

* *Airport Operator Liability for Damages*

Damage to cargo in International Air Transport

THE 9th ST. PETERSBURG AIR LAW CONFERENCE



* Cargo - Limited or Unlimited
Liability of Airport Operator?



* Applicable Instrument

- Cargo carriage is undirectional carriage
- In case of damage to cargo, first legal question what instrument is applicable - international air law or national law



Warsaw System



Montreal Convention 99



* Applicable instrument

- * Carrier liability (Warsaw System or Montreal Convention 99)
- * Agent liability - National law or private international law instruments?
- * Period of Liability - Warsaw System airport to airport system, MC 99- encompass carriage outside an airport
- * Claimants - consignor, consignee, owner of cargo?
- * Defendants - Liable person (carrier or agent)



* Damage to Cargo

- * Subjective or strict liability?
- * Breakable or unbreakable liability limits?
- * Warsaw as amended Hague Protocol 1955. subjective liability for damage to cargo in international air transport - Limited Liability, but breakable liability limits
- * Montreal Protocol 4. unbreakable liability limits - Montreal Protocol 4 and MC 99 unbreakable liability for damage to cargo
- * Are unbreakable liability of limits in line with national legal system?
- * Special declaration of interest in delivery at destination is rarely used in practice



* Subjective or Strict Liability

- * Carriage by air, the period during which the cargo is in the charge of the carrier - article 18. 3 MC 99
- * What is airport - functional or technical definition?
- * What if cargo premises are located outside airport fence?
- * If carrier without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.- art 18.4 MC 99
- * MC 99 applicable in case of door to door transport - US court approach.



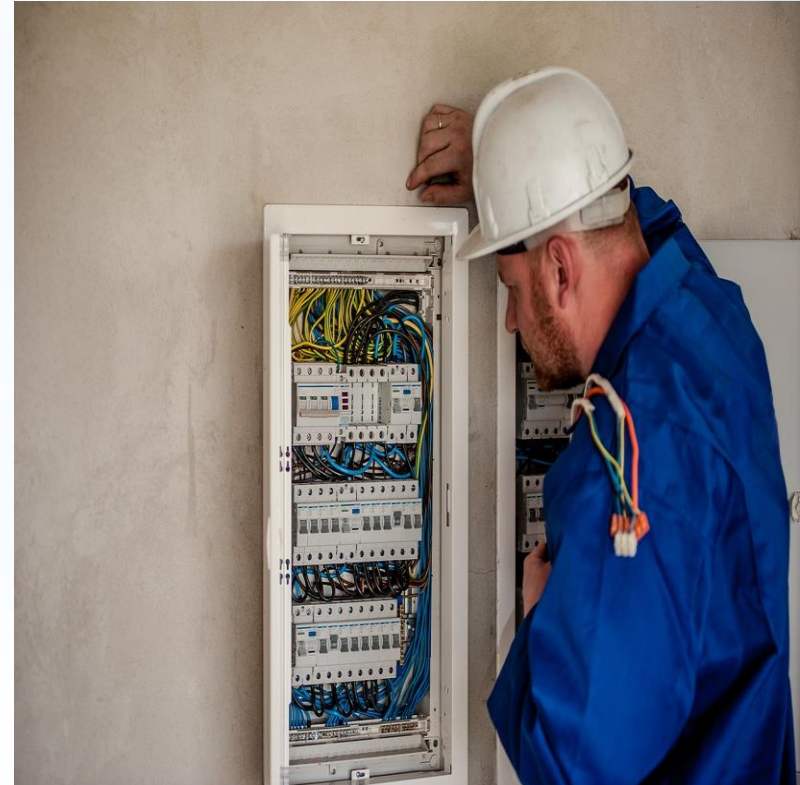
* Period of liability

- * Liberalisation of ground handling market took place in 1997 - Directive on access to the groundhandling market at Community airports
- * No monopoly position in the market for ground services (selfhandling and third party groundhandlers)
- * Supreme Court of Italy - Handling Company is considered to be agent of the carrier
- * Montreal Convention applies to the ground handling agent of the carrier



* Servants and Agents of the Carrier

- * The term servants and agents is not defined in Warsaw System and Montreal Convention
- * Cumulative conditions (agent acted in the execution of a task assigned to them, execution of task serves the performance of the contract for carriage by air
- * Case Law - if Handling Company establish monopoly position, than there is no legal ground to subsume airport operator as agent in terms of Warsaw system
- * Entrusting the goods to the handler create contract of deposit



* Servants and Agents of the Carrier