

FORWARDERLAW E-NEWS April 18, 2005

Changing technology never seems to be accomplished as quickly as expected. The website redesign mentioned in the last Forwarderlaw E-News seems is so close to completion, but there is always one more thing to be done. So the Editor hopes that the redesigned site will be loaded onto its present host within the month, and well before the time of the new Forwarderlaw E-News.

Forwarders and Credit Reports.

Credit reports are a necessary resource for doing business where parties are at arm's length. And they help a party to monitor the financial health of its purchaser, even when there has been a course of dealing over many years. But the credit reporting business can have a large impact if there is an error of reporting or a mistaken identity of the subject company. That is why credit reporting companies are quite willing to correct information that is demonstrated to be inaccurate.

But sometimes the information is accurate, without being fair to the subject company. Forwarders may find themselves in that situation. Read about the practices of certain collection agencies, which disseminate information concerning their activities to credit reporting companies.

If you have had an experience with a collection agency, good or bad, please let the general editor know. Follow this link.

FORWARDING PRACTICE AND INSURANCE

"The ability to provide a client with marine insurance coverage in a cost effective way is a valuable service offered by a freight forwarder." With these words George Strathy, a leading Canadian maritime lawyer and the author of "Insurance Law in Canada", introduces forwarders to a practical list of "do's" and "don'ts" in the placing of insurance for their customers.

George states:

"When cargo is lost or damaged during transportation, most customers will expect their losses to be covered by insurance and they will be surprised and disappointed to hear that their claim may not be covered due to the scope of the insurance or policy exclusions. "

The General Editor recommends that [this article](#) be drilled into the consciousness of all staff who provide this insurance protection to customers.

The Binding Effect of a Signature on a Document

Our Colleague on the Net, Andrew Trasler, drew our attention to a decision of an Appeal Court in Australia that considered this issue. To quote Andrew's words: "Basically [the Court] said that if someone has signed a document containing contractual provisions, the other party is entitled to rely on that signature. If the person who signed had not read the conditions, or did not understand them, that was his fault."

The interesting thing about this case was that the Appeal Court disagreed with the assessment of the Trial Judge, who was prepared to take a more lenient attitude towards the party signing a document but seeking to escape the legal effect of its terms.

Go to this piece of [wisdom from the Antipodes](#).

Package Limitation Cases are like Snowflakes

Canadian folklore has it that despite the infinite number of snowflakes that have fallen on Canada in its century and a half existence, no two of them have been alike! Some times one has the impression that cases on the application of the package limitation to cargo are like snowflakes. Despite the extraordinary range of similarities, no two of them are exactly alike.

Which is the reason why – if there is enough money at stake – carriers and cargo interests are prepared to litigate the issue again? And legal commentaries, including your General Editor, attempt to explain why one decision went one way and the next another.

Go to more [wisdom from the Antipodes](#).

A recent English decision confirms the importance of Forum Selection Clauses

This decision is one the General Editor's recommends that all lawyers read. Not because of the result, which is supported by the tight legal reasoning of a distinguished English Commercial judge. Rather the result presents a dilemma to lawyers who are advising insurance companies pursuing rights of subrogation. And the result suggests that given similar circumstances Canadian law vesting jurisdiction in Canadian courts will not have much influence beyond the borders of Canada.

The case is under appeal but [read this account](#) of the present judgement.

The Final Resolution of the Rafaela S case may start another controversy!

Forwarderlaw has previously reported on the decisions in a case where the issue was the application of the Hague Visby Rules (as incorporated into English law) to a non-negotiable or straight bill of lading. The English House of Lords has delivered its judgment finally settling this issue under English law. Despite the doubts of certain legal commentators a consignee named in a straight bill of lading is as much entitled to the protection of the Rules as a holder of a negotiable bill of lading.

But some of the comments have started speculation about the status of sea waybills. Counsel for the carrier tried to equate the function of a straight bill of lading with that of a sea waybill. Lord Steyn stated:

"The suggested comparison is plainly unrealistic. In the hands of the named consignee the straight bill of lading is his document of title. On the other hand, a sea waybill is never a document of title. "

Having affirmed that the consignee of a straight bill of lading is protected, what will the English courts say about the consignee of a sea waybill? [Read the commentary](#).

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