

To: Transport Industry Operators

9 month suit time limit

It is the industry practice that there is a nine month suit time limit clause in the contract between the freight forwarder and its customer. Is this kind of contract terms valid? In its Judgment given on 15/4/2003, the English Court of Appeal said yes in a case concerning damage to a return consignment of two containers of paint from Kuwait to Southampton by sea and then to the consignee's warehouse by road. The concerned freight forwarder also agreed to arrange insurance of the consignment against all risks in transit under Institute Cargo Clauses (A).

The paint was shipped from Kuwait in November 1999 and finally delivered to the consignee on 11/1/2000. The consignee found that the goods had been damaged in transit and made a claim for GBP27,673 against the freight forwarder. The freight forwarder then made a claim on the cargo insurance on the consignee's behalf. The cargo underwriters rejected the claim on 27/6/2000 because this was a return shipment which would require inspection of the goods on behalf of the underwriters before shipment and there had been no such inspection. The consignee was advised of the rejection of the cargo insurance claim in August 2000. The consignee sued the freight forwarder on 15/11/2001.

The contract between the freight forwarder and the consignee was subject to the British International Freight Association (BIFA) Standard Trading Conditions (1989 Edition). Clause 30 (B) said that the freight forwarder shall in any event be discharged of all liability whatsoever however arising ... unless suit be brought and written notice thereof given to the freight forwarder within 9 months from the date of the event alleged to give rise to the cause of action against the freight forwarder.

The Judges held that the parties were of equal bargaining strength. This was a commercial contract between commercial parties where the consignee might have been able to contract other than on BIFA conditions or to make their own insurance arrangements had it wished. The Unfair Contract Terms Act 1977 played a very important role in protecting vulnerable consumers from the effects of draconian contract terms. However, the Judges were less enthusiastic about its intrusion into contracts between commercial parties of equal bargaining strength, who should generally be considered capable of being to make contracts of their choosing and expect to be bound by their terms. Anyway, even by the standard of the 1977 Act, the Judges held the freight forwarder's nine month suit time limit clause valid.

The Judges agreed that if the freight forwarder was liable to its customer for damaging the goods, it was only fair and reasonable that the freight forwarder should be able to pass on that liability to the responsible carrier in time. A suit time limit of nine months was necessary to enable the freight forwarder to make a claim over against the responsible carrier before that claim became time barred (frequently within one year). The loss or damage could be ascertained on delivery. Nine months was ample time for the customer to decide whether

to bring suit. This limit was necessary to enable the freight forwarder to claim within the twelve month suit time limit which applied to many contracts of carriage.

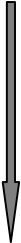
Since the consignee commenced the legal proceedings against the freight forwarder only after the nine month suit time limit had expired, the Judges dismissed the claim accordingly.

In order to protect your interests, we recommend that you pay more attention to the nine month suit time limit clause in your contract terms. 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

A normal claim cycle is like the following:-

Cargo damaged/lost. Potential claim is imminent.



~~Worry starts. Where does the company stand? What should be the most appropriate next step? Is a survey required? What surveyor? How to respond to a claim notification from client? **Should the claim be reported to my insurer?** What documents to gather? What are the key aspects to look for to protect the company's interest? Could I pass the ball down the line? Do I forget to hold someone responsible? Should a time extension be granted? What should be an appropriate claim handling strategy? Who monitors the claim progress? Who does the co-ordination with my insurer ensuring the company's interests is not prejudiced? **When would the company get reimbursed for a valid claim?**~~

Report the claims to Sun Hing and you are worry free. Your Claims Handling could never be easier!

Professional risk management consultants take care of your worry and trouble (deleted above) in case of a claim, even if you do not carry liability insurance - Feel Free to discuss your needs with Simon or Richard.

