

SIEMENS LTD V SCHENKER INTERNATIONAL (AUSTRALIA) PTY LTD: HIGH COURT APPEAL

On 11 April 2003, Siemens Ltd was granted Special Leave to appeal to the High Court in respect of a judgment of the New South Wales Court of Appeal in which it was held that, Schenker International (Australia) Pty Ltd and its overseas holding company Schenker International Deutschland GmbH ("Schenker") could limit their liability to US\$20 per kilogram in accordance with clause 4 of the FIATA standard form Air Waybill Conditions of Contract, in circumstances where the Warsaw Convention does not apply.

At the hearing Siemens will argue that:

1. the air waybill did not apply to the road transportation from Melbourne Airport to Schenker Australia's bonded warehouse;
2. the Court of Appeal was mistaken in finding that the road transportation was "carriage" within the meaning of clause 4 of the air waybill;
3. the Court of Appeal was mistaken in finding that "carriage" within the meaning of clause 4 did not mean "carriage by air" as used in the Warsaw Convention; and
4. the Court of Appeal was mistaken in treating clause 4 as applying to the conduct of Schenker.

The hearing has been set down for 4 September 2003.

Members should be aware that the outcome of the High Court Appeal will have no effect on the application of the members' Standard Trading Conditions. Therefore, members should continue to take all possible measures to ensure that their Standard Trading Conditions are incorporated into their contracts with their customers.

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