

To: Transport Industry Operators

22nd June, 2001
Ref: Chans advice/06

HK\$11,000,000 Rolex watches

Can the Amended Warsaw Convention (AWC) limit of HK\$135 per kg for cargo loss or damage be broken? Judge William Stone said yes in his judgment dated 24/5/2001 in respect of the case (Commercial Action No. 248 of 1995) in the High Court of the Hong Kong SAR.

At 10:35 am on 13/3/1995, 33 packages (753.1kg) of expensive Swiss watches predominately of the Rolex brand arrived at Kai Tak Airport. The goods were unloaded from the aircraft and stored in Hong Kong Air Cargo Terminals Limited (HACTL). They were shipped by air from Geneva to Hong Kong under a forwarder's House Air Waybills. At about 4:20 pm, the forwarder collected from the concerned airline the Shipment Release Form (SRF) and then placed it in a desk drawer which could not be locked.

The SRF was later stolen by unknown person and given to an innocent lorry driver. He arrived HACTL at about 7:55 pm on 13/3/1995 and collected the goods after producing the SRF. At about 9:25 pm, he conveyed the goods to Market Street in Yaumatei and delivered them to three men waiting there. One man had given him this road haulage order 2 hours earlier. Neither has any cargo been recovered nor any person been arrested, despite extensive police investigation.

The subrogated cargo insurers sued the forwarder to recover the compensation paid to the cargo owner. The cargo value was HK\$10,992,241 and the survey fees were GBP16,213.33. The forwarder tried to rely on Article 22 of AWC and limit its liability to 753.1kg x HK\$135 = HK\$101,668.5. According to Article 25 of AWC, the limits of liability in Article 22 shall not apply if the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result.

SRF was a bearer document. HACTL would release the goods to the bearer of SRF and would not verify whether the bearer was the true consignee or not.

The judge had no hesitation in finding that the system operated by the forwarder for the handling and safeguarding of SRFs was reckless. He also did not believe that the forwarder's personnel in question were under any illusions about the power or importance of the SRF. He found the forwarder's concerned personnel knew that loss of cargo would probably result from theft of the SRF. Accordingly, he found that the plaintiff's loss had resulted from acts or omissions done recklessly and with knowledge that damage would probably result.

The Judge also found, upon the balance of probabilities, that the theft was an inside job. It was in his view more probable than not that this theft was occasioned by or took place with the assistance and knowledge of the forwarder's concerned employees. Accordingly, he also found that the cargo loss had resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage...

The Judge ordered that the plaintiffs had succeeded to break the AWC's limit of HK\$135/kg and that the forwarder had to pay HK\$10,992,241 and GBP16,213.33 plus interest and costs.

Our loss prevention recommendations are as follows :

1. have a good system to keep, handle and safeguard SRFs; and
2. buy and make sure your transport liability insurance to cover your legal and contractual liability.

If you have any questions or would like a copy of the Judgment, please feel free to contact us.

Simon Chan and Richard Chan

Coming from a strong shipping and air transport background, Richard and Simon were the heads of claims and underwriting divisions at the Hong Kong regional office of the TT Club for more than 11 years. The Chans 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 now 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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