



Consignee liability

Is the receiver responsible for freight charges?

Comedian Groucho Marx once declared: “These are my principles; if you don’t like them, I have others.”

This statement aptly describes the legal position of the consignee with respect to its liability to pay freight charges to the carrier—but the situation is no joke.

The Courts have applied various legal principles imposing liability for freight charges on the consignee (the party receiving the goods), even where there is no contractual relationship between the consignee and the carrier.

And to make matters worse for the consignee, statutes within Canada and the US have been revised to prescribe the statutory liability of a consignee for freight charges in certain situations.

What are these legal principles, and when is the consignee liable to pay freight charges to the carrier?

Key common law principles

Under common law, the shipper is primarily liable for the freight charges, but the consignee is secondarily liable to pay those charges since it benefited from the carrier’s delivery of the goods.

The consignee’s liability for freight charges depends on the terms, express or implied, of its contract with the shipper of the goods and/or the consignee named in the bill of lading. For example: If the consignee in the ordinary course of business takes delivery of the goods from the carrier in a free carrier contract, the consignee is responsible to pay the freight charges. But if the contract provides that it is ‘carriage paid to’, the consignee generally is not responsible to pay the freight charges.

Where the carrier can prove that the consignee gave its own promise to pay the freight charges, then the consignee will be liable. The Court may infer this where the consignee: Orders the transportation or requests delivery of the goods; accepts freight from the carrier; exercises rights or control of the goods pursuant to transportation documents in its possession; and/or causes the carrier to give up its right of lien by releasing the goods.

Further, where the shipper acts as the consignee’s agent to negotiate the contract of carriage, or to ship goods on a collect basis, the consignee will be held liable at common law as the principal for the freight charges.

Statutory liability

Consignee liability is not limited to common law. Section 2 of the *Bills of Lading Act* (Canada) and Section 7 of the *Mercantile Law Amendment Act* (Ontario) each provide statutory provisions that render a consignee liable for freight charges in certain circumstances.

In a recent precedent-setting decision with national significance, the Quebec Court of Appeal reversed a trial judgment and ordered a consignee (Molson Breweries of Canada Ltd) to pay unpaid freight charges to two carriers (SGT 2000 and XTL Transport Inc), despite the facts that: The shipper (Molson’s supplier, Consumers Glass) retained the carriers, and then went bankrupt, leaving a significant unpaid account for several shipments; the carriers invoiced the shipper, not the consignee; the bills of lading were marked “pre-paid”; and the consignee previously paid the

shipper for the transportation services pursuant to invoices submitted to it by the shipper.

The Court of Appeal held that the Canadian *Bills of Lading Act* incontestably made Molson a party to the transportation contract, and consequently responsible as the shipper to pay outstanding freight charges—unless it proved that the carrier intentionally, and in a binding fashion, gave up its entitlement to the protection of the *Act*.

Since Molson failed to prove this, it was liable to pay more than \$200,000 to the carriers.

Legal principles to the rescue

Still, there are ways for a consignee to avoid liability for freight charges.

Be vigilant when negotiating and finalizing the transportation contract, and also when determining the invoicing and payment mechanisms.

Closely examine and tailor the terms of the transportation contract—express and implied—including provisions incorporated therein by reference.

Sign explicit non-recourse terms in bills of lading and contractual documents that require the carrier to collect freight charges from the shipper—not from the consignee.

Consider relevant limitation periods—contractual and statutory—that the carrier may have missed. Where a key limitation period has lapsed, the carrier may be barred as a matter of law from suing the consignee for the freight charges.

Finally, monitor terminology. Where goods are shipped to a consignee named in a bill of lading ‘on approval’ or for ‘the purpose of processing’, it has been held by the Courts that there will be no liability imposed on the consignee.

While there are legal principles that impose liability on the consignee, there are others that relieve the consignee from that liability. The key is to know what the pertinent legal principles are and how to apply them to the given situation.

And if the consignee doesn’t like that bit of advice, I have others. **MM&D**

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