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To: Transport Industry Operators

## Hague Rules 1924

Are you using the International Convention for the Unification of Certain Rules relating to the Bill of Lading 1924 (the "Hague Rules") as the paramount clause in your bills of lading? If yes, we suggest you check your bills of lading and see if your liability limitation under the Hague Rules has been specified as the nominal value of £100 sterling, lawful money of the United Kingdom, per package or unit. If there is no such specification in your bills of lading, your liability limitation may be held to be based on the gold value of the £100 sterling in 1924. Such may be as high as US\$8,000 per package or unit, depending on the value of the gold which fluctuates every day.

In its judgment dated 20/5/2004, the United Kingdom Privy Council held a carrier liable to pay a cargo damage claim on the basis of £100 sterling (in ordinary or paper currency) per package under the Hague Rules contractually incorporated into the bill of lading. The contract was for the carriage of 70 coils of electrolytic tin plate from Busan in Korea to Tauranga in New Zealand aboard the carrier's vessel. The bill of lading issued was on port to port basis. On delivery, 55 of the coils were found to be irreparably damaged by sea water, and the carrier accepted liability for that damage. The loss suffered by the bill of lading holder was agreed to be NZ\$613,667.25. But the carrier contended the bill of lading holder's right of recovery was limited to £100 sterling, lawful money of the United Kingdom, per damaged coil, a total of £5,500 sterling.

It has been common ground throughout that this carriage was not governed by any international convention nor by the law of either Korea or New Zealand. The carrier's liability was the subject of the bill of lading contract only. The relevant bill of lading clause was:

"By the Hague Rules contained in the International Convention for the Unification of Certain Rules relating to the Bills of Lading dated 25 August 1924 (hereinafter called the Hague Rules), if the loss or damage is proved to have occurred at sea or on inland waterways; for the purpose of this subparagraph the limitation of liability under the Hague Rules shall be deemed to be £100 Sterling, lawful money of the United Kingdom per package or unit and references in the Hague Rules, to carriage by sea, shall be deemed to include references to carriage by inland waterways and the Hague Rules shall be construed accordingly."

Article IV rule 5 of the Hague Rules provides:

"Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

Article IX of the Hague Rules provides:

"The monetary units mentioned in this convention are to be taken to be gold value."

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.”

The effect of article IX is to make plain that what article IV rule 5 refers to is the gold value of the pound sterling not its nominal or paper value: see *The “Rosa S”*[1988] 2 Lloyds Rep 574, 581, per Hobhouse J. In *Brown Boveri (Australia) Pty Ltd v Baltic Shipping Co*, Yeldham J decided that the limitation confining recovery to £100 per unit in article IV rule 5 was, in the light of article IX, to be calculated by reference to “the quantity of gold which was the equivalent of £100 sterling in 1924”, and his decision was upheld by the Court of Appeal of New South Wales: (1989) 93 ALR 171, 172,175,188,192. This interpretation of these two provisions, read together, has been accepted by the Privy Council. With the passage of 80 years since the Hague Rules were adopted in 1924, and with the marked depreciation in the value of the pound sterling over that period, the practical effect of article IX has become increasingly great.

In the present case, therefore, all turned on the correct interpretation of the billing of lading clause. The clause must be construed in the context of the contract as a whole. The general rule should be applied that if a party, otherwise liable, is to exclude or limit his liability or to rely on an exemption, he must do so in clear words; unclear words do not suffice; any ambiguity or lack of clarity must be resolved against that party.

The particular bill of lading clause served to incorporate the Hague Rules if no international convention or national law governed and the loss or damage was proved to have occurred at sea or on inland waterways. The limitation of liability under the Hague Rules was deemed to be “£100 Sterling, lawful money of the United Kingdom per package or unit”. The Hague Rules was to be construed in accordance with this deemed meaning. Thus the purpose of the deeming provision was to give the Rules a meaning different from that which they would have in the absence of a deeming provision. The deemed limitation provision stipulated a limit of £100 sterling, lawful money of the UK, a nominal or paper value. The deemed limitation provision gave effect to article IV rule 5 as if it were unqualified by article IX.

The Privy Council held that the express limitation stated by the parties in the bill of lading clause had the purpose of altering the limitation aspect of the Hague Rules and that effect had to be given to that contractual purpose. The Privy Council found no lack of clarity in the bill of lading clause. The carrier’s liability was limited to £5,500 sterling in ordinary or paper currency.

Should you have any questions or want to have a copy of the Judgment, please feel free to contact us.

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