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To: Transport Industry Operators

B/L Seminars 13 & 20 June 2005 – Q & A

There were big turnouts in our latest seminars held in June on Bills of Lading, the fourth theme of the Sun Mobility stressed Rules of the Transport Game after Hague Visby Rule in 2001, Amended Warsaw Convention in 2002, and Claims Handling in 2004. We like to take this opportunity to thank the industry for its continual support.

Sun Mobility seminars were so sought-after that we often had to repeat classes to meet the demand from the shipping and logistics industry. In fact, the readership of the Chans advice is expanding, while our insurance, claims, loss prevention and training services clientele have been steadily growing. All these suggest that there are strong demands in the industry for competitiveness enhancing knowledge, and for quality transport risk management services.

Given better seminar management, we had been able to tackle a lot of questions raised from the floor. For the benefit of those not able to get a seat in our seminars but are interested in sharing the Q & A from the audience of 250, we have given a gist as follows:

Q. After the carrier has received the goods from the shipper, the goods are subsequently lost or damaged in the carrier's warehouse and the B/L has not yet been issued. How should the carrier issue the B/L?

A. The B/L is a receipt of goods by the carrier from the shipper. The carrier should still have to issue the B/L to the shipper recording the quantity and apparent good condition of the goods upon the moment that the goods are received by the carrier from the shipper and the date of cargo receipt. The carrier should also remark on the B/L the subsequent cargo loss or damage and the date of the incident leading to the cargo loss or damage.

Q. How to release the goods to the consignee when the consignee can only present the full set of B/L with no endorsement of the shipper on the back of the B/L?

A. The B/L usually states clearly that a duly endorsed B/L needs to be surrendered for the cargo delivery at the destination. The shipper's endorsement on the B/L back page signifies the shipper's willingness to pass the B/L to the consignee for taking cargo delivery. Accordingly, the carrier would have liability to the shipper if the carrier releases the goods to the consignee against the B/L without any endorsement of the

shipper. The carrier should first obtain the shipper's written confirmation that the carrier can still release the goods to the consignee against the production of the full set of the B/L despite the lack of the shipper's endorsement on the back of the B/L. The carrier can then release the goods to the consignee.

Q. The consignee has some outstanding money due to the carrier in relation to some previous shipments. The carrier wants to exercise general lien on the goods. The shipper presents the full set of the B/L and ask the carrier to change the consignee to another party. Can the carrier refuse to change the consignee under the B/L?

A. The consignee is actually named by the shipper in the first place. Prior to the cargo delivery, the shipper should have the right to change the consignee provided that the shipper can present the full set of the B/L to the carrier for making the amendment. Once the consignee under the B/L has been changed to another party, the carrier can no longer lien the goods as the outstanding money has become nothing to do with the shipper and the new consignee.

Q. The shipper clearly remarks "Telex Release" on the shipping order. The shipper therefore does not want to come up to the carrier's office to collect the full set of the B/L because the shipper needs to surrender the full set of the B/L back to the carrier nearly at the same time. The Shipper thinks this is wasting its time. What is the proper way to handle this "Telex Release" situation?

A. The shipper needs to give a clear written instruction to the carrier (i) that the shipper requests "Telex Release" of the goods, (ii) that the shipper will not collect the full set of the B/L, (iii) that the full set of the B/L is deemed as having been surrendered to the carrier for cargo release to the consignee without the need of production of the B/L at the destination and (iv) specifying the full name and the contact details of the consignee to which the shipper wants the carrier to deliver the goods without production of the B/L. The carrier also should send a copy of the B/L issued including the back page terms to the shipper for good record sake.

Q. If the shipper asks the carrier to issue clean B/L for the pre-shipment damaged goods or to back date the B/L, what is the better approach for the carrier to deal with this?

A. The carrier should not (i) issue any clean B/L for the pre-shipment damaged goods or (ii) back date any B/L as all these are deliberate misrepresentation. It may be viewed as a conspiracy between the shipper and the carrier to deceive an innocent party e.g. the consignee or a bank. Such may even be a fraudulent act. The carrier may even be guilty of criminal offence. Even if the shipper issues a letter of undertaking fully indemnifying the carrier from all liability resulting from issuing a clean B/L for the pre-shipment damaged goods or backdating a B/L, such kind of letter of undertaking is not legally enforceable for the reason of public order and policy. Otherwise, it seems that the court is encouraging such kind of conspiracy.

Q. What are the risks associated with the nomination cargo?

A. The usual additional risk for the nomination cargo or routing order is the release of goods without production of B/L. There is usually a close relationship between the consignee and the destination agent for the nomination cargo. It is not uncommon to frequently hear that the destination agent releases the goods to the consignee without production of its principal's B/L because the destination agent tries to please the consignee without considering the risks and liability of its principal under the B/L.

Q. If the B/L is lost, what to do to protect the carrier for the cargo delivery without production of B/L or for the issue of replacement set of B/L?

A. The shipper, consignee and a first class bank should issue a letter of guarantee to the carrier fully indemnifying the carrier from all losses, liability, costs and expenses resulting from the cargo release without production of the B/L or from the issue of the replacement set of B/L. The carrier should also obtain a copy of the cargo commercial invoice to know the cargo value and the extent of the potential liability.

If you are interested in further idea exchanges on above issues, please feel free to phone. By the way, we like to mention that similar Q & A are taken place everyday between our clients and our professional claims and consultant team. These have prevented a lot of potential claims from happening, and at the same time raised the awareness and skills of concerned staff in freight forwarding operations.

Finally, although better knowledge of the transport game could minimize risk exposure, a forwarder should better consider buying liability insurance to back up because it is unlikely for you to outsmart professional recovery agents and litigations are costly exercises. Even if you like to DIY, it does not pay to spend your precious time which could be more productively spent in operations, sales and marketing. A forwarder liability insurance gives you not only protection, but also access to a big reservoir of transport claims handling skills if you happened to appoint a broker conversant in transport risks.

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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.