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What out for Indemnity Clauses!

There are many circumstances in which an indemnity clause is an appropriate protection for the person who requests that it be included in the contract. Even Standard Trading Conditions include indemnity provisions. For instance, the Conditions of the Canadian International Freight Forwarders Association obligate the customer to indemnify its forwarder “against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities **in excess of the liability of the Company in accordance with these Conditions.**”

The CIFFA Conditions establish a maximum limitation on the exposure of the forwarder. The point of this clause is that if, because of the circumstances, the claim is asserted by a party who claims that its rights are not subject to the limitation, the forwarder can rely upon its customer to make any loss good by virtue. Without the right of indemnity the forwarder would be left holding the bag for a liability that was not contemplated.

But watch out! Forwarders who use third parties for transport services may find that there is an indemnity clause that transfers liability back to them. **Even in circumstances where they would not be liable to their customers!** Go to this interesting case: <http://www.forwarderlaw.com/Cases/Ausbail.htm>

Comments Courtesy of Ernest van Buuren, Senior Associate with Blake Dawson Waldon,

Comments from “The Land of the Midnight Sun” from our Colleague, Anette Jahr, on Electronic Commerce and Cargo Bookings.

Our Norwegian Editor writes:

“I hope you’ve had a pleasant summer yourself. I was away for 4 weeks, some of which time I spent fly-fishing for salmon in the very north of Norway - truly the land of the midnight sun. Whilst the rest of Norway has had rather poor weather up until recently, the sun has shone for weeks on end in the North. The fish didn’t bite, but we still had a fantastic time.”

Canada has had crazy weather too. In fact, the Weather Forecasters, who lately have been getting a little smug, had to confess their failings. The Senior Climatologist at Environment Canada commented: “Never have we been so wrong for so long in so many parts of the country!”

The failure of the salmon in Norway to bite allowed Anette to turn her attention to Electronic Commerce. She reviews Norwegian laws that, following the lead of Regulations of the European Union, regulate the use of Websites for business. She also summarizes how the law of contract is adapted to bookings made over the Web. Her commentary is really all that a Manager needs to know. Be sure to follow the link at the end of her article to a humorous comment on the dot.com revolution in transport.

[Read Anette Jahr's latest contribution.](#)

The Importance of Contract Administration. Psychological barriers to insisting that clients accept Standard Trading Conditions.

The recent case of Samsung v. Frans Maas has many interesting comments about the environment in which forwarders try to get standard trading conditions accepted as the basis for a relationship, and the reluctance of customers to accept them. Consider this excerpt from the judgment, which is also offered to lawyers as a good example of effective direct and cross examination.

14. Before proceeding further, the reaction of commercial men on both sides is instructive. The cross-examination of Mr. Graham (of Samsung) included the following exchange:

" Q. You would be well aware, would you not, that freight forwarders and people in a similar type of distribution business routinely transact on standard terms ?

A. Yes, I would.

Q. If you disagreed with the terms applying or if your superiors disagreed with the terms applying they would have simply taken their goods elsewhere and found someone who was not relying on BIFA terms?

A. It is not as straightforward as that. It is not like being able to decide 'we do not want to trade under these terms and conditions with you because you want to apply them'. All logistics companies apply them or try to apply them...."

15. In his evidence, Mr. Harrowing (of Franz Maas) said this:

" Going back to basics, the whole point is that no freight forwarder or haulier in their right mind would operate without standard trading conditions in place, because you simply do not know the value of the goods. On all of our standard trading conditions whether they are BIFA, UKWA, RHA or what ever, it is all based [on] weight not on value

The case involved a theft of mobile phones worth a large sum, in fact the amount of £ 404,434.17, exclusive of interest and costs a sum worth fighting about, and combing the legal arguments to see what has plausibility, and then presenting these arguments with tenacity.

Read the commentary (<http://www.forwarderlaw.com/Cases/samsung.htm>)
It will show how legal ingenuity can make a case despite standard trading conditions.

A practitioner comments on the case of Mediterranean Shipping Company v. Westroc, which condemned a shipper have to pay freight a second time.

The Westroc case has been the subject of commentary in Forwarderlaw. Chris Gillespie, a past President of FIATA, and currently Chair of the Multimodal Transport Institute of FIATA, gives a practitioner's analysis of the commercial issues in the case. He does not disagree with the court's decision in favour of MSC, but he presents other facts where it would not be appropriate to apply the holding to other situations.

Read his commentary! (<http://www.forwarderlaw.com/Feature/westroc.htm>)

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