

FORWARDERLAW E-NEWS January 15, 2005

Your General Editor extends New Year's Greetings to all Forwarderlaw Subscribers and visitors. The year 2004 saw strengthening of Forwarderlaw's participation in countries not previously represented. This process will continue in 2005.

There were also be significant changes to the Forwarderlaw site. More on those changes in the next edition of Forwarderlaw E-news.

Straight Bills of Lading under Chinese Law

In April 2003, George Wang, the Chinese National Editor, reported on a decision of the Supreme People's Court in the case of [Feida v. APL](#). This decision approved the actions of APL in delivering cargo to the consignee named in its straight bill of lading without demanding the surrender of this document.

In the opinion of the Supreme Court, this case was governed by the *Federal Bill of Lading Act* of the United States. The People's Court of Guangdong had erroneously applied Chinese Law as the proper law of the claim. According to US laws, it was reasonable for the carrier to deliver the goods to the consignee designated by the shipper on the straight bill of lading. The carrier was not required to request the surrender of an original straight bill of lading when delivering goods to a consignee.

What would have been the position under Chinese law? George Wang commented:

“We can't draw an affirmative conclusion that a carrier under straight B/L doesn't have this obligation under Chinese maritime law. How long will this issue remain unresolved? We can only wait and see.”

We now have an important development. The conclusion that George Wang is:

Thus, if a case about delivery of cargo without surrendering of original straight bills of lading is heard in China today, the result will depend on the applicable law: if Chinese laws are applied, the carrier will be held liable; if laws regarding the straight bills the same with waybills such as Carriage of Goods by Sea Act of US 1936 are applied, the carrier will be exempted.

Read how Chinese law has [reached that conclusion](#).

SGS HELD LIABLE ON ITS CERTIFICATE IN A CASE OF FRAUD

The home page of this well known international agency carries the slogan “When you need to be sure!” In this case SGS was held liable where it issued its certificate that certain cargo in a warehouse had been “taken in charge” under a FIATA bill of lading. Unknown to SGS, the cargo was subject to a

warehouseman's lien, and could not be the subject of a valid transport contract until that lien was discharged.

SGS was held liable to the purchaser of the cargo who was unable to recover from the forwarder who issued the FIATA bill of lading. The case has a fortunate twist for SGS. [Read on.](#)

SOME SOUND ADVICE FROM TT TALK!

Forwarderlaw reported on a case where an international forwarder was persuaded to abandon the defences in the standard industry conditions that applied to its services. This costly decision was justified by the process of obtaining the logistics business of a large trader.

The Editor of TT Talk comments:

“Many of these contracts contain onerous conditions relating to liability: the customer is also seeking to offload his insurance burden at the same time as outsourcing his logistics operation.”

And concludes with the sage observation:

Unfortunately, just as there is no such thing as a free lunch, there is no such thing as free insurance: whether the premium is paid by the customer direct to his insurers, or indirectly via the LSP as part of the agreed price, someone has to pay.”

[Go to the substance of these comments!](#)

DO CARRIERS ABUSE FREEDOM OF CONTRACT?

The draft UNCITRAL Convention (the Draft Convention on Carriage of Goods [wholly or partially] [by sea]) shows every sign of reversing nearly one hundred years of legal policy, and allowing carriers to make their own bargains free from the interference of mandatory law.

UNCTAD considers that this policy is too important to surrender. In its recent report it stated:

7. The main purpose of this approach, common to all existing international liability regimes, is to reduce the potential for abuse in the context of contracts of adhesion, used where parties with unequal bargaining power contract with one another. By establishing minimum levels of liability, which apply mandatorily and may not be contractually modified, existing liability regimes seek to ensure the protection of cargo interests with little bargaining power, i.e. small shippers and third party consignees, against unfair contract terms unilaterally introduced by the carrier in its standard terms of contract.

The question comes up: How will carriers employ this freedom in the future?

Not an easy question to answer, but it is important to review how in certain limited situations carriers have used that freedom in the past. Go to this case involving [the short sea trades](#) where no bill of lading was issued, and a second case where a bill of lading was issued, but was not subject to the [Hague Visby Rules](#).

LIABILITY FOR DELAY

The draft UNCITRAL Convention tackles the issue of liability for delay head on. In doing so it reflects the general consensus of the participants in international sea borne trade that delay is becoming of increasing concern, and should be governed by any new convention.

Read about [the provisions on delay](#) as they now stand.

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