FORWARDERLAW E-NEWS June 12, 2006

An Example of why Warsaw should be updated to Montreal Convention

In a recent case between Bax Global and Fujitsu, the main issue was whether Bax could limit its liability in accordance with the Warsaw convention. As the air waybill for this shipment did not meet the notice requirements under the Warsaw convention, Bax had to pay damages of $320,000, instead of the $20,000 that would have been the limit under the convention. Even though the shipper was sophisticated and well aware of the convention limitations, and would not have acted any differently.

The Montreal Convention, by contrast, provides that the convention limits apply whether or not the formal notice requirements are met, avoiding the strict interpretation that is required under the Warsaw Convention. For the full article click here:

http://www.forwarderlaw.com/library/view.php?article_id=397

Coffee, Cocoa, and Weight Loss

Inspired by a previous Forwarderlaw article on a carrier's duty to weigh cargo, Vlad Cioarec provides a commentary on the trade in coffee and cocoa. Both coffee and cocoa carry a significant moisture content, and can be expected to lose weight during a voyage causing weight discrepancies. While this is understood in the industry, those issuing bills of lading for such cargoes are wise to include weight disclaimers to protect themselves from liability in the event of excessive loss. For the full article click here:

http://www.forwarderlaw.com/library/view.php?article_id=396

Railroad Law Uniformity: Federal dogma Derails Conflicting State Doctrine

In the United States, railroad jurisprudence has long been the domain of federal legislators, which takes precedence over state laws. This seemingly simple division of powers is more easily legislated than implemented, as Steve Block writes in this recent article.

Can Federal law impose a uniform solution to the differing standards of negligence or proof in the various states? In *Mehl v. Canadian Pacific Railroad* – a class action arising from a derailment that released potentially hazardous fumes – The Federal Court in North Dakota provided a thorough review of the existing and conflicting jurisprudence, ultimately landing on the side of uniformity. Nonetheless, the groundwork has been laid for much future debate. For the full text click here:

http://www.forwarderlaw.com/library/view.php?article_id=387

Anti-Suit Injunctions again!

Forwarderlaw has commented on the effectiveness of an anti-suit injunction (ASI) based on an exclusive jurisdiction clause in shutting down litigation. Parties maintaining an action in another jurisdiction face the prospect of a contempt finding in the jurisdiction granting the ASI. Where the named forum, in this case London, is too important for the parties to ignore, the ASI and

corresponding threat of a contempt order can be a powerful tool for stopping actions brought anywhere in the world. For the full text, click here:

http://www.forwarderlaw.com/library/view.php?article_id=379

When Legal Manoeuvrings go Awry

In a recent case before the English courts, however, a forwarder ultimately failed in its attempt to forestall litigation launched by a shipper in France. The forwarder, Emery, claimed that it was a CMR carrier and brought suit in England for a declaration of non-liability for the shipment in question. As a defendant to an action brought by their customer in France, however, Emery claimed that it had been operating as a commissionaire de transport. On appeal in England, the Court ruled that they could not eat their cake and have it too: the Court took note of the fact that, since their initial English decision, Emery had adopted an entirely different position in the French action. The Court rejected its claim that it could escape liability as a CMR carrier. For the full text, click here:

http://www.forwarderlaw.com/library/view.php?article_id=380

R.M.S. Titanic: The Legendary Disaster Continues to Make History

A similar attempt by a French company to change hats for legal advantage was also rejected by an American Federal Court. RMS Titanic Inc had been incorporated in the 1980's and had successfully salvaged thousands of items from the legendary wreck. Under the principles of the law of salvage, they had successfully applied before a French Tribunal for clear title to all the salvaged artifacts. Subsequent operations produced more salvage, but this time RMST brought it to America for display and applied there for clear title to the goods. Sensing a legal advantage, they represented themselves as 'finders' under the common law principle, rather than as salvors under admiralty law. At trial in the District Court and on appeal to the Fourth Circuit, the courts rejected RMST's attempt to re-cast the nature of its operations depending on the legal environment. Their arguments based on the common law 'finders keepers' principle were rejected, and the matter was sent back down to the District Court for determination. For the full article click here:

http://www.forwarderlaw.com/library/view.php?article_id=386

General

If you would like to be removed from the mailing list hit your reply button and type in "unsubscribe" in the message. Please send this edition of Forwarderlaw E-news to a friend who would benefit from an introduction to this resource.

If you wish to send the General Editor an Article, please “telegraph” your intentions by a previous email, so that your article does not get deleted like the numerous virus-carrying emails