

AIR CARRIER LIABILITY FOR LOSS AND DAMAGE OF AIR FREIGHT

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I. DOCUMENTATION

- Warsaw Art. 8:
Sets out 17 distinct categories of information which an Air Waybill must contain, and non-compliance with 10 of those categories results in the loss of the carrier's right to invoke the liability limits of the Convention
- M 99 Arts. 4-5:
Air Waybill or Cargo Receipt must specify information on routing and weight of the consignment under 3 headings:
 - An indication of the places of departure and destination;
 - An agreed stopping place within the territory of another state;
 - An indication of the weight of the consignment.

DEFICIENT CARGO DOCUMENTATION

- Warsaw Art. 9:
Does not affect the existence of validity of a contract of carriage but denies the Carrier the right to rely on the liability limitations of the Convention
- M 99 Art. 9:
Starting with MP4, a deficient or defective Air Waybill/Cargo Receipt does NOT set aside the applicability of the Convention's liability limits for cargo.

DOCUMENTATION

- Lots of cargo claims under Warsaw were brought under the documentation provisions – this was an important means of breaking the limits of liability of the Convention
- Although M 99 does not require strict compliance with documentation requirements for liability limits to apply, there is still good reason for a Carrier to ensure that the documentation complies: e.g. under Art. 11, an Air Waybill or Cargo Receipt is prima facie evidence of:
 - conclusion of a contract of carriage;
 - acceptance of the cargo by the carrier; and,
 - the conditions of carriage therein mentioned

II. RIGHTS AND DUTIES OF THE PARTIES

- Art. 12: Rights of the Consignor
- Art. 13: Rights of the Consignee
- Art. 14: Enforcement of rights
- Note: There is no express mention of the rights of the actual owner of the goods in either Warsaw or M 99. The provisions on rights and duties are restricted to **consignors and consignees.**

III. LIABILITY REGIME AND EXTENT OF COMPENSATION

- Art. 18 – Damage to Cargo – Carrier is strictly liable as long as the event which caused the damage took place during the carriage by air.
 - Major difference between cargo and passenger liability: Art. 18 uses the term '*event*' whereas Art. 17 uses '*accident*'. Art. 18 is therefore broader in scope than Art. 17.
- Art. 18(2) lists 4 defences that the carrier may rely upon to avoid liability:
 - Inherent defect, quality or vice of that cargo
 - Defective packing performed by a person other than the carrier
 - An act of war or armed conflict
 - An act of public authority carried out in connection with the entry, exit or transfer of the cargo

LIABILITY AND COMPENSATION

- Major difference between Warsaw and M.99 is that whereas the Art. 20 "All Necessary Measures" defence continues to apply to Warsaw cargo claims, this is not the case with M.99 which specifies 4 defences available to the carrier in Art. 18(2).
- Art. 18(3): Period of carriage by air: Period during which the cargo is in the charge of the carrier. Disputes usually arise when damage occurs during transshipment of the cargo by some other means apart from air transport.
- Art. 19: Liability for damage to cargo occasioned by delay – Carrier also liable, however "All Necessary Measures" defence may be used.

LIABILITY LIMITS FOR CARGO

- Warsaw Art. 22(2):
250 Francs per kilogram
(US\$ 9.07 per kilogram)
- M 99 Art. 22(3):
17 SDRs per kilogram
(US\$ 25.20 per kilogram,
or Dhs. 92.82 per
kilogram as of April 10,
2009)

IV. EXCLUSIVITY OF REMEDY UNDER WARSAW AND M 99

- Art. 24(1) of Warsaw provides that “*in cases covered by Arts. 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention*”
- With specific reference to cargo claims, this raises the question as to whether the true owner of goods may bring action under the Convention – by virtue of Art. 14, the rights specified in the Convention may only be enforced by the Consignor or Consignee.
- The broad question of whether the owner of damaged cargo is entitled to sue the carrier disguises two problems:
 - First, whether Warsaw limits the cause of action *within the Convention* to the named consignor and consignee; and,
 - Secondly, if Warsaw does so restrict the cause of action, whether it also extinguishes the right of the owner outside the Convention to sue on his/her title to the goods.

EXCLUSIVITY OF REMEDY

- Judicial opinion has been severely divided on these issues:
 - Some decisions have favored the exclusive approach, concluding that Warsaw limits the right to sue based on the wording of Arts. 12, 13 and 14 and has thereby automatically extinguished extrinsic causes of action.
 - On the contrary, other decisions suggest that the WC does not provide an exclusive remedy, and that an owner who is not named as a consignor or consignee in the air waybill can still bring an action against a carrier for damage occasioned to his goods.

EXCLUSIVITY OF REMEDY

- Art. 29 of M.99 clarifies the issues. It provides that: In the carriage of passengers, baggage and cargo, any action for damages *however founded, whether under this Convention or in contract or tort or otherwise*, can only be brought subject to the conditions and such limits of liability as are set out in this convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights....
- M.99 therefore envisages that claims may be brought outside its four corners – for example in domestic contract or tort law – but that such domestic law claims will continue to be subject to the conditions and limitations of the convention.

THANK YOU

FOR NOT ASKING QUESTIONS!!!