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# The Navigator

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## Climate Change

Climate Change has already affected New Zealand exporters in many ways. It's not whether the climate is in fact changing; it's more the trading environment that's altered. Many of us have heard of Food Miles. There are even 'Flower Miles' and 'Clothes Miles'.



In the lead-up to the Copenhagen Climate Conference, these crude distance-measured terms morphed into 'Fair Miles' by Oxfam and the IIED, principally as many East African farmers relied on their produce reaching European supermarkets. (Remember snow-peas from Zimbabwe, anyone?) Consumers were told that the situation was simply more complicated than the simple Food Mile concept of distance. The entire carbon footprint of food production is important. In particular how they, the buyers, travelled to and from the supermarket was usually more important ecologically than the origin of the foodstuff itself. Transportation of goods to market in the USA accounts for only 11% of food's carbon footprint. "In terms of the average American diet, 'food miles' are not so important as what you're eating", according to a research paper by Carnegie Mellon University in the Environmental Science & Technology Journal in 2008. Beef has a higher carbon footprint, as it comes from a gassy ruminant, which may have had its food trucked to it. Yummy vegetables only sequester.

Nevertheless, the Food Miles sentiment is important to New Zealand exporters. Whilst New Zealand's carbon footprint is a mere 0.3% of world emissions, and whilst quite high per capita, it is unique as 50% is from agriculture (principally methane from ruminants, and nitrous oxide from fertilizer and animal waste). In international politics there is now a distinct difference between industrial and agricultural carbon, but this is not yet present in the minds of consumers and the all-important European supermarkets. Exporters who have been proactive in assessing their environmental impact along with their whole value chain, who have used eco-labels to communicate this to their customers, and verified their claims with international certification, have increased their orders from European supermarkets.

Vero Marine is currently investigating this at the document transaction level, as there are obvious implications for rejection and seller's interest covers, to mention just two aspects.

## Marine Insurance Terms – General Average

General Average is a system of contribution, whereby all parties involved in the voyage, including the owners of the ship, must contribute to the losses voluntarily incurred to save both ship and cargo.

General Average is applied according to an international law called the York-Antwerp Rules and is legally binding on all parties. These Rules mean that when a ship is in danger at sea, whereby the maritime adventure is likely to become a total loss, the master is at liberty to sacrifice property or to incur reasonable expenditure to save the adventure.

For a General Average to be declared there are a number of requirements: -

- The sacrifice or expenditure must be extraordinary
- The action taken must be intentional and voluntary and not inevitable
- There must be peril
- The action must be for the common safety of all and not merely for the safety of part of the property involved

### Who has to contribute?

All parties involved in the voyage will contribute including the ship-owner/charterer.

Therefore if a cargo owner's cargo is "lost" and a General Average declared, all cargo owners will be legally required to contribute whether or not their cargo has been lost or damaged.

### What form of security is required?

Security is required in all cases, a promise to sign a guarantee is not sufficient.

- Average Bond - an agreement signed by all parties involved in a General Average act.
- General Average Deposit and Receipt - a deposit paid by a consignee in return for delivery of the goods where such goods are subject to General Average contribution. A Lloyd's form should be used and, if the cargo is insured, the original receipt should be sent immediately to the insurer for reimbursement.
- General Average Guarantee - These may be used instead of General Average Deposits. This document is issued by the underwriter and guarantees payment of any contribution to General Average and or Salvage Charges which may be imposed.

### Action to be taken by cargo interests

It is very important to contact the cargo insurer immediately and keep them informed of developments. Always refer all documents to the insurer before signing them. In particular, a copy of the Bill of Lading and the Commercial Sales Invoice should be provided without delay. It is important to note that General Average and Salvage Charges are payable irrespective of whether you have Transit Insurance.

## Carriers' Liability

### What constitutes a Carrier and how is their liability determined?

In 2009, the Supreme Court considered the application of what constitutes a carrier and the package limitation that applies under the Carriage of Goods Act 1979 (Act). The background to *Ports of Auckland Limited v Southpac Trucks Limited* [2009] NZSC 112, relates to Kenwood Trucks and Southpac Trucks Limited (Southpac) entering into an agreement with CP Ships (UK) Limited (CP Ships) for the carriage of six trucks from Melbourne to Auckland. As agreed between the two parties, CP Ships also had the responsibility to unload the trucks from the overseas vessel to a designated area of the wharf, so that Southpac could collect them. CP Ships (contracting carrier) subcontracted this final leg of the transit to Ports of Auckland Limited (POAL), who, in turn, subcontracted to Wallace Investments Limited (Wallace).

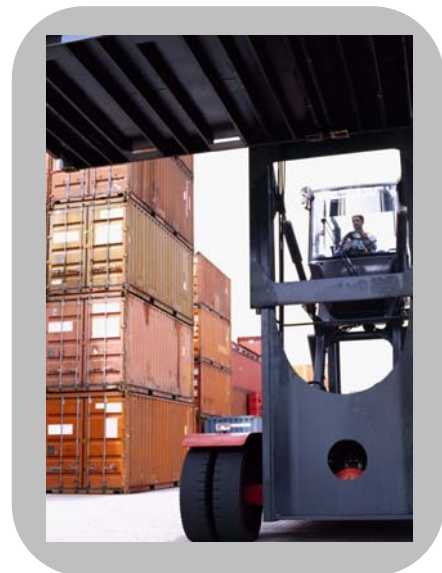
During the unloading process of one of the trucks, a collision occurred. A fork hoist which was being used by an employee of POAL collided with one of the trucks, which was being driven by an employee of Wallace. The fork hoist was being used for other POAL purposes, unrelated to the process of unloading of the trucks. Fault for the accident was deemed to rest with the POAL employee.

Southpac brought proceedings against POAL for the damage that occurred to the truck - a claim which amounted to NZD 63,000.

POAL stated that it was a 'carrier' under the Act, even though it was not the actual carrier at the time the loss occurred. It stated that they were a party to the carriage, by way of its negligent employee, and thus could rely on the package limitation within the Act and limit their liability to NZD 1,500.

Under the Act a 'carrier' means: a person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person...and...includes a person who, in the ordinary course of his business, performs or procures to be performed any incidental service in respect of any such goods.

The Supreme Court held that POAL was a 'carrier' (as defined by the Act) either because it procured its subcontractors to carry the truck or because it procured its subcontractors to perform an incidental service (stevedoring) relating to the carriage of the truck.



In determining how the package limitation of the Act applied to this situation, the following section of the Act is relevant '...no carrier shall be liable as such, whether in tort or otherwise, and whether personally or vicariously, for the loss of or damage to any goods carried by him except - (a) In accordance with the terms of the contract of the carriage and the provisions of this Act; or (b) Where he intentionally causes the loss or damage.'

The Supreme Court held that the above section of the Act applied because POAL was a carrier 'as such', even though the collision occurred when Wallace was the actual carrier. The immunity granted in this section of the Act is not confined to the actual carrier in possession of the goods or the contracting carrier. Therefore POAL was entitled to benefit from the protection afforded by this section of the Act and limit their liability to NZD 1,500.

The implication in this decision is that the Act is intended to apply to all parties that procure contracts of carriage, regardless of whether or not they take an active role in the carriage itself, for example in the freight forwarding industry.

## Language of the British Merchant Seaman

Another sea-faring expression from the book 'All Hands and the Cook' by Captain Barry Thompson:

### Coffin ships

During the 19<sup>th</sup> century when Samuel Plimsol was campaigning to reduce the serious loss of seamen by introducing load lines, this term was frequently applied to the many ships lost by serious overloading. It was often contended that unscrupulous shipowners deliberately sent their ships to sea in this unseaworthy condition to collect inflated values from their insurers.

'All Hands and the Cook - The Customs and Language of the British Merchant Seaman 1875-1975' by Captain Barry Thompson is available for purchase by contacting [shipmaster@ihug.co.nz](mailto:shipmaster@ihug.co.nz).

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