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14 May 2010

Customs, Trade and Transport Law e-alert

'Unenforceable' Container Detention Fees: action to recover or resist fees?

As reported in our E-Alert sent out on 7 May 2010 in recent a Consumer, Trader and Tenancy Tribunal of New South Wales ("**Tribunal**") decision the Tribunal held that container detention fee charges by an Australian agent of an international shipping company was an unenforceable penalty. The container detention fee would only have been enforceable if it was a genuine pre-estimate of the damages expected to be suffered from the late return or non-return of a shipping container.

The decision confirms what many in the industry have previously thought, that the rate of container detention fees has no relationship to the potential, or actual, loss suffered by the shipping company.

This is an issue that affects thousands of importers and their service providers in the supply chain and many have often felt powerless in the face of a demand for container detention fees from a shipping company or their agent. Unsurprisingly, following on from our recent E-Alert and the subsequent media coverage regarding the Tribunal's decision we have received a number of inquiries into the possibility of either individual or group legal proceedings being commenced against the shipping company or their agents.

Media reports have suggested that many Shipping Australia members are now facing hearings in the Tribunal on the same issue.

If you or your clients have paid container detention fees or are currently subject to demands for the payment of container detention fees, it now may be possible to commence legal proceedings for the recovery of the amounts paid or to resist the demands made. In many cases, where the container detention fees are low, it may not be economical for individual importers to commence legal proceedings. However, if there is a sufficient number of importers or others affected, who have sufficiently similar circumstances, a class action may be a viable option. In the alternative, if affected parties wish to pursue their own individual interests then taking separate action maybe an appropriate way to pursue those interests.

As always, we would be pleased to discuss the decision of the Tribunal and the effect it may have on your individual circumstances. This may include proceedings of the type we have discussed in this E-Alert.

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