



THE RETURN OF THE CARRIAGE OF GOODS GONE BAD

BY HAYLEY CAMPBELL BSC, LLB

Earlier this year we looked briefly at the Court of Appeal judgment, *Southpac Trucks Ltd v Ports of Auckland Ltd*. The case involves an, until now, uncommon area of litigation. The case was recently re-heard on appeal in the Supreme Court and is of interest because although it stemmed from an incident on wharf, the outcome will also apply to the liability of carriers when the cargo is still on ship and it has a mixed bag of implications for carriers, insurers and cargo owners.

The Carriage of Goods Act 1979 governs every carriage of goods *within New Zealand* that is not part of an international carriage. It includes carriage by water and applies to goods of any description, including animals. It applies regardless of whether there are passengers. The Act limits the liability of Carriers to \$1500 for each *unit* that is unintentionally damaged. The issue of what is a *unit* is one that has been traversed previously by the courts, it is a term that may refer to the container including its contents or the individual parcels inside the container, it may refer to an entire pallet including the packages on it, or to the individual packages on a pallet.

The Court of Appeal held that, although POAL was a carrier, they were still liable for the damage of the unit in negligence

It has been held that both a shrink wrapped pallet of cigarette cartons, and the individual cartons on a pallet that were not shrink wrapped are ‘units.’


In some cases such a limit on liability will not matter to the cargo owner, for example in the *Wills v Wolters Cartage* the units were cigarette cartons – unlikely to be valued anywhere near \$1500 each, therefore the owner was assured full coverage for damage. This was not the case in *Southpac*, where the units in question were trucks, valued in excess of \$60,000. The question that is addressed in *Southpac* is whether a carrier needs to be in possession of the unit when it is damaged to be eligible for the limited liability. The answer the Supreme Court gave is no, the Act provides a blanket limitation, and even if you negligently caused the damage to the goods while they were in another carrier’s possession, provided you are involved in the contractual chain of the carriage of goods that were damaged, you are eligible for the limited liability afforded by the Act.

In the business of transporting goods it is common to get

a contract in relation to certain goods and then contract that role out, this is what happened in the *Southpac* case. CP Ships contracted the carriage of the goods as contracting carrier; CP Ships then sub-contracted the unloading and other wharf activities to Ports of Auckland Limited (POAL). POAL subcontracted those responsibilities to Southern Cross Stevedores Limited who then sub-contracted them on to Wallace Investments Limited (Wallace). Wallace was performing those duties when an employee of POAL negligently damaged a unit of goods by driving a fork hoist into the truck.

The Court of Appeal held that, although POAL was a carrier, they were still liable for the damage of the unit in negligence because they weren’t a carrier “as such” when the damage occurred and therefore they weren’t covered by the limited liability under the Act. However on appeal, the Supreme Court found that despite the fact that POAL had at the time of the damage, no material control over the goods, they were still a carrier of those goods and protected by the limited liability under the Act.

This provides an interesting situation for carriers and owners of goods being carried. It was a pure coincidence that POAL had been involved in the carriage (by way of incidental service) of the goods. Had it been any company other than POAL or Southern Cross that caused the damage, that company would have been liable for the full amount of the damage to the unit. However, because POAL had subcontracted the carriage of the goods they were considered to be a carrier under the Act and therefore able to take advantage of the limited liability afforded by the Act. Additionally, although the incident happened while stevedoring it could equally apply to collisions or negligent acts that occur while the goods are on ship, although the limitation would apply only to the goods covered in the contract of carriage in common and not to damage of any other goods or the ship.

The decision is good news for carriers, their strict but limited liability is restored in all situations. However the decision could raise concerns for owners and insurers of goods being transported around New Zealand. As the case determined that any carrier involved in the contractual chain of carriage is covered by the limited liability, it is possible that the usual contractual chain may become even more convoluted as carriers endeavour to cover their backs in all situations, and the coincidence as seen in the *Southpac* case could become more and more frequent. 

Hayley Campbell is a solicitor at Oceanlaw where she works on a range of aquaculture, maritime and fisheries issues. She also has a Bachelor of Science with a double major in Marine Biology, Ecology and Biodiversity.