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To: Transport Industry Operators

AWB Seminar – 8 November 2006 – Q & A

The AWB seminar jointly organized with the Hong Kong Shippers' Council was another milestone of Sun Mobility. Covered were the essences of Neutral Air Waybill plus suggested improvements we think helpful based on our ample and on going air freight claim handling experiences. The handouts were circulated to all participants. It is also accessible to the Chans Advice readership through www.sun-mobility.com.

The bigger venue in YMCA, thanks to the choice of our joint organizer, had saved us from having to do two separate sessions like we did in previous years. This annual event of us had this time attracted 400 participants to attend. This fifth major annual show of the Chans continued Sun Mobility's ardent belief in Knowledge is Power. And we are glad that this belief is supported by the logistics industry.

The joint seminar had a diverse mix of participants. For the first time, apart from the logistics industry, our audience included shippers, officers from the Hong Kong Customs and Excise Department, lawyers, insurance companies and EVEN our competing peers. The wide spectrum helped to stimulate unprecedented exchange of views and questions from the floor. 12 questions were answered during the seminar. As the Seminar was overrun, the remaining 13 questions have to be addressed through this issue of the Chans Advice to the trade and for the benefit of our readership.

1Q. Is it a must that the Forwarder Instruction Form has to be used for the air shipment? Can the shipper design its booking form under its own letterhead?

A. It is purely something of freedom of contract between the forwarder and the shipper. There is no law governing this area. If the forwarder agrees to use the booking form designed by the shipper, such is perfectly in order. However, it is common in the air freight industry that the forwarders and airlines would insist on their own Shipper's Instruction Forms for air shipments.

2Q. If the consignee does not take cargo delivery in a freight collect air shipment, should the shipper bear the freight and storage charges? Furthermore, if there was no agreement between the shipper and carrier, how are the uncollected cargoes to be dealt with?

A. It all depends on the contract terms. It is likely the shipper has the responsibility to pay the freight and storage charges because it is the shipper who asked the carrier to ship the freight collect cargoes and finally the consignee fails to take cargo delivery leaving the carrier with no party at destination to collect freight charges. If there is no contract term in the AWB allowing the carrier to sell or dispose of the uncollected cargoes, the carrier may have to apply to the court for an order to sell or dispose of the uncollected cargoes in order to avoid the potential liability of conversion.

3Q. Is it possible to make complaints to IATA against forwarders?

A. We do not have knowledge on this area.

4Q. If a consignee import cargoes from Japan to HK and the cargoes was found damaged after arrival in ST1, HK, can the consignee have a successful recovery action against the airlines/forwarder without arranging survey in ST1?

A. It will be quite difficult for the consignee to prove the cargo damage claim. In the transportation industry nowadays, it is common that airlines or forwarders will not consider cargo damage claims if there is no survey report submitted by the shipper or consignee.

5Q. What are the notice time limits for cargo loss, damage or delay for sea shipments?

A. The Hague or Hague Visby Rules require the written notice of cargo loss or damage to be given to the carrier within 3 days of the cargo delivery. Otherwise, it is prima facie evidence that the cargoes have been delivered in good order and condition. However, if the shipper or consignee has more conclusive evidence e.g. survey report proving the cargo loss or damage having happened in the carrier's custody, the shipper or consignee can still pursue its cargo claim against the carrier despite the situation that the three-day notice time limit has not been complied with because the better evidence of survey report has rebutted the prima facie evidence. Regarding the notice time limit for cargo delay, it depends on the B/L term. It may range from 3 days to 14 days of the cargo delivery.

6Q. Why the Customs only sued the forwarder but not the shipper for exporting cargoes with the forged trade mark "Citizen" in the case as reported in our Chans advice/62?

A. In fact, the shipper was charged on 18/7/2003 with the offence of attempting to export goods of forged trade mark. On 10/9/2003, the shipper was convicted of the offence under its own plea.

7Q. Is the liability limitation of US\$20/kg under AWB still valid if it is proved that the carrier was negligent?

A. Yes, the liability limitation should still be valid. The purpose of liability limitation is exactly for the carrier to limit liability when the carrier is negligent.

8Q. A consignee has a shipment from Brazil to Hong Kong. Original sailing was 9/10/2006. But on 9/10, forwarder informed the cargoes were changed to another steamer ETA HK. 3/11/06, due to operation problem. And then on 3/11, forwarder also advised that the arrival was postponed to 13/11 still operation problem which confirmed by Lien. It already delays for 1 month. In this case, what the consignee can do to protect its position.

A. If the delay was caused by the negligence of the forwarder or shipping company, they should be liable for the delay subject to the B/L terms. However, it is common in the shipping industry that carriers do not assume liability for delay. It is important for the Shipper and Consignee to get the carrier to ship and deliver the cargoes soonest possible to mitigate any losses.

9Q. Does interpleader action usually take place in air or sea shipment or both?

A. It is the carrier that takes the interpleader action in court when two or more parties are competing for the cargo ownership. It can be air, sea, road or rail shipment.

10Q. Can the carrier release the cargoes to the notify party under a AWB?

A. The carrier should release the cargoes to the consignee under the AWB. If the carrier has to deliver the cargoes to the notify party, the carrier needs to obtain the consignee's instruction first.

11Q. The vessel delayed over one month. The Shipper claims the forwarder for US\$15,000. Is the forwarder liable?

A. It depends on the reason for the vessel delay and also the HB/L terms. If the delay was caused by something wrong done by the shipping company, the forwarder should have the liability subject to the HB/L terms which however may follow the industry practice to exclude liability for delay or to limit the liability to one or two times of the freight charges.

12Q. Under what circumstances could a claim for delay be made successful (not for the perishable goods & live stocks)?

A. This is usually the situation of cargo devaluation following the delay incident. For example, the value of the cargoes drops by 40% as a result of one month delay. The original cargo value is for example US\$100,000. The cargo owner can have a valid claim against the carrier for the loss of cargo value of US\$40,000 subject to the Warsaw Convention liability limitation of US\$20/kg.

13Q. When there is a dispute, instead of going to court for costly judgement, is there any Arbitration Clause in the IATA Neutral Air Waybill stating that the dispute shall be settled in the process of arbitration?

A. For an arbitration clause to be valid, it must be agreed by the parties in the contract. There is no arbitration clause in IATA neutral AWB.

We hope the above would stimulate further discussion among air freight forwarders. No doubt for equal chance any one of you may face or might have encountered similar issues.

Please however feel free to contact us in case you think we may be of help in other air freight liability and claim issues not covered above. It is always our pleasure to share knowledge with the industry. Dialogues with our clients on similar issues and offers for solutions are our daily routines.

If you believe better knowledge of the transport game does minimize risk exposure, talk to us before costly litigations set in. Your time should better spent in operations, sales and marketing for profit. A forwarder liability insurance brings more than protection – if you choose wisely.

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Multi-modal transportation involves far more complicated liability regime than port-to-port or airport-to-airport carriage. Pure international sea or air transport often affords better protection by international conventions. Conversely, multi-modal transport entails a variety of operational risk elements on top when the cargo is in-transit warehouse and during overland delivery. Fortunately, these risks are controllable but not without deliberate efforts. Sun-Mobility is the popular risk managers of many multi-modal operators providing professional assistance in liability insurance, contract advice, claims handling, and as a matter of fact risk consultant for their staff around-the-clock.