

# ABLM - AIR CARGO LEGAL WG

Forwarders Air Cargo Liability Revisited

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# Air Cargo Law

Current (growing ?) issue – (possibly) affecting forwarders liability

- legal status
- ✓ Agent or principal
  
- Liability versus 'customer'
- Recovery possibilities towards carrier
  
- Liability for non-contractual damages?
- ✓ Not possible under the Convention
- ✓ But under other legal regimes

# Air Cargo Law

## Carrier liability

- Absolute...(Montreal Convention 1999)
- will not be breached in case of wilful misconduct (Montreal Convention 1999)

## Freight Forwarders Liability

- Status of forwarder may (will) affect the liability of the Forwarder
- Agent liability cover under Montreal Convention
- Principal liability cover under Standard Trading Terms and Conditions
  - ✓ Incorporating the Convention by reference or in full
- Increased liability insurable ?
  - ✓ Does your general liability cover liability outside the scope of the Convention ?

# Air Cargo Law

Can Forwarder limit its liability for damages caused by the carrier with wilful misconduct? (successfully claimed by the cargo owner ?)

- Agent or Principal
  
- Cover under the Convention or Standard Trading Terms
  - ✓ Unfair contractual terms if Standard Trading Terms apply?

# Air Cargo Law

## Current issue - Liability in multimodal transport

- ✓ Carrier liability?
- ✓ Forwarder liability?
- ✓ Insurance coverage?

# Air Cargo Law

## Article 1 - Scope of Application

- This Convention applies to all international carriage of cargo performed by aircraft

## Article 18 - Damage to Cargo

- 1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.
- 3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

# Air Cargo Law

## Article 18.4

- The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport.

If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

(Note: text on front of AWB – shipper ‘agrees’, i.e. consents, thus substituted mode not ‘carriage by air’)

# Air Cargo Law

Notice on front of Air Waybill

*Subject to the conditions of contract on the reverse hereof, all goods may be carried by any other means including road .... Unless specific contrary instructions are given hereon by the shipper.....*



# Air Cargo Law

## Article 38 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

(but what if no other conditions are inserted.....)

(Carriers conditions of carriage have inserted provisions, but what about your Standard Trading Terms?)

# Air Cargo Law

## Liability in cases of Combined Carriage / Multimodal Transport

- Carrier may or may not be liable under the Convention
- Forwarders liability depending on provisions in Standard Trading Terms

# Air Cargo Law

- Other legal instruments may apply
- Forwarder liability may be imposed for occurrences outside the scope of the Convention, which may or may not be recoverable from the Carrier
- This ‘increased’ liability may or may not be recoverable for Forwarder under his insurance policy
- Maintain correct insurance coverage !

# Air Cargo Law

Carrier / (Forwarder) liability for damages caused by a Ground Handling Agent (of the Carrier).

- Carrier liable until goods have been delivered
  - ✓ But will the Convention automatically apply ?
- Ground Handling Agents liability ‘limited’ in accordance with IATA SGHA
  - ✓ In practice – no liability whatsoever
- Forwarder liability may be imposed for occurrences outside the scope of the Convention, which may not be recoverable from the Carrier

# THANK YOU FOR YOUR ATTENTION



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