

Whitelaw—Twining

**Connecting Carrier
Conundrum: Last Carrier
Presumption and Limits of the
Weight Limit Defence**

Bo Carter

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Introduction

- + Connecting Carriers
- + The blame game

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The Problem & The Solution: the Last Carrier Presumption

- + What the shipper knows
- + Under whose care, custody and control did the damage occur?
- + The Last Carrier Presumption

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Welcome to Canada: *The Sammi Crystal*

+ *Voest-Alpine Canada Corp v Pan Ocean Shipping Co (The Sammi Crystal)*

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The Principle

+ *Voest-Alpine Canada Corp v Pan Ocean Shipping Co (The Sammi Crystal)*:

- + In my view, the governing principle should be that where there is a successive chain of bailees and the owner of the goods has proven delivery of the goods to the first bailee in good order and the receipt of those goods in bad order at the end of the chain of successive carriers, there is a presumption that the loss occurred during the time the last custodian had control of the goods

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The Justification

- + Carrier is in the best position
- + Careful inspection

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The Other Side of the Justification Coin – the Argument Against the Last Carrier Presumption

- + Is the carrier in the best position?
- + e.g. Sealed containers

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Evidence is Key – the Rebuttal

- + No Damage: the BOL
- + No Negligence: today's technology
- + Easy: *Myers v Kingsway Transport Ltd*
 - + ...it would have been reasonable simple for the defendant to have called its trucker to show that its handling of the crate was not negligent. The fragility of the caning gives rise to a very real possibility of damage being able to occur without negligence on the part of the carrier. Very little would have been required to rebut the presumption of negligence. Nothing was forthcoming. I therefore find the defendant to be liable for the damage
- + Onerous: *Imperial Granite Supply Ltd v Sea Pearl*

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Not Last? Not Necessarily Safe!

+ *Canadian Forest Products Ltd v BC Rail Ltd*

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What to Keep in Mind

- + The Last Carrier Presumption exists
- + Evidence is key: BOL
- + The carrier may not be in the best position (e.g. sealed containers)
- + Evidence of lack of negligence

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What if You are the Liable Carrier?

- + Liability of an insurer
- + No negligence does not mean no liability
- + Few defences

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The Weight Limit Defence



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The Weight Limit Defence

- + Uniform conditions
- + *Motor Vehicle Act Regulations*, BC Reg 26/58, s 37.39
- + Specified Conditions of Carriage (Articles 9 and 10)

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\$2.00 Per Pound

- + If the shipper has declared the value, no more than that declared value
- + If the shipper has not declared the value, no more than \$4.41 per kilogram (\$2.00 per pound); and
- + In any event, no more than the actual value at the time and place of shipment

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The Limitations of the Weight Limit Defence

- + The type of damages sustained
- + Whether the goods are in transit
- + The opportunity provided to the shipper to opt into more coverage
- + Whether there is a partial loss; and
- + The law that governs the contract of carriage

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Types of Damages Sustained

- + Physical injury or loss
- + No consequential loss
- + E.g. the generator and the mill

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Whether the Goods are in Transit

- + Duration
- + Combined Contracts

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The Opportunity Provided to the Shipper to Opt into More Coverage

- + Carrier must offer
- + Subrogated actions

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Whether it is a Partial Loss

- + Basis for calculating limits (i.e. \$2.00 per pound of what?)
- + “Total weight of the shipment”

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The Law that Governs the Contract of Carriage

- + Incorporation of the Uniform Conditions
- + Through Bill of Lading

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What to Keep in Mind?

- + Physical loss or damage
- + Ask: Is there business loss?
- + Ask: Is there storage involved?
- + Ask the shipper, do you want to pay more?
- + Make sure the uniform conditions are properly incorporated

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Thank you.

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