

BILLS OF LADING

Practice, Law & Cases

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Practice in Forwarding Instructions

- The following instructions are needed to be provided to shipping lines in creating a bill of lading(courtesy Brett Charlton,Agility)
- Waybill-indicate the word"WAYBILL" or "EXPRESS RELEASE" on your forwarding instruction. The shipping company will issue original bills of lading if the wording is not present.
- Contact numbers for the consignee and notify is compulsory for express release of the bill of lading

Weight

- Gross Charge Weight is the total of the Commodity Weight and the Packing Weight means Commodity Weight only. Net Cargo Weight means Commodity Weight only
- Some shipping lines automatically apply the Tare Weight of containers to the manifest details transmitted to the port of discharge.
- You should list Gross Cargo Weight only and not include Tare Weight of a container in Gross Weight on the forwarding instruction.

Charges

- Clearly indicate form of payment as prepaid, collect or other for all type of charges such as sea freight, load and port charges, discharge port charges and other charges.

Commodity & Package

- If there is more than one commodity within a container the breakdown details of weight, package and measurement must be provided for each commodity.
- If there is more than one package type within a container the breakdown details of commodity, weight and measurement must be provided for each type of package.

Bills of Lading Reform

- The *Carriage of Goods by Sea Amendment Act* 1997(Cth) amended the Hague Rules to:
- provide coverage for wider range of sea documents including electronic documents
- provide coverage of contracts of carriage of goods by sea from places outside Australia to places in Australia where contracts were not subject to a relevant international convention

- provide for increased coverage of deck cargo
- extend the period during which carriage may incur liability
- provide for carriers to be liable for loss or delay in circumstances identified as being inexcusable
- The 1997 Act covers all relevant shipping documents, both negotiable and non negotiable and provides for a wider range of contracts of carriage including non negotiable documents, sea-waybills, ships delivery orders as well as bills of lading

Bills of lading: extension of liability

- A bill of lading in *Parlux SPA v M&U Imports Pty Ltd* (2009) 250 ALR 340 was not construed to cover the land leg in a multimodal carriage
- There was a shortfall in the number of goods shipped from Italy and M&U claimed loss of part of the goods carried by an Italian road carrier was covered in the land leg by the bill of lading
- M&U argued that the bill of lading came under the 1997 Act as a multimodal bill of lading.
- The Victorian Court of Appeal held that in construing bill of lading the most important part of the bill was the front in its printed terms and details inserted by the parties.
- As the bill of lading had spaces for the place of receipt and delivery in this case there were no such details so the document was held to be a port-to-port bill only.

Airway bill and Limitation of Liability

- In *Siemens v Schenker International (Aust) Pty Ltd* (2004) ALR 322 the High Court of Australia held that a limitation of liability clause in the air way bill for digital transmission equipment for delivery to WA by Siemens applied both to the air carriage and that by road to the warehouse.
- The equipment was purchased on a FCA point (free to carrier) basis so that property and risk passed to the purchaser at Tegel Airport, Berlin.
- The consignment was consolidated by Schenker GmbH on Singapore Airlines

High Court decision

- The equipment was damaged when it fell from the truck en route by road from Tullamarine Airport to a warehouse.
- Siemens claimed damages against Schenker which argued limitation under both the Warsaw Convention and the airway bill
- The High Court on appeal held that the limitation provisions of the Warsaw Convention incorporated by the *Civil Aviation(Carriers' Liability) Act 1959(Cth)* did not apply but that those in the air waybill did to protect Schenker.

Limitation of actions under the Hague Rules

- Under the Hague Rules Art3 r6 an action must be brought by the owner of goods within 1 year from when the goods were, or should have been, delivered.
- Otherwise the carrier and the ship are discharged from all liability for the goods.
- In *Pacific Resources International Pty Ltd v UTI(Aust) Pty* [2012] NSWSC 1274 warehouse in Botany Bay, Sydney and its contents were destroyed by fire. UTI were the lessee of the warehouse .Pacific Resources stored fish oil and Brackley Industries, dvd's. Both Brackley PR sued UTI for damages caused by the loss of their goods.

UTI's liability

- UTI leased the warehouse from GTA Pty Ltd and on the lease terms UTI were prohibited from using the premises for the storage of fish oil and thermoplastic polypropylene.
- UTI's standard terms and conditions included clause that provided that UTI would not be liable in contract or tort or otherwise for loss or damage to or deterioration of the goods or misdelivery or failure to deliver for any reason whatsoever without limitation negligence, breach of contract or wilful act by UTI for any loss or damage
- The Supreme Court of New South Wales found the fire was caused by UTI's negligence and that UTI terms above were effective to exclude UTI's liability to Brackley and PRI.
- However, it was held that UTI made false and misleading representation about storage to both claimants which they had relied on to their detriment. UTI were held liable to Brackley and PRI on the basis of these representations which did not indicate that the storage was subject to GTA's restrictions which included the claimants' goods

Limitation re package or unit

- In *El Greco(Australia) Pty Ltd v Mediterranean Shipping Co* (2004) 200 ALR 449 the parties entered an agreement for the carriage of posters and prints by sea from Australia to Greece. These were placed in 2000 packages in a single container although described as 200,945 pieces in a bill of lading
- The prints and posters were damaged by seawater during the voyage. The primary judge held the carrier liable for the damage.
- The liability was limited to a certain amount per package or unit under Art4 r5(a) of the amended Hague Rules. Rule5© deemed the number of packages or units to be the number set out in the bill of lading as packed in the shipping container. Without such enumeration the container itself became the only package or unit. The primary judge calculated the liability of the carrier on the description of the pieces as an enumeration for purposes of r5©
- The Federal Court, in dismissing the carrier's appeal, held that enumeration for the purposes of r5© consists of a setting out of the numbers on the face of the sea-carriage document. It need not be contractually agreed to for the purposes of r5©

Container use contracts

- In *Cosco Container Lines Co Ltd v Unity Int'l Cargo Pty Ltd* (2012) NSWDC 122 Cosco's containers were loaded with fibreglass and wool in Xingan, China for redelivery to Unity Int'l as consignee destination Brisbane and Sydney.
- Both Cosco and Unity had entered a Import Net Agreement (INA) for the delivery and loan of the containers. The INA expressly incorporated Cosco's standard bill of lading terms and conditions of its standard Equipment Handover Agreement (EHA)
- Where an INA has been signed (as Unity had been identified as the consignee in a seaway bill) electronic orders are sent to that party once they confirm, in this case to Cosco, that freight and local charges have been paid.

Container use contracts

- As a matter of practice between Cosco and Unity all charges invoiced to Cosco were paid by Unity but Unity looked to the receiver of the goods, Global Fibreglass Pty Ltd (Global), to either pay in funds or reimburse Unity for payments to Cosco.
- When Global went into liquidation, resulting in Unity not being paid by Global, Cosco sought to rely on the INA to recover the charges from Unity. Unity argued it was not a "merchant" as defined in INA which (if accepted) meant that the INA had no operation.
- This argument was rejected Rolfe J holding that the INA constituted a distinct container use contract and should be accepted.
- The liability of Unity to pay 'detention' or demurrage' charges was enforceable. These provisions did not amount to a penalty as the parties had agreed that Unity would hire the containers until their return at the agreed contractual rate which was a separate obligation and not dependant on any breach of contract.