

Air Waybill

(8/11/2006)

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SUN MOBILITY
Insurance and Claims Services Limited
新移動保賠顧問有限公司

To: Transport Industry Operators

8 September 2006

Seminar

Air Waybill

More and more goods sold internationally are shipped by air nowadays. The air waybill is very important to the air freight industry as well as the international trade. It is the best evidence of the contract of carriage. It contains the contract terms between the carrier, the shipper and consignee governing the rights and obligations of the parties.

As part of our transport risk management services to the transport industry, we together with the Hong Kong Shippers' Council will hold a seminar about the basics of the air waybill. We will use IATA neutral air waybill as an example to examine the important functions and the common clauses of the air waybill. The details are as follows:

- 1. Date : Wednesday, 8 November 2006 (2:15pm – 4:30pm)
- 2. Venue : YMCA of Hong Kong – Assembly Hall, 4/F North Tower
41 Salisbury Road, Tsimshatsui, Kowloon, Hong Kong
- 3. Speaker : Mr Richard Chan
- 4. Language : Cantonese
- 5. Fee : HK\$200 per person
- 6. Outline :
 - carrier's receipt of goods
 - best evidence of contract of carriage
 - Amended Warsaw Convention Article 8(c) notice
 - carrier's identity
 - shipper's responsibility on cargo details and packing
 - carrier's liability for cargo loss, damage or delay
 - paramount clause of Warsaw Convention 1929 or Amended Warsaw Convention 1955
 - carrier's liability limitation of US\$20/kg for cargo loss, damage or delay
 - forwarder's trading conditions applicable to carriage to airport of departure
 - Himalaya clause benefiting carrier's servants or agents
 - liberty to carry
 - shipper's guarantee to pay all carriage charges
 - shipper's or consignee's cargo disposal right
 - 14-day cargo damage notice
 - 21-day cargo delay notice
 - 120-day cargo non-delivery notice
 - 2-year suit time limit
 - cargo insurance

Please fill in the attached enrollment form and send it to Sun Mobility Insurance and Claims Services Limited or the Hong Kong Shippers' Council with your cheque for payment of the attendance fee.

Yours faithfully

For and on behalf of

SUN MOBILITY INSURANCE AND CLAIMS SERVICES LIMITED

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Seminar – 8 November 2006

Air Waybill

More and more goods sold internationally are shipped by air nowadays. The air waybill (“AWB”) is very important to the air freight industry as well as the international trade.

Receipt of goods

The AWB is the receipt of goods by the carrier. The carrier issues the AWB as a receipt to the shipper after the carrier receives the goods from the shipper.

Not a document of title

The AWB is not a document of title to the goods. The carrier does not require the production of the original of AWB by the consignee prior to the cargo delivery to the consignee at the destination. The carrier only needs to identify the consignee under the AWB and then deliver the goods to the consignee.

Contract of carriage

The AWB is the best evidence of the contract of carriage between the carrier and the shipper and consignee. It contains the contract terms governing the rights, liability and obligations of the parties.

IATA neutral AWB

Amended Warsaw Convention (“AWC”) Article 8(c) notice

According to Article 8(c) of the AWC, the AWB shall contain a notice to the shipper to the effect that if the carriage involves an ultimate destination or stop in a country other than the country of departure, the AWC may be applicable and that the AWC governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. If the AWB does not include this notice, Article 9 of the AWC stipulates that the carrier cannot rely on the AWC to limit its liability for cargo loss, damage or delay (say US\$20/kg of the gross weight of the cargoes).

Warsaw Convention

The carriage is subject to the Warsaw Convention of 1929 (“WC”) or the Amended Warsaw Convention of 1955 unless the carriage is not international carriage.

US\$20/kg liability limitation

In the carriage to which the WC or AWC does not apply, the carrier’s liability shall not exceed US\$20 per kg of the goods lost, damaged or delayed unless a higher value is declared by the shipper and a supplementary charge is paid. The weight to be taken into account in determining the carrier’s liability shall be only the weight of the package or packages concerned.

Himalaya clause

Any exclusion or limitation of liability applicable to the carrier shall apply to and be for the benefit of the carrier's agents, servants and representatives and any person whose aircraft is used by the carrier and its agents, servants and representatives. For purpose of this clause, the carrier acts as agent for all such persons.

Liberty to carry

The carrier undertakes to complete the carriage with reasonable dispatch. The carrier may use alternate carriers or aircraft and may without notice and with due regard to the interests of the shipper use other means of transportation. The carrier is authorised to select the routing or to change or deviate from the routing shown on the face of the AWB.

Period of liability

The carrier shall be liable for the goods during the period they are in the carrier's charge or the charge of its agent.

Freight charges

Except when the carrier has extended credit to the consignee without the shipper's written consent, the shipper guarantees payment of all charges for carriage due. When no part of the consignment is delivered, a claim with respect to such consignment will be entertained even though the transportation charges are unpaid.

Cargo delivery

Notice of arrival of goods will be given promptly to the consignee or to the notify party. On arrival of the goods at the place of destination, subject to the acceptance of other instructions from the shipper prior to arrival of the goods at the place of destination, delivery will be made to or in accordance with the instructions of the consignee. If the consignee declines to accept the goods or cannot be communicated with, disposition will be in accordance with instructions of the shipper.

Cargo loss, damage, delay notice time limit

The person entitled to delivery must make a complaint to the carrier in writing in the case:

1. of visible damage to the goods, immediately after discovery of the damage and at the latest within 14 days from receipt of the goods;
2. of other damage to the goods, within 14 days from the date of receipt of the goods;
3. of delay, within 21 days of the date that the goods are placed at his disposal; and
4. of non-delivery of the goods, within 120 days from the date of issue of the AWB.

Suit time limit

Any rights to damages against the carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

Shipper's complying with laws and regulations

The shipper shall comply with all applicable laws and government regulations of any country to, from, through or over which the goods may be carried, including those relating to the packing, carriage or delivery of the goods, and shall furnish such information and attach such documents to this AWB as may be necessary to comply with such laws and regulations. The carrier is not liable to the shipper for loss or expense due to the shipper's failure to comply with this provision.

Cargo insurance

If the carrier offers insurance and such insurance is requested, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by the AWB are insured under an open policy for the amount requested as set out on the face of the AWB (recovery being limited to the actual value of goods lost or damaged provided that such amount does not exceed the insured value). The insurance is subject to the terms, conditions and coverage (from which certain risks are excluded) of the open policy, which is available for inspection at an office of the carrier by the interested party. Claims under such policy must be reported immediately to the carrier.

Forwarder's contract of carriage to airport of departure

When used as an AWB issued by a forwarder in a capacity as contracting carrier for air transportation, it shall be agreed that transportation to the airport of departure (as shown on the face of AWB) does not constitute part of the contract of air carriage. As far as the issuer of the AWB takes over the arrangement or performance of such services, it is done under a separate contract which is subject to the applicable conditions of national forwarders associations only; where such conditions do not exist, company's condition and the respective national air transport legislation apply.

Potential improvements to IATA neutral AWB

Uncollected cargo

If delivery of the goods is not taken by the shipper and consignee at the time and place when and where delivery should be taken, the carrier shall be entitled (but is not obliged) to store the goods at the sole risk of the shipper and consignee, whereupon any liability which the carrier may have in respect of the goods stored as aforesaid shall wholly cease and the cost of such storage shall be paid by the shipper to the carrier.

The carrier is entitled (but not obliged) to sell or dispose of all goods which in the opinion of the carrier cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the shipper and consignee within 14 days after notice has been given to the them. The shipper shall pay all charges and expenses in connection with the storage and the sale and/or disposal of the goods.

General and Particular Lien

All goods and documents relating thereto shall be subject to a particular and general lien for monies due either in respect of such goods, or for any particular or general balance or other monies due from the shipper and consignee to the carrier. If any such monies due to the carrier are not paid within 14

days after notice has been given to the shipper and consignee, the goods may be sold by auction or otherwise at the sole discretion of the carrier at the expense of the shipper and consignee, and the proceeds (net of the expenses in connection with such sale) shall be applied in or towards satisfaction of such debts.

Interest on outstanding charges

Charges for the services shall be deemed fully earned and non-returnable upon receipt of the goods by the carrier. The shipper and consignee shall pay to the carrier all sums immediately when due without deduction on account of any claim, counterclaim or set-off. Payment to the carrier is due as soon as an invoice is rendered to the shipper or consignee. For any amount unpaid within 30 days from the date of the invoice, the carrier shall be entitled to interest from the date of the invoice until payment at 2% per month.

Liability limitation for cargo misdirection, misdelivery...

The liability limitation of US\$20/kg should not only apply to the cargo loss, damage or delay; but it should also apply to the cargo misdirection, misdelivery and all the other claims.

Liability limitation in terms of each incident

In addition to the weight limitation of US\$20/kg, the carrier should have a liability limitation (e.g. US\$250,000 on) on the basis of each incident.

Law and Jurisdiction

The AWB should contain an exclusive law and jurisdiction (e.g. Hong Kong) clause.

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8/11/2006

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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.

30 November 2006
Ref : Chans advice/71

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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Photos









