SHIPPING SOLUTIONS® NEWS

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Upcoming Events:

Export Documentation & Shipping Seminar

Anaheim, CA (12/14/05)
Charlotte, NC (12/5/05)
Cleveland, OH (12/12/05)
Detroit (12/8/05)
Houston, TX (11/29/05)
Minneapolis, MN (12/8/05)

Letters of Credit: Export & Import Seminar

Anaheim, CA (12/15/05)
Charlotte, NC (12/6/05)
Cleveland, OH (12/13/05)
Detroit, MI (12/9/05)
Houston, TX (11/30/05)
Minneapolis, MN (12/7/05)

NAFTA Rules of Origin Seminar

Anaheim, CA (11/30/05)
Charlotte, NC (12/9/05)
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Tariff Classification: Using the Harmonized

An Alternative to Back-to-Back Letters of Credit

By Chris Lidberg email | bio

In a previous article I discussed back-to-back letters of credit (LC) and how banks, particularly in the United States, just don't have an appetite for that type of business. This article is going to cover an alternative to using back to back LCs.

Let's just assume that we have a buyer, a broker or middle man, and a manufacturer. At the request of the broker, the buyer applies for a letter of credit. The broker has instructed the buyer that the letter of credit must be transferable. Hopefully the buyer follows these instructions and indicates on the LC application that the LC must be transferable.

The issuing bank, following the instructions of their customer the buyer, issues the LC that contains the clause: "This letter of credit is transferable." Just what does this mean, and how does it work?

When a letter of credit is transferable, the original or first beneficiary is allowed to transfer all or a part of the value of the letter of credit to a third party, otherwise known as the second beneficiary. In our example mentioned above, the beneficiary is a broker, and they now have the ability to transfer either all or a part of the value of the letter of credit to the actual manufacturer of the goods and can do so without using any of their own line of credit.

The transferring bank, which typically would be either the issuing or advising bank, will actually issue a Transferred Letter of Credit (TLC) and advise it to the second beneficiary. The TLC will look identical to the original LC, with a few exceptions. If the original LC required four documents—a bill of lading, commercial invoice, packing list and certificate of origin—the transferred LC will also contain those same documents and only those same documents.

There are a few things that can differ between the two credits: The value, the unit price if there is one, the expiration date, the period for presentation of documents, the shipment period, and the percentage of insurance coverage if required by the original LC. In addition, the applicant on the TLC may be shown as the first beneficiary.

If the entire value of the original LC is transferred to the second beneficiary, one could assume that some type of payment was made directly to the original/first beneficiary to compensate them for the transaction. If only a partial transfer was made to the second beneficiary, the original beneficiary retains the right to present their invoice and draft to the bank at the time the second beneficiary is making their document presentation.

The second beneficiary (in our example, the manufacturer) now holds a Transferable Letter of Credit and can anticipate payment if and when they present compliant documents. The second beneficiary is

responsible for making the shipment, following the shipping instructions contained in the TLC, and for presenting the required documents to the bank for payment. They are very much in control of the transaction.

Once it is determined that the documents comply, the second beneficiary will receive payment for the value of their invoice less any banking charges. In the event of a partial transfer, the original beneficiary will receive payment for the difference between their invoice and the second beneficiary's invoice.

This appears to be the perfect solution for a three party transaction, or is it? Remember, the second beneficiary has a lot of control. If the shipping documents they present have discrepancies, payment could be refused. Maybe even greater danger, when the second beneficiary is loading the crate and preparing for shipment, they could include a copy of their invoice with a notation that for future shipments please contact them directly, thus cutting the first beneficiary out of any future dealings. It's never a perfect world!

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When Does Carrier Liability Begin and End? — Part 2

By William J. Augello, Esq. email | bio

Disputes often occur in the distribution cycle over which party must bear the loss of a shipment due to a contention that the carrier had not yet taken control of the shipment or had made a "delivery" according to the bill of lading. In my last article, I discussed when carrier liability begins. This month, I'll cover the remaining issue: when it ends.

Both of these articles are excerpts from "Supplement No.1" to *Transportation, Logistics and the Law, Second Edition*, the only textbook available on the legal issues in the transportation and distribution field.

When Carrier Liability Ends

Carrier liability ends when delivery has been completed. Again, this is a question of fact that often involves a "dropped" trailer. When it is the carrier's duly to unload the trailer, dropping the trailer in the consignee's premises does not constitute delivery. However, if the consignee is to unload the trailer, the issue then involves whether there was an agreement that delivery was to be accomplished without obtaining a signed delivery receipt. This is customary when deliveries are to be made after normal business hours when no employee of the consignee is on duty. If, however, there is a watchman or guard on duty with authority to sign for deliveries, the carrier should obtain that person's signature to prove delivery. The issue would then become whether that signature would bind the consignee to having issued a "clear delivery receipt" in the event damage was later discovered upon opening the trailer.

Transportation is not completed until a shipment has both arrived at its destination and has been delivered. *Danciger v. Cooley*, 248 U.S. 319, 327 (1919). Delivery is the placement of the vehicle in a position for unloading. The mere arrival of goods at their destination does not reduce the liability of the carrier where anything remains to be done by the carrier to effectuate delivery. *Seaboard Allied Milling Corp. v.*

Tariff Schedule Seminar

Anaheim, CA (11/29/05)
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Import Administration

International Trade Administration

International Trade Data System

NAFTA Customs Website

Small Business Administration

Trade Information Center

U.S.A. Trade Center

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Consolidated Rail Corp., unreported, (D. Colo. 1980); *Keystone Motor Freight Lines v. Brannon-Signaigo Cigar Co.*, 115 F.2d 736 (5th Cir. 1940).

Delivery of a rail car is normally affected when the car is placed on a team track or spotted. *Republic Carloading & Distribution Co. v. Missouri Pacific R.R. Co.*, 302 F.2d 381, 386 (8th Cir. 1962). However, in *Seaboard*, a carrier temporarily left a railroad car in constructive placement on some side rails to await orders for the car to be moved for actual placement to the unloading spot. While the carrier was waiting for orders, the car was vandalized. The court held the carrier liable since the car had not been delivered before the damage occurred.

In *Intech, Inc. v. Consolidated Freightways, Inc.*, 836 F.2d 672 (1st Cir. 1987), the carrier had transported a machine and its accessories in two containers from California to Acton, Massachusetts. Upon arrival of the first container at the consignee's facility, there was a dispute as to who was responsible to unload the machine. The container sat there for some six months before C.F. finally came back and removed it. Damage was discovered five months later, when the consignee went to inspect the machine at C.F.'s yard.

While the issue centered on whether a claim was timely filed, the court discussed the issue of the carrier's liability, and noted that there would have been no delivery so long as anything remained to be done by the carrier, such as unloading. However, the court granted summary judgment for the carrier due to the claimant's failure to file a claim within nine months from the date delivery should have been made.

The case of *PolyGram Group Distribution, Inc. v. Transus, Inc.*, 990 F.Supp. 1454 (N.D. Ga. 1997) involved a mis-delivery of some 67 cartons of sound recordings intended for a new Media Play store in Gainesville, Florida. The shipment was supposed to be sent to a distribution center in Minneapolis. However, PolyGram instructed the carrier to deliver to a new store that was still under construction and had not yet opened for business.

The carrier delivered the shipment to the site and apparently obtained the signature of one of the construction workers. It was later discovered that most of the cartons had disappeared. The issue was whether proper delivery had been completed by the carrier, and the court stated:

> Accordingly, under *Intech*, a common carrier can affect "delivery" by merely depositing the merchandise at the consignee's place of business without acceptance or rejection by the consignee. See *Intech*, 836 F.2d at 674; see, e.g., *Interocean*, 865 F.2d at 703 (carrier's liability terminated under bills of lading after containers reached destination and arrived at warehouse); *Caporicci Footwear, Ltd. v. Roadway Package Systems, Inc.*, 894 F.Supp. 265 (E.D.Va.1995) (common carrier who delivered goods to proper location identified in papers and who left goods in storage bay as instructed with person falsely identifying himself as representative of consignee despite observation of representative loading U Haul truck discharged contractual obligation and was not negligent). Because Transus did this, and PolyGram has not shown that the goods were in diminished condition at the time of said delivery, the allocation of risk of loss shifted to PolyGram. Moreover, liability extinguished under both the Carmack

> Act and the Federal Bills of Lading Act.

On ramp-to-ramp rail traffic, delivery by the railroad is completed when the railroad delivers the car to the destination ramp and notifies the consignee that the shipment is available for pick up. *Intercargo Insurance Company v. Burlington Northern Santa Fe Railroad*, 185 F. Supp. 2d 1103 (C.D. Cal. 2001).

In *Tokio Marine & Fire Ins. Co., Ltd. v. Chicago & Northwestern Transportation Co.*, 129 F.3d 960 (7th Cir. 1997), Matsushita contracted with API (an intermodal service provider) and Amato (a local motor carrier) to transport Panasonic goods from Tacoma, Washington to Arlington Heights, Illinois. API had a "stack train" arrangement with the Union Pacific Railroad Company and the C & NW. C & NW was to handle the interchange of the Panasonic goods when they arrived at the C & NW railhead in Chicago. Then Amato was to provide transportation from the C & NW railhead to Panasonic's Arlington Heights, Illinois warehouse.

On the day before arrival at the CNW Chicago railhead, the C & NW notified Amato that the containers would be made available for delivery the next morning. Amato itself was unavailable to pickup the containers and subcontracted with Raven (another local motor carrier) to deliver them to Panasonic. Amato gave Raven the container numbers and special pickup numbers to obtain the release of the containers at the C & NW railhead. When Raven's driver arrived to pickup the container, it was discovered that the container had been stolen by an impostor. The missing container was never found, causing Matsushita $490,311.41 in damages.

The Court of Appeals upheld dismissal of the action against the C & NW and API on the grounds that delivery of the container had been completed, stating:

> With respect to C & NW and API, the Carmack Amendment (49 U.S.C. § 11707) [now § 14706] pre empts common law remedies for negligent damages of goods shipped under a proper bill of lading. *Tokio Marine & Fire Insurance Co. v. Amato Motors*, 996 F.2d 874 (7th Cir.1993). [FN2] However, neither carrier here violated the Carmack Amendment because the goods were transported from the C & NW ramp in Tacoma, Washington to its ramp in Chicago, placed on the chassis and the consignee, or notified party, was informed that the containers were available to be picked up. Nothing more was required by API's transportation agreement with Matsushita. *Schiess Froriep Corp. v. S.S. Finnsailor*, 574 F.2d 123, 127 (2d Cir.1978); *American President Lines, Ltd. v. Federal Maritime Board*, 317 F.2d 887, 888 (D.C. Cir. 1962). Delivery occurred when Amato was notified by C & NW that the containers had arrived at its pickup facility and had been placed on a chassis there. Liability of the two carriers terminated upon delivery of the shipment to the C & NW pickup chassis. *Republic Carloading & Distrib. Co. v. Missouri Pacific R.*, 302 F.2d 381 (8th Cir. 1962); *Illinois Central R.R. v. Moore*, 228 F.2d 873 (6th Cir.1956). Therefore neither C & NW nor API is liable to plaintiffs. Id. at p. 961.

The case of *Indemnity Insurance Co. of North America v. Hanjin*

Shipping, 348 F.3d 628 (7th Cir. 2003) involved a shipment of tools from Shenzhen, China, to a Lowe's facility in North Vernon, Indiana, moving under a through multimodal ocean bill of lading.

As the shipment approached Chicago, Lowe's customs agent, Fritz Companies, directed Hanjin to release the shipment to a motor carrier so that it could be taken to a U.S. Customs facility for an intensive customs examination. The container was delivered to a station operated by O'Hare Services, which in turn had contracted with Channel Distribution to perform the actual inspection. After the inspection had been completed, the container sat for over a week in Channel's unprotected yard, and was eventually stolen.

The lower court had held Hanjin liable for the loss, but the 7th Circuit reversed, noting that Hanjin's duty under the waybill was to deliver the container either to Lowe's at the North Vernon, Indiana, warehouse, or to follow any superseding written instructions for delivery that it received from Lowe's customs broker, Fritz. Under COGSA, delivery "occurs when the carrier places the cargo into the custody of whoever is legally entitled to receive it from the carrier." Since Hanjin had a duty to follow the instructions from Fritz, it could not be liable for the subsequent theft.

The court also reversed the lower court's finding that O'Hare Services and Channel Distribution were not liable, and remanded the matter back for further proceedings to determine if they could be liable under Illinois law as bailees, since there was evidence of very lax security precautions.

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