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To: Transport Industry Operators

Seminar (28 May 2024) Q&A Part 1

Against the post-Covid tide, we ran an off-line real seminar on Uncollected and Undelivered Cargo on 28 May 2024. Attendance could not be compared with any webinars but the number of enthusiastic questions in the Q&A session reflected the demand for transport liability issue solutions. For the sake of recapitulations and sharing the Q&A among the Chan Advice readership, we like to report the Q&A in two issues. We welcome any other questions you may have on the following.

Question 1

Regarding release of goods without original B/L, were there any court cases in relation to the shippers suing in the courts of China after the cargo misdelivery in the USA? If yes, were the Chinese forwarders or the USA forwarders the parties sued by the shippers? And what were the results? (based on incoterms or contract?)

SMIC: We handled many cases each year concerning the shippers suing our HK/Chinese forwarder clients in the courts of China after their USA agents released the goods to the consignees without production of the original B/Ls of the HK/Chinese forwarders. The Chinese courts held the HK/Chinese NVOCs liable to the shippers for the CIF value of the goods (according to the Chinese laws, the carriers cannot rely on the PRC Maritime Code's liability limitation of 666.67 SDR/package or 2 SDR/kg of the goods for the cases of cargo release without presentation of original B/Ls). These actions were based on the contracts of carriage between the carriers and the shippers as evidenced by the B/Ls, but not the incoterms (which are for the sale of goods contracts between the sellers and buyers).

Question 2

Part of an air shipment mis-route by airline to a wrong destination. Hold by the Customs and release date is unknown. Both shipper and consignee did not raise claim. As a forwarder, what should we do and how should we handle?

SMIC: As it was the airline that made the mistake, the forwarder should keep pressing the airline to release the cargoes from the Customs and redirect the cargoes to the correct destination without any further delay. The shipper or consignee will claim against the forwarder for the total loss of the cargoes if the cargo redirection is not done soon. The forwarder will in turn claim against the airline for full indemnity. The airline and the forwarder may be able to rely on the liability limitation of 22 SDR/kg of the goods under the Montreal Convention to limit their liability.

Question 3

Want to understand if there is any update of the insurance compensation procedures nowadays. If no, want to understand how the clients can make a claim for cargo damage in relation to import and export air shipments. What are the procedures and time bar etc?

SMIC: The insurance compensation procedures remain more or less the same i.e. the insured has to provide the insurer with sufficient evidence to prove that there is a valid claim under the insurance policy. No matter the shipment is an import or export shipment, the cargo

owner should be advised to immediately notify its cargo insurer of the cargo damage and to claim against its cargo insurer for fuller and quicker compensation (the cargoes' insured value is usually 110% of the cargo value). The cargo insurer can then instruct its surveyor to inspect the cargo damage, and would pay compensation (e.g. repair costs) to the cargo owner based on the findings as per the survey report. According to the Montreal Convention, the consignee has to send written complaint (about the cargo damage) to the carrier under the air waybill within 14 days from the date of the consignee's receipt of cargoes from the carrier. If the consignee fails to comply with this rule, the carrier will be discharged from all liability for the cargo damage i.e. the claim against the carrier is time barred. It is imperative that the cargo owner timely send the written complaint to the carrier in order to protect the cargo insurer's right of recovery against the carrier. Otherwise, the cargo insurer would have the right to reject covering the cargo owner for the cargo damage.

Question 4

If the freight forwarder does not issue its own HB/L to the actual shipper and actual consignee, and the shipping company's direct MB/L is issued to the actual shipper and actual consignee, what is the freight forwarder's liability for uncollected cargo? Can the freight forwarder / carrier sell or dispose of the uncollected cargo by public auction?

SMIC: We presume the freight forwarder just acts as the actual shipper's agent to book the shipment with the shipping company. If our presumption is correct, since the freight forwarder should have done nothing wrong to cause the uncollected cargo problem, the freight forwarder should have no liability for the uncollected cargo incident. The shipping company as the carrier under its MB/L should follow the MB/L contract terms to claim against the actual shipper / the actual consignee for the uncollected cargo extra costs.

On the other hand, only the shipping company as the carrier would have the right to sell or dispose of the uncollected cargo by public auction provided that the MB/L has the contract terms allowing the shipping company to do so. The freight forwarder as the shipper's agent has no right to sell or dispose of the uncollected cargo.

Question 5

Is air freight similar to sea freight in terms of uncollected cargo?

SMIC: For uncollected cargo, air freight is similar to sea freight.

The freight forwarder as the carrier under its HAWB should rely on its HAWB terms to handle the uncollected cargo, e.g. to obtain the right to sell or dispose of the uncollected cargo, and to claim against the shipper and consignee under the HAWB for the losses resulting from the uncollected cargo.

The airline as the carrier under its MAWB can claim against the freight forwarder (as the shipper or consignee under the MAWB) for the actual losses resulting from the uncollected cargo.

Please feel free to contact us if you have any questions.

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