FORWARDERLAW E-NEWS July 25, 2005

Interpretation of national laws can vary significantly from country to country. To emphasize how these variations can cause problems in the adoption of uniform contracts by the forwarding industry, Forwarderlaw has re-published

(a) re-published the decision of the Singapore Court that invalided a nine-month limitation in or time bar in the Singapore Logistics Association (then the Singapore Freight Forwarders Association) as contrary to Singapore's Unfair Contract Term legislation, and

(b) re-published in an edited version the decision of the Court of Appeal in England in Granville Oil v. Davies Turner, which decided that the nine months limitation in the Section 28 B BIFA Conditions was reasonable, and therefore not contrary to the Unfair Contract Terms Act of the United Kingdom.

You will find these commentaries on the Home Page of Forwarderlaw. See "A Review of the Impact of Unfair Contract Terms Legislation on the Nine-Months Limitation Period" and "Unfair Contract Terms Legislation - new conflicts for the Forwarding Industry".

The United Kingdom Act exempted International contracts, and carriage of goods by sea from the scope of the legislation. Yet forwarding contracts, which in many ways are just as international in scope, are subject to the United Kingdom Act. Presumably the Singapore Legislation is the same.

Consider the problem from the point of view of FIATA, which is trying to have its Model Rules adopted as a standard for all its member organizations. What effect will it efforts have if on something as fundamental as a time-bar, national laws frustrate the uniformity of application of the Rules?

The next posting on Forwarderlaw will add commentary from US jurisprudence, taken from a decision of the United States District Court for the Northern District of California. This case was a bonanza of interesting judicial commentary and decision. Two commentaries in this month's Forwarderlaw E-news deal with this case.

First, the facts of the case, Seagate v. China Express, were very similar to the Australian decision in Siemens v. Schenker, in that the claim related to air cargo that was outside the boundaries of an airport when the claim arose, but still in the legal custody of the party liable as air carrier under the Air Waybill. However, the Siemens v. Schenker's issue whether the IATA Air Waybill Clause limited the liability of the air freight consolidator did not come up for decision. (To readers who have not followed the Forwarderlaw commentary on the case but would like to find out more about Siemens v.Schenker, enter either term on the Search facility of the Home page.)

Second, Seagate, the owner of the cargo, did not sue the airline, but did sue air freight consolidators who issued their house air waybill, and a ground handling agent employed by the air line.

The air freight consolidators sought an indemnity against the airline through third party proceedings on the strength of its master air waybill that named the air freight consolidators as consignor and consignee. .

Both the air freight consolidators and the airline sought a court order exonerating them in whole or in part on the basis of the fine print in their air waybill. The air freight consolidators succeeded outright in having Seagate's claim against them dismissed. The success of the air consolidators indicates the importance of this industry pressing forward with air waybill terms and conditions that protect their interests, while not prejudicing air carriers. (Ed Note: If you haven't read about the battle between Cathay Pacific and the Forwarding Industry, go to the Features page and read the Article posted June 18th).

The airline did not succeed in having the court confirm that it had a right to limit its liability to $20 per kilo as against the air freight consolidators, who were its customers. However, as Seagate's claim against the air freight consolidators was dismissed, the airline's lack of success was not important – there was no more third party indemnity claim against it that it had to defend.

What happened with the claim against the Ground Handling agents, who presumably were responsible for the loss? We don't know, but the assumption by the General Editors is that the airline paid the Ground handling agents enough money to settle the claim on the basis of the $20 limitation.

For the claim against the air carrier, go to the Home Page and click through on "Siemens v. Schenker" has surfaced in California - Part II''. For the claim against the air freight consolidators, click through on "Siemens v. Schenker has surfaced in California.

Felipe Arizon warns multinationals about a potentila new development in Spanish law based upon use of Websites

Multinationals emphasize their international profile in seekikng business, but emphasize their corporate differences of members of their group when confronting legal issues. Sometimes courts are not inclined to go along with this approach.

The Spanish Courts gave little encouragement to DHL that its corporate identities would be respected when their Websites don't emphasize the differences in national organizations within the group.

Go to Felipe's comments on the Home page under the heading "The Perils of being an International Transport Conglomerate "

Forwarderlaw welcomes all contributions from lawyers, insurance adjusters, and arbitrators, forwarding managers, government or administrative authorities. They will be republished with full attribution to their source.

If you would like to be removed from the mailing list hit your reply button and type in "unsubscribe" in the message. Please send this edition of Forwarderlaw E-news to a friend who would benefit from an introduction to this resource.

If you wish to send the General Editor an Article, please “telegraph” your intentions by a previous email, so that your article does not get deleted like the numerous virus-carrying emails.

Peter Jones
General Editor, Forwarderlaw
416-643-3323
1 Queen St. E. Suite 2100
Toronto, Canada M5C 2W5