where another Westwood document states 'bill of lading');
- A stamp said 'non negotiable waybill';
- Another stamp included the requirement of 'delivery against proof of identity',
- A statement in the bottom-left corner stated that only 'one' document was to be signed.

Also, the judge felt the following factors were of little assistance:

- The printed term 'Bill of Lading No', because the judge held this to be subordinated to stamped terms;
- The stamped term 'Straight Bill of Lading (Waybill)', which the judge viewed as 'apparent confusion of terms'; and

- The identical wording of the conditions on the back of the document in question and the Westwood bill of lading.

Incidentally, Mr Justice Blanchard also held that the reference in the Westwood sea waybill conditions to a 'bill of lading' did not make these conditions inapplicable.

Please use the following web link for the full text of the judgement by the Federal Court (Mr Justice Blanchard) in Cami Automotive v Westwood Shipping Lines of 24 June 2009:

<http://www.canlii.org/en/ca/fct/doc/2009/2009fc664/2009fc664.html>

## **5. Conclusion**

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at [tt.talk@ttclub.com](mailto:tt.talk@ttclub.com). We look forward to hearing from you.

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