SUN MOBILITY
Insurance and Claims Services Limited

30 September 2008
Ref : Chans advice/93

To: Transport Industry Operators

BIFA STC

On 30/6/2004, the English High Court held that a forwarder could rely on the British International Freight Association ("BIFA") Standard Trading Conditions to limit its liability to around £25,000 in a case of theft of mobile phones worth £2,252,460 done by the forwarder's employees.

In the early evening of Sunday, 10/2/2002 some 25,738 Samsung A300 mobile telephones, belonging to Samsung, were stolen from the warehouse facility of the forwarder in Hayes. At about 16 00 or 18 00 the warehouse was locked and "alarmed" by an employee of the forwarder. At about 18 51 the alarm was switched off and some 25,738 Samsung mobile telephones were stolen. Other telephones, DVD players and computers were left untouched in the warehouse. The thieves entered through the front door; there were no signs of any forced entry. It followed that the thieves must have had a key to open the dead lock. The thieves then disarmed the alarm before it sounded; it must further follow that the thieves knew the code. The thieves then walked into the office/monitoring room and disconnected the DVD recorder; that too was stolen, together with the disc in use. Thereafter, the thieves opened the roller shutters at the rear of the warehouse by unlocking the padlock; to do so, they must have known where to find the key to the padlock. The thieves also moved the 11.5-ton forklift truck, which had been positioned across the rear roller shutters; once again, the thieves must have known where to find the keys to the forklift truck. Quite plainly too, the thieves knew where to find the mobile telephones which had been or must have been "targeted". Having moved the forklift truck out of the way, the thieves could move their own vehicle(s) into the warehouse; the volume of goods stolen amounted to some 57-60 pallets and would likely have required a 40-ft articulated trailer or more than one trip using a smaller vehicle. The operation must have taken a matter of hours to complete; it was inherently likely that the thieves must have felt comfortable that they would not be disturbed. CKM Security Consultants, instructed by the forwarder's liability insurers, said this: "It is our opinion that this burglary was carried out by persons who had a good knowledge of the warehouse security operations either as employees or by the receipt of 'insider' information . . ." In the Judge's judgment, the considerations pointing to the theft having been an inside job were overwhelming. As a matter of probability, the thieves received material information or assistance, voluntarily supplied by an employee or employees of the forwarder. In this sense, this was an inside job. The Judge made it plain that there was no suggestion that any employee implicated in the theft was in a position to be regarded as an alter ego of the forwarder; in short, there was no suggestion of deliberate wrongdoing on the part of the forwarder itself.

On 30/11/1998, the forwarder sent to Samsung a document setting out its "Import Documentation and Handling Charges"; at the foot of the page, the document stated: "All transactions handled in accordance with standard trading conditions of British International Freight Association (1989 Edition) ". By letter dated 2/12/1998, Samsung wrote to the forwarder confirming that the forwarder had been appointed as Samsung's sole agent to handle all air shipments with effect from that date. Thereafter, by letters dated 3/6/1999 and 16/9/1999, new arrangements and charges were agreed; the document containing the list of (amended) charges contained the same statement as to the applicability of the BIFA terms. Subsequently, the forwarder would probably have sent Samsung "thousands" of invoices, all of which again contained the same statement as to BIFA terms. By letter dated 28/9/2001, the forwarder wrote to Samsung as follows: "May we please confirm that the operation of warehousing/ deliveries of your mobile phones/ lap top computers will be undertaken on the conditions of the United Kingdom Warehousing Association which has a maximum liability for losses or damages of GBP100.00 per tonne and the road haulage will be in accordance with RHA conditions of 1998 with a liability of GBP 1300.00 per tonne. Please confirm your acceptance of these terms." On the same day, Samsung faxed back, saying: "Accepted. (Subject to review on 1/10/2001)". No review ever took place. On 17/10/2001, the forwarder e-mailed Samsung as follows: "Subject: Conditions of trading. Paul, just to confirm your conversation earlier with Ian [Ferguson], the conditions that we are trading under will be BIFA a copy of which you already have. Should you need a further copy please do let me know. Can you, please confirm your agreement and understanding of this." On the next day, Samsung e-mailed in reply that it had mislaid its copy of BIFA terms and asked for another copy to be sent to it. Samsung also accepted the forwarder had been telling Samsung "in no uncertain terms" that the forwarder traded on BIFA terms. Samsung did not

voice any objection. The Judge held that there was a contractual bailment and there could be no doubt that the forwarder did what was reasonably sufficient to give Samsung notice of the BIFA terms; thousands of invoices made reference to the BIFA terms; on no occasion did Samsung protest. The Judge concluded that the BIFA terms governed the bailment by the forwarder of Samsung's goods whether those terms were accepted by conduct or incorporated by way of a course of dealing. The Judge further held that if he was wrong as to the applicability of the BIFA terms, then the UKWA terms would have governed the parties' relationship from 28/9/2001 onwards and the bailment at the time of the theft.

It was convenient to set out the principal BIFA clauses governing the forwarder's liability:

> 24. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
> 25. The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:
> (A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence;
> (B) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.

The conclusion that the theft was an inside job was sufficient to establish wilful default on the part of the forwarder employee or employees responsible. All hinged on the question of vicarious liability. It is now well-established that an employer can be held vicariously liable for an employee's deliberate wrongdoing. But the same authorities also make it clear that vicarious liability is not established simply because the "guilty" servant had, by reason of his employment, the opportunity to commit the wrongdoing in question. To establish vicarious liability, more than a mere opportunity to commit wrongdoing must exist; there must be a close connection between the work the servant had been employed to do and the wrongdoing. The forwarder submitted that even if the theft had been an inside job, it could not be established that the forwarder was vicariously liable for the employee(s) concerned. Not all the forwarder's employees at the warehouse were engaged in a managerial capacity or were warehousemen; some of the employees were import clerks or secretaries. Given that the "guilty" employee(s) could not be identified, it was as likely that a clerk or secretary as any other employee could have assisted the thieves. But of the clerks and secretaries the most that could be said was that their employment had given them the opportunity to assist the thieves; they had not been entrusted with the care of the goods. This was not sufficient to impose vicarious liability on the forwarder. Samsung underlined the fact that all or virtually all members of the warehouse staff had keys to the bottom lock of the front door of the warehouse and access to the single master code which operated the alarm. Members of staff were provided with such keys and information in order to enable them to open and close the warehouse as part of their employment. The "main point", which applied to all staff alike (including clerks and secretaries) was put this way by Samsung in its submissions: “. . . the giving of keys and the alarm code to employees, entrusting them with the security of the premises, and therefore the security or the custody and security of the goods. You cannot divorce the giving of the keys from the custody of the premises, and therefore the custody of the goods. . .” Samsung said that the breach of duty of the employee towards Samsung involved the giving out of keys and information going to the security of the warehouse and the goods, in particular the alarm code. That breach also amounted to a breach of the employee's duty owed to the forwarder, namely, to take care of the keys and code. The Judge agreed with Samsung that, the custody of the premises could not be divorced from the custody of the goods. On the evidence, the employees, whether warehousemen, clerks or secretaries, were entrusted as part of their employment by the bailee with the security of the warehouse and hence the goods, by virtue of having the front door keys and knowledge of the alarm code. The Judge concluded that the forwarder was vicariously liable for the wilful default of the warehouse employee(s) in question, whatever the precise job description of those involved.

The conclusion as to wilful default was sufficient to establish liability on the forwarder's part for the theft and hence the loss of the goods but as the Judge had been urged to do so, he went on to consider the case on negligence. Samsung advanced a great many criticisms as to the forwarder's security arrangements at the warehouse at the time of the theft. The principal specific criticisms were as follows:

(i) *The keys to the bottom lock:* It was bad practice to let all or virtually all members of staff have the keys to the bottom lock on the front door.

(ii) *The burglar alarm:* First, it was bad practice to permit all or virtually all members of staff to have access to the one master code which operated the burglar alarm. Secondly, the alarm code was only changed once in the two to three years before the theft.

(iii) *Record-keeping*: There was no proper system for ensuring that members of staff not only signed for their front door keys but returned those keys. There was no accurate record of how many employees were aware of the burglar alarm master code at the time of the theft.

(iv) *CCTV monitoring:* There was no off-site CCTV monitoring and the recorder should have been placed in a more secure location.

(v) *Security guards:* Given the value of the mobile telephones in the warehouse (said to be some £6 m.) on-site security guards should have been deployed.

The forwarder realistically admitted that it was negligent in respect of criticisms (i), (ii) (at least as to access to the code) and (iii). The Judge was not satisfied that criticism (iv) was made out. In short, while some warehousemen might have done things differently, the Judge was not persuaded that the CCTV monitoring arrangements in place disclosed negligence on the forwarder's part. As to criticism (v), the Judge was satisfied that given the forwarder's knowledge as to the goods in the warehouse, it was negligent at least not to broach the question of guards with Samsung. However, the engaging of guards would have given rise to commercial considerations: "That depended very much on who was going to pay for such a service. " Granted that a bailee is at least ordinarily duty bound to protect the bailed goods against theft, the extent of the precautions to be taken cannot be considered regardless of cost. Any failure to discuss the question of guards could not have been causative unless it was to be assumed that commercial negotiations between Samsung and the forwarder would have resulted in an agreement as to on site security. That was an assumption the Judge would be unwilling to make. While the forwarder should have raised with Samsung the question of on site security, the Judge could not conclude that the forwarder's negligence in that limited regard was causative. What remained was the question of whether the forwarder's negligence in respect of criticisms (i), (ii) and (iii) was causative. The Judge was satisfied that the forwarder's negligence was indeed causative of the theft and, hence, Samsung's loss. The forwarder's failures in respect of criticisms (i), (ii) and (iii) materially contributed to the theft; these failures assisted in the commission of the theft. Accordingly, the Judge was persuaded that on the ground of negligence as well, the forwarder was liable to Samsung.

Clauses 24 and 25 of the BIFA terms, dealing with liability, have already been set out. Clause 27(A) is central to the question of limitation; it, together with cll. 26 and 27(D) provide as follows:

> LIABILITY AND LIMITATION
> 24. . . .[see above]
> 25. . . .[see above]
> 26. Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods.
> 27(A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below the Company's liability howsoever arising and notwithstanding that the cause of the loss or damage be unexplained shall not exceed. . .. [the various limits set out in sub-clauses (A) to (C)]
> (D) By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in Sub-Clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

For completeness, for the present case, cll. 2(B) and 11(B) were irrelevant and needed not be set out. Further, no special arrangement under cl. 27(D) was entered into here.

It was plain - and Samsung did not seriously contend otherwise - that the wording of cl. 27(A) entitled the forwarder to the benefit of the BIFA limitation provisions, insofar as the basis for the forwarder's liability to Samsung lay in negligence. The critical question, subject only to the impact of Unfair Contract Terms Act 1977 ("UCTA"), was whether the forwarder was entitled to limit its liability insofar as such liability was founded on the wilful default of its employee(s).

Samsung advanced the following submissions:

(i) Clear words were needed to entitle a party to limit its liability in respect of its employees' (or ex-employees') deliberate criminal wrongdoing. Wilful default amounted to dishonesty or fraud. The wording of cl. 27(A), "liability howsoever arising" was not sufficiently clear. Such wording was to be contrasted with the wording found in cl. 3(ii) of the UKWA terms: "The Company excludes liability for any claim relating to loss, damage, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery or miscompliance with instructions of or to or in connection with the Goods ("Claim"). This exclusion does not apply if a Claim arises from the neglect or wilful act or default of the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors (acting in furtherance of their duties as sub-contractors). In any case, the Company's liability shall not exceed a total of £100 per tonne weight of that part of the Goods in respect of which a claim arises. In no case shall the Company be liable for any loss of profit or indirect or consequential loss of any kind."

(ii) On its true construction, contra proferentem, cl. 27(A) applied to negligence; it did not extend to cover wilful default. That was a matter outside its scope and there was no good reason for giving the clause an extended construction. Fraud was a thing apart.

(iii) Clause 27(A) formed part of the "Liability and Limitation" section in the BIFA terms. It was to be read in context; the section was to be read as a whole. The focus of cll. 24 and 25 rested on liability for negligence. If this be right, then cl. 27(A) was likewise concerned with negligence; in short, "howsoever arising" referred

back to and "mopped up" the bases of liability contemplated under cll. 25 and 26.

(iv) If, however, these Samsung's submissions were wrong, then cl. 27(A) contained words of unlimited width and there was no satisfactory stopping point short of the forwarder's own wilful default (i.e. its own fraud). That could not be right.

The forwarder's submissions began by emphasizing the context in which cl. 27(A) was to be considered. First, it was a limitation clause not an exemption clause; it was not to be construed by the "specially exacting" standards applicable to exclusion and indemnity clauses: Ailsa Craig Fishing Co. Ltd. v. Malvern Fishing Co. Ltd and Another, [1983] 1 W.L.R. 964. Secondly, there was no rule of law that liability could not be excluded, let alone limited in respect of deliberate breach: Photo Productions Ltd. v. Securicor Transport Ltd., [1980] A.C. 827. Thirdly, there was no or no proper basis for saying that as the clause covered negligence, it could not cover other matters; that was (to cite Securicor, at page 846) a perversion of the rule that if a clause can cover matters other than negligence it would not be applied to negligence. Fourthly, Samsung had had the option, furnished by cl. 27(D), of paying more and obtaining a higher limit of liability. Fifthly, the particular business context was to be underlined; given a floating population of labour, much of it menial and theft attractive goods of considerable value, the risk of theft or connivance at theft was obvious and apparent. Putting the matter positively, the parties had meant what they said; "howsoever arising" meant just that. The parties had agreed that the forwarder could limit its liability in all cases save where it was itself guilty of fraud; whether as a matter of construction or policy, cl. 27(A) would not extend to limit the forwarder's liability in respect of its own fraud; but that was not this case. Ultimately, this clause was concerned with risk allocation; as a matter of construction, there was no good reason for not giving effect to cl. 27(A) in accordance with its terms.

In the Judge's judgment, the forwarder was entitled to limit its liability under cl. 27(A) of the BIFA terms in respect of wilful default on the part of employees or ex-employees; that was the bargain struck by the parties. To begin with, perhaps somewhat surprisingly, there did not appear to be any authority directly in point on the BIFA terms. *Securicor* is an important authority, on striking facts, for the proposition that, at least in commercial cases (now subject only to the impact, if any, of UCTA), words, even in exclusion clauses, mean what they say and the parties will be held to the bargain into which they have entered. Further, it is a matter of construction rather than law as to whether liability for deliberate acts will be excluded, though of course the wording must be clear. Still further the fact that a clause covers negligence does not entail that it does not cover deliberate acts. In that case, the House of Lords held that the general wording was clear and that the defendants were not liable for the act of their employee in deliberately starting a fire which, in the event, burnt down the plaintiffs' factory. As is apparent from the speeches (see, especially at pages 846, 851 and 852), the reasoning had regard to the apportionment of risk agreed by the parties, coupled with their ability to insure against the risks and losses in question.

Ailsa Craig establishes that limitation clauses are not regarded by the courts with the "same hostility" (Lord Wilberforce, at page 966) as exclusion clauses. As Lord Fraser explained, at page 970: "...these principles [i.e., those applicable to exclusion and indemnity clauses] are not applicable in their full rigour when considering the effect of clauses merely limiting liability. Such clauses will of course be read contra proferentem and must be clearly expressed, but there is no reason why they should be judged by the specially exacting standards which are applied to exclusion and indemnity clauses. The reason for imposing such standards on these clauses is the inherent improbability that the other party to a contract including such a clause intended to release the proferens from a liability that would otherwise fall upon him. But there is no such high degree of improbability that he would agree to a limitation of the liability of the proferens, especially when...the potential losses that might be caused by the negligence of the proferens or its servants are so great in proportion to the sums that can reasonably be charged for the services contracted for ..."

It was helpful to turn next to the commercial context in which cl. 27(A) was found. A corporate bailee such as the forwarder, performed its duties vicariously and was inevitably exposed to the risk of vicarious liability. More specifically, in the context of the bailment of theft attractive goods, the risk of theft must be, if not notorious, then at least apparent and obvious. Sadly but realistically, the same must be said with regard to the risk of attendant dishonesty on the part of the bailee's workforce. Accordingly, as it seemed to the Judge, amongst the commonplace risks which the parties must contemplate when contracting, were negligence, losses by unexplained causes and deliberate wrongdoing, extending to dishonesty on the part of the bailee's employees for which he might be vicariously liable. Against this background, it would hardly be surprising if the parties sought to address and allocate such risks in their contract; still less would it be surprising if standard terms in this area of commerce, such as the BIFA terms, sought to do so. The Judge started with the words themselves. They were to be construed contra proferentem. The wording was general; it did not in express terms refer to negligence or wilful default or employee dishonesty or deliberate wrongdoing. Nonetheless, on any natural reading, the wording of cl. 27(A) was wide indeed. There was no or no serious dispute that cl. 27(A) entitled the forwarder to limit its liability in respect of the case of negligence advanced against it. To the Judge's mind, the

clause did not stop there. As a matter of language, the Judge was amply satisfied that the wording was capable of extending to cover deliberate wrongdoing. If that be right, there was no good reason why, as a matter of language, the answer should be any different when the deliberate wrongdoing was comprised of or included employee dishonesty; the words "howsoever arising" were certainly broad enough to encompass dishonesty on the part of employees for whom the forwarder was or might be vicariously liable. What of the wording in context? Here, as it seemed to the Judge, the arguments were essentially one way:

(i) The risk of employee wilful default was a real, foreseeable, commonplace risk.

(ii) Clause 27(A) was a limitation clause.

(iii) Both the nature of the clause and the commercial background against which it was intended to operate, suggested that the parties intended cl. 27(A) to provide an uncomplicated safety net for the forwarder; if, however, cl. 27(A) did not extend to the commonplace risk in question, then there would be a significant hole in that safety net. These considerations lent powerful support to the proposition that the parties intended the wording to mean what it said; "howsoever arising" meant just that - cl. 27(A) scooped up the forwarder's liability, "howsoever arising", including employee wilful default.

(iv) Nothing in the authorities to which the Judge had referred told against such an approach. To the contrary, this approach to cl. 27(A) is consistent with both Securicor and Ailsa Craig; commercial contracts were not to be artificially construed and liability even for deliberate wrongdoing can be excluded, a fortiori limited, provided appropriate wording is used. While a suggested limitation of liability for employee wilful default did require close scrutiny, so far as concerned deliberate wrongdoing in the course of performance of an admittedly valid contract, the matter was one of construction.

(v) The Judge added this; in practical terms, one or other party was to or would be well advised to insure against the risk of employee wilful default; the party directly at risk was Samsung; all other things being equal, it was likely to be better placed than the forwarder to do so. The above construction of cl. 27(A) would mean that the parties had addressed this risk and left it to Samsung to obtain insurance (for losses above the limit).

In summary, the Judge was persuaded that the language of cl. 27(A) of the BIFA terms, read in context, was clear and was not only capable of extending to employee wilful default but was intended by the parties to do so. Neither the language of the clause nor its context pointed towards straining the clause so as to read into it some restriction which it was not naturally there. The words "howsoever arising", to which the parties had agreed, meant what they said. While the relationship between cll. 24 and 25 of the BIFA terms might involve an element of overlap or tautology, in very broad terms, cl. 24 addressed liability, cl. 25 relief from liability and cl. 27(A), limitation of liability. Necessarily, there was a relationship between these clauses. If there was no breach of the obligation contained in cl. 24, no question of relief from or limitation of liability arose. On any view, in a case where the forwarder could bring itself within the relieving provisions of cl. 25, then the limitation provisions of cl. 27(A) were never reached. It followed that cl. 27(A) came into play when and only when, first, the forwarder was in breach of duty under cl. 24 and, secondly, was unable to take advantage of the relieving provisions of cl. 25. For the Judge’s part, this analysis of cl. 27(A) within the scheme of the section of the BIFA terms dealing with "Liability and Limitation", lent further support to the conclusion that cl. 27(A) was a simple "catch-all" provision, having the effect that the forwarder was entitled to limit its liability, "howsoever arising". There would be no liability absent a breach of duty under cl. 24; in some instances relief from liability would be available under cl. 25; liability "howsoever arising" and for which, ex hypothesi, relief could not be obtained, would be limited under cl. 27(A). For the reasons given, the Judge was satisfied that cl. 27(A) of the BIFA terms entitled the forwarder to limit its liability in respect of Samsung's claims in this case, whether advanced on the basis of employee wilful default or negligence.

Had the Judge concluded that the UKWA rather than the BIFA terms were applicable, he would hold the following:

(i) It was clear from cl. 3(ii) of the UKWA terms that there was no exclusion of liability in the case of either negligence or wilful default; accordingly the forwarder would have been liable to Samsung for the theft and the loss of its goods.

(ii) Given the wording of cl. 3(ii) of the UKWA terms, the forwarder would have been entitled to limit its liability in respect of Samsung’s claims.

(iii) In short, the outcome under the UKWA terms would have been no different from that arrived at under the BIFA terms, save for the limitation figure, which would require a different calculation.

The question was whether the limitation provisions contained in the BIFA terms satisfied the requirement of reasonableness under UCTA. The Judge dealt with this question on the basis that cl. 27(A) of the BIFA terms would not permit the forwarder to limit its liability in respect of its own fraud. Insofar as relevant, UCTA provided as follows:

3. Liability arising in contract

(1) This section applies as between contracting parties where one of them deals. . .on the other's written standard terms of business.
(2) As against that party, the other cannot by reference to any contract term -
(a) when himself in breach of contract,. . .restrict any liability of his in respect of that breach . . .
except in so far as. . .the contract term satisfies the requirement of reasonableness.
11 The "reasonableness" test
In relation to a contract term, the requirement of reasonableness. . . is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.
(5) It is for those claiming that a contract term. . .satisfies the requirement of reasonableness to show that it does.

Samsung contended that cl. 27(A), if it extended to the forwarder's vicarious liability for employee wilful default, did not satisfy the requirement of reasonableness. Samsung underlined that the limit was derisory. The forwarder submitted that cl. 27(A) did satisfy the requirement of reasonableness. First, there had been no inequality of bargaining power. Secondly, terms such as cl. 27(A) were routinely used in the freight industry. Thirdly, it was open to Samsung to agree with the forwarder to a higher limit upon payment of additional charges, pursuant to cl. 27(D) of the BIFA terms. The Judge confessed to no real doubt that the forwarder's submissions were to be preferred. The context was illuminated by Granville, where Lord Justice Tuckey said this, at paragraph 31: "The 1977 Act obviously plays a very important role in protecting vulnerable consumers from the effects of draconian contract terms. But I am less enthusiastic about its intrusion into contracts between commercial parties of equal bargaining strength, who should generally be considered capable of being able to make contracts of their choosing and expect to be bound by their terms." The Judge respectfully adopted those observations. In the present case:

(i) The parties were of equal bargaining power;
(ii) The reason that the limit under cl. 27(A) was said to be derisory related to the *value* of the goods lost. But no freight forwarder in his "right mind" would contract on the basis of value; at the time of contracting freight forwarders might well not know the value of the goods with which they might come to deal. Accordingly, the limit in cl. 27(A) was calculated in terms of *weight*.
(iii) In any event, Samsung could have contracted under cl. 27(D) of the BIFA terms for a higher limit had it wished to do so.
(iv) Clauses such as cl. 27(A) were commonly used by freight forwarders.
(v) Samsung could obtain insurance cover in respect of the goods.

For all these reasons, the Judge was amply satisfied that cl. 27(A) of the BIFA terms satisfied the requirement of reasonableness under UCTA. Accordingly, UCTA had no impact on the forwarder's entitlement to limit its liability under cl. 27(A). The Judge also held that he would have come to the same conclusion in respect of cl. 3(ii) of the UKWA terms, on the basis that he would not have read that clause as permitting the forwarder to limit its liability in respect of its own fraud.

Samsung contended that even if the forwarder was entitled to limit its liability under cl. 27(A), the £22,563.12 claim for survey fees was to be allowed in full. The argument was that cl. 27(A) applied only to "loss or damage to goods" and therefore did not extend to limit the claim for the survey fees. The Judge was unable to accept Samsung's submission. Clause 27(A)(i) limited the forwarder's liability in respect of a claim for loss or damage to goods to a particular amount; the survey fees formed part of that claim; they did not have an independent existence; on the question of limitation, they stood or fell with the claim for the loss of the goods.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

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