

To: Transport Industry Operators

27 December 2001
Ref : Chans advice/12

Godown Warrant

Deputy High Court Judge Gill in his Judgment dated 17/12/2001 held a warehouse operator to pay HK\$1,354,174 plus costs and interest for damage caused to 26 x 40' containers of garlic.

On 1 August 1996, the cargo interests contracted verbally with the warehouse operator to store the garlic at HK\$2.5 per packet of 10kg. This was the first time that the two parties did business. When the contract was made, the warehouse operator had not given any notice to the cargo interests that the contract would be governed by its Godown Warrant terms. When the garlic were delivered to the warehouse on 2 and 3 August 1996, the cargo interests were given receipts stating they were subject to the warehouse operator's Godown Warrant. The cargo interests received the Godown Warrant in the post a week or so later.

The cargo interests instructed the warehouse operator to store the garlic at -2 degrees. However, the warehouse operator was in breach of the contract and stored the garlic between 0 degrees to 4 degrees. As a result, the garlic began to sprout and lost its nutritional content and thus worth. The total of 587.65 tons of garlic was originally worth US\$387,080. The deteriorated garlic was finally sold for US\$186,750, making a loss of US\$200,330.

The warehouse operator tried to limit its liability by relying on its Godown Warrant terms. However, Deputy High Court Judge Gill said:

Quote

...The burden is on the party seeking to rely on an exclusion clause to prove that it has become part of the contract. Crucial to its cause is that notice must be given no later than when the contract is made; communication after that is of no effect... There is no need for that notice to contain the conditions for the parties to be bound by them, provided that by the notice the receiving party has knowledge that there are conditions which will be binding on him... it is not disputed that the terms of the storage contract in its entirety were settled, verbally, before delivery of the consignment or any part of it. There was no notice of the existence of a Godown Warrant or any exclusion clauses contained in it prior to the receipt of the first delivery by which time it was too late to be effective. At no stage was it put forward, let alone accepted, that the parties would be bound by additional terms and in particular terms which purported to limit the liability...

Unquote

Accordingly, it was held that the warehouse operator's liability was not contractually avoided or reduced.

To reasonably protect your liability position, we recommend that you give notice of applying your Godown Warrant to your clients before or upon the conclusion of the contract. Such also applies to other contract terms like air waybill, bill of lading and standard trading conditions...

Please feel free to contact us if you have any questions or you would like 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.