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## Customs, Trade and Transport Law e-alert

# The rights and liabilities of the unknowing Consignee

### Introduction

There has been significant debate and discussion about the right and liabilities of parties to shipping contracts for container detention or damage charges. In the majority of cases, the parties involved are those who are knowingly parties to the transactions. However, there are also a number of cases where freight forwarders and customs brokers are named as consignees on Bills of Lading as a means to facilitate trade – even when they do not know that they are being named as consignee. The real issues arise as to the position of those parties when those goods arrive and they are called on to take possession of the Bills of Lading and collect the goods.

### What you need to know

If you are named as the consignee on a Bill of Lading without your consent and do not demand or take delivery of the goods, or otherwise exercise any rights in respect of the goods, you generally cannot be forced by the carrier to take delivery of the goods or pay any charges in respect of the goods.

### Freight forwarder as the consignee

It is not uncommon for freight forwarders to be listed as the consignee on a Bill of Lading. Normally this does not pose any problems and is of practical benefit as it permits the freight forwarder to take possession of the goods.

However, issues arise where the freight forwarder has not consented to being listed as the consignee and the consignor, or the ultimate consignee, fails to pay the carrier's charges. In these circumstances it is important to know as a freight forwarder whether you must accept the goods, are liable for the costs associated with the carriage of the goods or are otherwise bound by the terms of the Bill of Lading.

It is firstly important to note that the recipient freight forwarder is usually not a party to the contract for the carriage of the goods. That contract is usually between the consignor (or freight forwarder at the place of export) and the carrier. Therefore, without anything more, the carrier cannot enforce the terms of the contract against the recipient freight forwarder.

However the *Sea-Carriage Documents Acts ("Acts")*, enacted by the Australian states and territories (except the ACT), have altered this position. The Acts set out where a consignee will have rights and liabilities under the contract of carriage.

### Rights of a consignee/freight forwarder

Under the Acts, rights under the contract of carriage are transferred to each successive lawful holder of the Bill of Lading. Alternatively, in the case of a sea waybill or where another document other than a Bill of Lading is given in association with the contract of carriage, the rights are transferred to the person to whom delivery of the goods is to be made in accordance with the contract or order. The rights vest in that person as if that person had been an original party to the contract.

This is important as it gives the freight forwarder (or more usually the ultimate consignee) the right to sue the carrier in contract if the goods are damaged or not delivered.

### Liabilities of the consignee/freight forwarder

Liabilities under the contract of carriage are transferred to the consignee in the following circumstances:

1. where the consignee demands or takes delivery of the goods from the carrier; or
2. where the consignee makes a claim under the contract of carriage in respect of any of the goods.

Therefore, once the consignee acts in a manner consistent with it being a party to the contract of carriage evidenced by the Bill of Lading, it will be treated under the Acts as being liable under the contract. The consignee will be liable as if it had been an original party to the contract. The next issue for the consignee is managing the associated risk in terms of insurance, collection of the goods, storage of the goods, return of the container, liability for damage to the goods and recovering any moneys owing from the consignor or the ultimate consignee (as relevant).

## Liability to the consignee

The information above only sets out the freight forwarder's rights and liabilities to the carrier if the freight forwarder had not previously agreed with the consignor or carrier to accept the goods. If, prior to shipment, a freight forwarder agreed with the consignor to accept the goods, but refused to do so when the goods arrived, it is likely the freight forwarder will be liable to the consignor for any loss the consignor suffers from the failure to take delivery of the goods (even if the freight forwarder is not directly liable to the carrier).

## What to do

If a carrier is making demands on you in respect of goods where you did not agree to be the consignee, you may have grounds to reject the claims, including any claims for container detention fees. We would be happy to assist with responding to the carrier's claim and advising you on your rights as well as advising you on how to manage risks and liabilities associated with the shipments.

## Contacts

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