

To: Transport Industry Operators

Straight B/L in PRC

In its Judgment dated 25/6/2002, the Beijing Supreme Court held a carrier not liable in a case of cargo release without production of original straight bill of lading. In August 1993, the seller of two containers of lighting equipment shipped the goods from Huangpu to the buyer in Singapore. The carrier issued two straight bills of lading naming the buyer as the consignee for these two laden containers. The goods were subsequently released by the carrier to the buyer without production of the original bills of lading. The seller holding the full set of the original bills of lading sued the carrier for the cargo value of US\$98,663 plus interest.

The bills of lading provided that USA laws applied to the contract of carriage. However, the Guangzhou Maritime Court and the Guangdong High Court held that the case should be governed by the PRC laws because the result of the tort took place in China. Moreover, the carrier did not timely object to Guangzhou Maritime Court's jurisdiction.

According to Article 269 of the PRC Maritime Code, the parties to a contract may choose a law applicable to such contract, unless the law provides otherwise. Accordingly, the Beijing Supreme Court held that the USA laws should apply. The bills of lading were voluntarily chosen and used by the parties. The bills of lading clearly provided to apply the USA laws. Such was the choice that truly represented the parties' intention. This was also not against the public interests of the People's Republic of China. The USA law provision in the bills of lading was legally valid and should be respected. The Beijing Supreme Court held that the PRC laws were not the applicable laws in accordance with the bill of lading contracts. The Supreme Court also held that the two lower Courts were wrong in treating this case as tort dispute and in applying the PRC laws.

The straight B/L is not negotiable and is not a document of title to the goods. According to the USA laws, the carrier is entitled to deliver the goods to the named consignee without production of the original straight bill of lading. Accordingly, the Supreme Court held that the carrier in this case had complied with the USA laws and duly carried out its contractual obligation in the cargo delivery to the buyer (i.e. the named consignee) in Singapore. The Carrier did not do anything wrong. The Supreme Court dismissed the two lower Courts' Judgments and held the carrier not liable.

It is encouraging to note that the Beijing Supreme Court has recognised the foreign law clause in the bill of lading. However, in an attempt to avoid any unnecessary dispute, we still recommend the carrier insists on getting back one duly endorsed original bill of lading prior to the cargo delivery even if it is a straight bill of lading. Please feel free to contact us if you have any questions or you would like to get a copy of the Judgment.

Simon Chan and Richard Chan

Have you ever thought why a cargo claim would not go away easily? You get the answer if you think from the cargo interests' perspective – THEY WANT FULL SETTLEMENT and YOU HAVE TO LIMIT YOUR LIABILITY.

Solution – actively advise your client to buy All Risks Cargo Insurance; arrange for yourself a good liability insurance for protection through a professional insurance brokers also provide third party claims handling assistance. Your insurance broker should be able to help.