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31 May 2005
Ref : Chans advice/53

To: Transport Industry Operators

Straight B/L & Hague Rules

Do the Hague Rules or the Hague Visby Rules apply to the straight bill of lading? The House of Lords in England said yes in its Judgment dated 16/2/2005.

The Hague Rules (as scheduled to the Carriage of Goods by Sea Act 1924) and the Hague Visby Rules (as scheduled to the Carriage of Goods by Sea Act 1971) provide by article I(b) that the rules contained in those international maritime conventions apply only to contracts of carriage "covered by a bill of lading or any similar document of title". In a shipment in 1989 the question arose whether a bill of lading consigned to a named consignee, a so-called straight bill of lading, was a conforming document under article I(b) of the Hague Visby Rules. Such a straight bill of lading is to be contrasted with an "order" or bearer bill of lading each of which permits the transferability of the bill of lading to any number of transferees in succession, respectively by endorsement or delivery. In a dispute arising from cargo damage CIF buyers, the named consignees, as claimants alleged that article I(b) of the Hague Visby Rules applied to the straight bill of lading in question. If that were correct the relatively generous package limitation under article IV Rule 5 of the Hague Visby Rules would have been applicable, resulting in a claim of the order of US$150,000. On the other hand, the carrier contended that the straight bill of lading was akin to a sea waybill, which merely operated as a receipt. Accordingly, it was argued that article I(b) of the Hague Visby Rules was inapplicable, and that package limitation was governed by section 4(5) of the US Carriage of Goods by Sea Act 1936, restricting the claim to US$2,000.

A United States company bought a printing machine and ancillary equipment on CIF terms from an English company. The sellers consigned the goods to the buyers. The carriers were a container liner operator and the demise charterers of the vessels "Rosemary" and "Rafaela S". The goods were shipped from Durban aboard the "Rosemary," as evidenced by a document entitled "Bill of Lading" dated 18/12/1989, which was issued by the demise charterers at Durban. The bill of lading evidenced a contract for the carriage of the cargo to Felixstowe and for on-carriage to be subsequently arranged to the final destination at Boston. The Bill of Lading named the buyers as consignees. The goods were carried from Durban to Felixstowe, discharged there and then loaded aboard the "Rafaela S". This vessel carried the goods to Boston. No fresh bills of lading or other shipping document was issued in respect of the Felixstowe –Boston leg of the voyage. However, it was agreed that if any fresh bill of lading had been issued, it would have been in the same terms as that issued in respect of the carriage from Durban to Felixstowe. Whatever its import the bill of lading issued governed the voyage during which cargo damage was allegedly caused.

The purpose of the Hague Rules was to provide a set of provisions to regulate the terms on which goods were carried. More particularly, the aim is to protect third parties to the contract of carriage, including consignees, who may come to be bound by the terms in that contract without having had any real opportunity of examining them or of assessing the value of the security it

affords. The Rules were therefore designed to incorporate certain, reasonable, standard provisions into the contracts of carriage to which they applied.

The Rules applied, first and foremost, to contracts of carriage covered by a bill of lading. Plainly, however, there was a risk that one or other of the parties might try to avoid the application of the Rules by using some document which, though otherwise serving much the same practical purposes from his point of view, was not actually a bill of lading. The purpose of adding the words "or any similar document of title" in article I(b) was clearly to frustrate any attempt of this kind by extending the range of the definition so that it applied not only to a contract of carriage covered by a bill of lading but also to a contract of carriage covered by "any similar document of title". In short, these words were not included in order to cut down the range of contracts to which the Rules apply by narrowing the class of "bills of lading" as understood in commercial circles; they were intended, rather, to extend that range by including contracts covered by any document of title that is similar to a bill of lading.

In modern commercial usage the bill of lading is one of the pillars of international trade, providing the credit necessary for the financing of mercantile trade. The principal characteristics of the modern bill of lading are threefold. It operates as:

(a) a receipt by the carrier acknowledging the shipment of the goods on a particular vessel for carriage to a particular destination;
(b) a memorandum of the terms of the contract of carriage, which will usually have been concluded before the signing of the document;
(c) a document of title to the goods which enables the consignee to take delivery of the goods at their destination or to dispose of them by the endorsement and delivery of the bill of lading.

The question is whether a straight bill of lading triggers the application of the Rules, that is the provision that the Rules are only engaged in respect of contracts of carriage "covered by a bill of lading or any similar document of title". Before the adoption of the Hague Rules the practice of issuing straight bills of lading was known, and such documents were described and treated as bills of lading. It is true, of course, that the vast preponderance of transactions took place on the basis of order bills of lading. But it is a matter of contextual significance that straight bills of lading were in use before the Hague Rules were adopted. But it is a fair inference that the framers of the Hague Rules could not have been unaware of the relatively widespread mercantile use of straight bills of lading at that time. If it had been intended to exclude these bills of lading, special provision to that effect would surely have been made. Instead the gateway to the application of the Hague Rules was expressed in the wide and general terms of the existence of a bill of lading or any similar document of title. The very words in question – "bills of lading or any similar document of title" – are words of expansion as opposed to restriction. They postulate a wide rather than narrow meaning. The attempt by the carriers to treat those words as importing a restrictive meaning of a conforming document under article I(b) involved a distortion of the plain language. Instead the Rules must be construed by reference to "broad principles of general acceptation" appropriate to the international mercantile subject matter. The wording is more consistent with an interpretation of article I(b) which treats straight bills of lading as included rather than excluded.

The bill of lading in question expressly provided that "One of the bills of lading must be surrendered duly endorsed in exchange for the goods or delivery order." The carrier argued that the words "duly endorsed" signify that this provision is inapplicable to a straight bill of lading. The Lords rejected this argument. The words "duly endorsed" merely indicated that the bill of

lading must be endorsed if appropriate or as may be necessary to perform the right of the presenting party to claim delivery. In any event, the issue of a set of three bills of lading, with the provision "one of which being accomplished, the others to stand void" necessarily implied that delivery would only be made against presentation of the bill of lading. In the Lords' view the decision of the Court of Appeal of Singapore in Voss v APL Co Pte Ltd [2002] 2 Lloyds LR 707 at 722 that presentation of a straight bill of lading is a requirement for the delivery of the cargo is right. In the hands of the named consignee the straight bill of lading is his document of title. Except for the fact that a straight bill of lading is only transferable to a named consignee and not generally, a straight bill of lading shares all the principal characteristics of a bill of lading as already described. The Lords would accordingly give an expansive interpretation to the expression "bill of lading or any similar document of title", which seems to the Lords apt to cover the document issued in this case. The Lords have no difficulty in regarding it as a document of title, given that on its express terms it must be presented to obtain delivery of the goods.

Moreover, no policy reason has been advanced by the carrier why the draftsmen of the Hague Rules would have wanted to distinguish between a named consignee who receives an order bill of lading and a named consignee who receives a straight bill of lading. There is simply no sensible commercial reason why the draftsmen would have wished to deny the CIF buyer named in a straight bill of lading the minimum standard of protection afforded to the CIF buyer named in an order bill of lading. The importance of this consideration is heightened by the fact that straight bills of lading fulfil a useful role in international trade provided that they are governed by the Hague Visby Rules, since they are sometimes preferred to order bills of lading on the basis that there is a lesser risk of falsification of documentation. The Lords can see no rational reason for giving the protection of the Rules to a consignee under a transferable bill but not to a consignee under a straight bill. For that reason, it makes sense that article I(b) of the Hague Rules has been worded in a way that does not exclude – and so includes – contracts of carriage that are covered by a bill of lading which is not transferable.

Accordingly, the House of Lords held that the Hague Rules and the Hague Visby Rules apply to the straight bill of lading.

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

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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.