

Whitelaw — Twining

Motor Truck Cargo in the Canadian Marketplace

Presented by Whitelaw Twining



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Freight Forwarders: Agents vs. Principal

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W—T

Focus

- + Liability of freight forwarders, and how their exposures change if acting as agent or principal

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7 Topics

- + Role of freight forwarder
- + Liabilities when acting as agent
- + Liabilities when acting as principal
- + Determining capacity (i.e., agent or principal)
- + Freight forwarder as only defendant
- + Claims brought by freight forwarders

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Role of Freight Forwarder

- + Freight forwarder can act (i.e., arrange transportation) as either:
 - + An agent of the shipper, or
 - + As a principal contracting directly with the shipper/cargo owner and sub-carriers

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As Agent

+ Enters contract on
behalf of the shipper



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As Agent

- + An “agent only” freight forwarder can be held liable where it fails to:
 - + Act with reasonable dispatch
 - + Exercise due skill and care in selecting sub-carriers
 - + Follow shipper’s instructions
 - + Communicate instructions to the sub-carriers, or
 - + Preserve the shipper’s interests



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As Principal

- + Contracts as the actual carrier of the goods
- + Essentially guarantees safe delivery

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Justice Melnick

- + “A freight forwarder who acts as a principal or freight forwarder contractor is, like a common carrier, responsible for the goods he ships. He is in effect an insurer of the goods, quite apart from any negligence on his part. This is a very onerous standard...”

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Result

- + Shipper can bring claim against freight forwarder directly



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Determining Capacity

- + Performance of transport with own employees
- + Obligations in the contract documents
- + Past dealings between parties
- + House Bill of Lading
- + Whether shipper knew which sub-carrier would actually transport the goods
- + Whether shipper played any role in selection of sub-carriers
- + Whether shipper received the bill of lading issued by others
- + The mode of payment

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Freight Forwarder as Only Defendant

- + “Agent only” cases where fails to relay proper instructions
- + Rogue carrier claims
- + No actual carrier to pursue
- + Actual carrier has no insurance or insufficient policy limits
- + Business loss cases

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Limitation of Liability

- + CIFFA limits/terms
- + Prove intent of parties
- + Reference on website
- + Reference in emails
- + Discussion between parties
- + Specific reference in contract between freight forwarder and shipper
- + Specific reference in House Bill of Lading



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Freight Forwarder Claims

- + Legal liability
- + Right of Action vs Voluntary Payment

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Summary for Cargo Claims

- + Determine whether a freight forwarder was involved
- + Identify each freight forwarder during initial investigation
- + Determine whether freight forwarder acted as agent or principal
- + Identify duties and whether may be held liable for those duties
- + Identify any limitation of liability arguments
- + Determine whether freight forwarder has a right of action, or if instead made a voluntary payment

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Thank you.

For more information, please visit our website at

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