Freight Forwarder as Shipper – Know Your Liabilities

Freight forwarders commonly issue a House Bill of Lading (HBL) identifying the exporter and importer. The forwarder in turn is identified as shipper/consignee on the Master Bill of Lading (MBL) in what is often called a back to back shipment. In doing so the freight forwarder accepts principal liability as an NVOCC for the carriage (see paragraph 1 of the CIFFA STCs). This not only makes the forwarder liable to their customer for the carriage, but also makes the forwarder liable as the principal shipper or consignee to the actual carrier for freight and related charges. These liabilities can greatly exceed the freight charges, as the following scenario shows:

July 2010: Booking and Carriage

A Canadian freight forwarder, in response to a request from an agent overseas, contacts a North American exporter to arrange the export of eight containers of cargo to India. The carrier’s MBL shows the Canadian freight forwarder as the shipper and the overseas agent as consignee, and is marked “charges collect”. The forwarder’s HBL shows the North American exporter as the shipper and the Indian purchaser as consignee and is also marked “charges collect”. The carriage is in fact arranged and the cargo arrives in good order at Mumbai.

March 2011: Abandonment

Nearly a year later the Canadian freight forwarder receives a notification from the steamship line that the goods in the eight containers have not cleared Indian customs and remain unclaimed at destination. The carrier’s terms provide that the “Merchant” – being the shipper or consignee – remains responsible for freight charges even if the bill of lading is marked “charges collect”. The carrier invoices the Canadian freight forwarder $37,000 in freight charges as the principal shipper and Merchant.

The freight forwarder pays the freight (as it is legally obligated to do) and instructs the carrier to abandon the goods. The North American exporter is no longer in business, the agent in India does not respond to enquiries, and the Canadian freight forwarder is unable to recover the freight charges.
June 2011: Demurrage and Destruction

Two months after confirming instructions for abandonment, the Canadian freight forwarder receives an invoice for $320,000 from the carrier for storage and demurrage on the eight containers plus disposal charges. Once again, the freight forwarder is legally obligated as principal shipper to pay these charges and faces an action in Federal Court if it refuses.

The lesson:

Depending on the small print on the back of the bill of lading, the shipper is ultimately responsible for not just the freight but all of the shipping charges, and where the freight forwarder is identified as shipper or consignee it may be held directly responsible for all such charges. The shipper is responsible for the equipment and its safe return to the carrier at destination, and the liability for terminal, storage, demurrage, and destruction charges on abandoned cargo can be enormous.

Best Practices: Prevention and Avoidance

1. Do not automatically accept freight collect, routed shipments, especially from agents with whom you do not have a strong contractual agreement. Make sure they are aware of their liabilities as principal consignee, are solvent and insured.

2. Run a credit check on the exporter AND on the importer AND on the overseas agent before accepting a routed, charges collect shipment where you will be the shipper on the carrier bill of lading.

3. Always provide the shipper with the CIFFA Standard Trading Conditions – especially on routed, collect cargo. If the shipper is fully informed, the STCs may well hold up in court and the shipper will be responsible for all charges (see paragraph 10 of the CIFFA STCs). Ensure your HBL terms permit you to claim charges against both shipper and consignee in spite of the ‘charges collect’ indication.

4. Consider and negotiate alternative methods of bill of lading completion, e.g. with instructions to name the exporter as the shipper on the carrier bill of lading.

5. Implement strict procedures for follow-up with the consignee and the carrier to ensure containers are cleared and delivered. If they are not cleared, delivered and returned to the carrier within the free time, act immediately to encourage and obtain prompt return. Where the consignee refuses delivery or is otherwise unwilling or unable to accept the cargo, take steps including enforcing your right to lien (see paragraph 18 of the CIFFA STCs) or abandoning the Cargo promptly to avoid the accumulation of months of storage and demurrage liabilities.
Troubleshooting: What to do when it has gone so badly wrong

1. Contact your insurer or broker.

2. Reference the CIFFA STCs and bill of lading terms and impose charges back to the shipper ASAP.

3. Enforce your lien to stop the accumulation of liabilities and perhaps recover some value or costs.

4. Negotiate demurrage charges with the carrier. Accumulated demurrage can easily exceed the cost of a replacement container and such charges reflect a windfall to the carrier.

5. Contact legal counsel who is well-versed in maritime, admiralty, and transport matters.

6. Understand the CIFFA Standard Trading Conditions. Register for the workshop ‘Protecting Your Business with the CIFFA STCs’.