

# **Logistics and Transport Law: An Uncommon Adventure**

## **IBA Conference Auckland October 2004 Maritime and Transport Law**

### **Parties in the Adventure**

- NZFG – Owner of Cargo
  - Barry – boss
  - Shelagh – switch operator
- ILI – MTO, Freight Forwarder (HQ USA)
  - Kevin – ILI’s employee, Auckland
  - Larry – ILI’s employee, USA
- Danish Blue Cheese – Seller of Cheese
- Little Clog Company – Seller of clogs
- Andersen Haulage – Truckers (Cheese company to ILI’s warehouse)
- MV Box Carrier- Container Carrier
- Happy Trucking – Truckers (Palm Landia Transit)
- MV Pacific Adventurer – 2<sup>nd</sup> Container Carrier
- Bruce Shifters – Truckers (Auckland to NZFG Hamilton)

### **NZFG’s Losses**

- Special damages
  - Stolen clogs, rotten cheese, delay, loss of profit etc
- Consequential
  - plenty

### **NZFG v ILI and others**

- Main target is ILI, possible actions -
- Under FIATA B/L (ILI’s liability strict)
  - Nigeria is not a contracting state
  - If Denmark or Netherlands is a contracting State
    - NZFG may commence action in Nigeria/Denmark/Netherlands
    - If none is a party, no jurisdiction
    - Jurisdiction clause - null and void
- Problem
  - Defective B/L
  - Wrong parties
  - Consignee (Innovative Logistics NZ)
  - Notify party (NZFG’s switch operator)
  - NZFG cannot sue under B/L, no title
- Under common law against ILI
  - Contract need not be written
  - NZFG paid right price to ILI
  - ILI agreed to take responsibility from “door to door”
  - ILI breached contract

- Insurance
  - NZFG – no insurance (contract FOB)
  - NZFG is unsecured creditor
- ILI insolvent
  - NZFG unsecured creditor
  - If judgement obtained against ILI in common law action, NZFG levies execution through the Receivers
- Direct action against DBCC
  - Action in Denmark based on FOB sales contract
- NZFG may recover through ILI /Receiver acting as NZFG's agent
  - Network liability
  - Sue parties responsible for the leg where damage occurred
    - Anderson Haulage (lost boxes)
    - MV Box carrier (mechanical breakdown)
    - Happy Trucking (no power in container)
    - MV Pacific (loading accident)
    - Delay (note *force majeure*)

### **NZFG v ILI and others**

- Dear Shelagh
  - Appropriate party?
  - Only a switch operator
  - No interest in the goods
- NZFG and Lawyers?