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To: Transport Industry Operators

Neutral AWB

The Warsaw Convention limits the carrier's liability to say US\$20/kg of the goods lost, damaged or delayed. The Convention applies to the period during which the goods are in charge of the carrier, whether in an airport or on board an aircraft. However, the Convention does not apply to any carriage by land, by sea or by river performed outside an airport.

What is the carrier's liability limitation for the carriage outside airport? It should be the air waybill contract terms to apply.

In a Judgment delivered by Supreme Court of New South Wales in Australia on 6/8/2001, Judge Barrett ordered a forwarder to pay about DM 1,600,000 plus interest and costs to the cargo interests for the cargo damage happened on 15/12/1996 during the road haulage outside the airport. This concerned an air shipment of 2 aircraft pallets containing telecommunication electronic equipment from Berlin to Melbourne under the forwarder's house air waybill. Upon arrival at the Melbourne airport, the consignment was transported by the forwarder by road to its warehouse situated about 4km from the airport. Due to defective or inadequate cargo securing done by the driver, the goods fell from the vehicle to the roadway outside the Melbourne airport. The goods were rendered worthless. The cargo value was about DM 1,700,000.

The wording of the forwarder's house air waybill should be the same as the neutral air waybill widely used by the airlines and the air forwarders in the industry. Clause 2.1 of it reads: "**Carriage hereunder is subject to the rules relating to liability established by the Warsaw Convention unless such carriage is not 'international carriage' as defined by that Convention.**" Clause 4 of it is: "**Except as otherwise provided in carrier's tariffs or conditions of carriage, in carriage to which the Warsaw Convention does not apply carrier's liability shall not exceed USD 20.00 or the equivalent per kilogram of goods lost, damaged or delayed, unless a higher value is declared by the shipper and a supplementary charge paid**".

The Judge said:

Quote

...The clear assumption in each of these provisions is that the carriage as a whole will or will not be within the Convention's definition of "international carriage" and that the carriage as a whole will or will not be carriage to which the Convention applies. No half measures are contemplated. The carriage is not regarded as consisting of segments, with some being "international carriage" for the purposes of the Convention and others not, or with the Convention applying to some but not to others. It is all or nothing. This, to my mind, indicates that the concept of "carriage" adopted by the waybill is intended to correspond, and does correspond, with the concept of "carriage" under the Convention. Clause 4 does not apply unless the whole of the relevant carriage is "carriage to which the Warsaw Convention does not apply". In other words, if the Convention does apply, clause 4 does not: one or the other operates exclusively. On any view of matters, the Convention did apply to this carriage. ... It follows that the carriage was not of the description in clause 4 of the air waybill. The substitute liability limitation provision in that clause therefore did not operate at all....

Unquote

Accordingly, the air waybill did not have the contract terms to limit the carrier's liability for the loss, damage or delay happened outside airport.

We suggest you check your own air waybill to see if it contains the same Clauses 2.1 and 4. If yes, we suggest you consider to amend your air waybill terms as appropriate so that you should have liability limitation for cargo loss, damage or delay happened outside airport.

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

Simon Chan and Richard Chan

Coming from a strong shipping and air transport background, Richard and Simon have ample experience in designing liability and property insurance for forwarders, logistic service providers, shipping companies, feeder operators, air cargo terminals, container terminals, and container lessors in Asia Pacific. Richard and Simon are independent risk management advisors able to offer full array of risk management services, including full-scale professional claims handling, loss prevention advice and prudent sourcing of insurance for your ease of mind. Their blended transport and insurance expertise are unique in the market. They are eager to answer whatever claims handling and insurance needs you may have as a transport operator.

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