

20 April 2009
Ref : Chans advice/100

To: Transport Industry Operators

HVR cover cargo delivery? (IV)

Remember the following Chans advice?

Chans advice/79

The Hong Kong Court of Appeal on 13/7/2007 held the forwarders liable to pay the seller of the goods for US\$873,028 plus interest and costs in the cargo misdelivery claim.

Chans advice/83

The Court of Appeal on 16/11/2007 dismissed the forwarders' application for leave to appeal to the Court of Final Appeal.

On 28/4/2008, the Court of Final Appeal granted leave to appeal to the forwarders.

The Court of Final Appeal was satisfied that three issues of great general or public importance arose in this matter which justified the grant of leave to appeal.

The first involved the following question: Where goods are shipped under a straight bill of lading, that is, a bill of lading that is not consigned to "order" but only to a named consignee, does the carrier attract liability for delivering to the named consignee without production of the straight bill of lading?

The second concerned the efficacy or otherwise of the exemption clause appearing in the bill of lading, which was a clause covering subject matter that was almost always found in bills of lading although in varying formulations, to exclude liability arising from the delivery without production of a bill of lading.

The third concerned the construction of the "before and after clause" and, in particular, as to the meaning of "discharge". In this context, the Court of Final Appeal noted that an argument in relation to the correct application of the relevant per-package limitation provisions could possibly arise.

Accordingly the Court of Final Appeal granted leave in respect of these questions.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

Simon Chan
Director
E-mail: simonchan@sun-mobility.com

Richard Chan
Director
E-mail: richardchan@sun-mobility.com

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: 2866 7096
E-mail: gm@sun-mobility.com Website: www.sun-mobility.com
CIB A MEMBER OF THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

It goes without saying the economy is heading further south as 2009 sets sail into the second quarter.

Unrealistic it is to expect turnaround any time soon. Before we see the lights, we see rising number of E&O, uncollected cargo and completion of carriage claims. The global credit crunch has created chain effects leading to, forced or otherwise, found or unfounded, breach of contracts and obligations along the logistics chain. Our claims team are on full gear recently in dealing with those claims.

If you are in need of a cost effective service in defending claims lodged against you, SMIC is just a phone call away.