

To: Transport Industry Operators

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FCR

Forwarder Cargo Receipt ("FCR") has many different forms in the market. Some are just a kind of receipt proving that the forwarder has received the goods from the shipper. However, it is more often found that the FCR is a contract of carriage under which the forwarder undertakes to carry the goods from the place of receipt to the place of delivery. Some FCRs stipulate that the forwarders act for the consignees and the control of the goods passes to the consignees once the forwarders have received the goods from the shippers. Anyway, one thing is quite certain i.e. FCR should not be a document of title to the goods. The delivery of the goods to the consignee would not require the production of the original FCR.

In his Judgment dated 18/7/2000, Judge William Stone of the High Court of the Hong Kong SAR ordered the forwarder to compensate the shippers for the cargo value of US\$344,070.25 plus interest and costs for a cargo misdelivery case under FCRs happened in 1995. During the period from 26/1/1995 to 3/4/1995, there were ten garment shipments from Colombo, Sri Lanka to New York, USA. The forwarder issued its FCR to the shipper for each of the shipments. The consignee under each FCR was an American bank. The shippers intended that the American banks would instruct the forwarder to release the goods to the purchaser after the latter had paid the price of the goods.

However, the forwarder raised the bills of lading with the shipping company, naming the purchaser as the consignees. Such was done without the shippers' knowledge and no bill of lading was provided contemporaneously to the shippers. Consequently, the purchaser was able to obtain the goods without making payment to the shippers. The purchaser later on filed for a Chapter 11 bankruptcy protection in late 1995.

The shippers had given clear instructions to the forwarder that the goods should be consigned to the banks. The forwarder should only part with possession of the goods on the basis of their consignment to the order of the banks. The Judge concluded that the forwarder had not followed the shippers' instructions when the forwarder raised the shipping company's bills of lading naming the purchaser instead of the banks as the consignees. He held the forwarder liable for the shippers' losses.

As FCR in general should not be a document of title to the goods and also should not be negotiable, we suggest it should not be advisable to name a bank or to state "To order" in the consignee box under FCR. If the shipper wants to name a bank or to state "To order" in the consignee box, the proper document to be issued should be bill of lading instead of FCR.

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

Freight forwarders, NVOCCs, CTO, MTOs trading to the USA are often referred to as **Ocean Transportation Intermediary (OTI)** under Section 19, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. They are required to file with the Federal Maritime Commission an OTI Bond, often called **FMC bond**, for an amount of USD150,000.

As transport risk manager, we could assist you in obtaining the FMC Bond. Feel free to call Simon and Richard for details.