Cour fédérale  Federal Court

Date: 20090624

Docket: T-1600-05

Citation: 2009 FC 664

Ottawa, Ontario, June 24, 2009

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

CAMI AUTOMOTIVE, INC. and
AISIN WORLD CORPORATION
OF AMERICA

Plaintiffs

and

WESTWOOD SHIPPING LINES INC.,
AS BORGESTAD SHIPPING and
CANADIAN NATIONAL RAILWAY COMPANY

Defendants

AND BETWEEN:

WESTWOOD SHIPPING LINES INC.

Third Party Plaintiff

and

CANADIAN NATIONAL RAILWAY COMPANY

Third Party

REASONS FOR JUDGMENT AND JUDGMENT OF THE PRELIMINARY ISSUES OF LIMITATIONS ON THE DEFENDANTS' LIABILITY AND THE NATURE OF THE SHIPPING DOCUMENT AT ISSUE

I. Introduction

[1] By agreement between the parties, at this stage of the proceeding the Court is asked to address only specific preliminary issues regarding limitations of liability between the parties as set out below. I have determined that it is also necessary to consider the nature of the shipping document at issue.

[2] In the main action, the Plaintiffs (Cami Automotive, Inc. and Aisin World Corporation of America) claim damages, pre-judgment interest, costs, and such further and other relief as may be granted by this Court, against the Defendants (WSL Shipping Lines, Inc., Borgestad Shipping, and Canada National Railway) for damage to cargo (the Goods) resulting from the derailment of train cars while the cargo was being transported from Vancouver, British Columbia to Toronto, Ontario.

[3] Both Defendants WSL and Borgestad claim against the Defendant CN for indemnity from any judgments rendered against them, damages, pre and post judgment interest, costs and any other relief as may be granted by this Court.

[4] WSL also claims compensation for the damage to the containers in which the Goods were shipped.

[5] Finally, CN makes a third party claim against WSL arguing that if the Plaintiffs have sustained any damage in this matter, WSL must be liable for the loss. CN therefore seeks indemnity from any judgment rendered against it, pre and post judgment interest, costs, and such further relief as may be granted by this Court.

II. Facts

[6] The parties to this action submitted an agreed statement of facts. I reproduce below the agreed statement of facts as filed with the Court. The schedules referenced in the agreed statement of facts are included in the record but are not reproduced in annex to these reasons.

1. The Plaintiff, Cami Automotive, Inc. (Cami), is a company registered to do business in the Province of Ontario with offices at 300 Ingersoll Street, Ingersoll, Ontario. Cami is an independently incorporated joint venture between Suzuki Motor Corporation and General Motors of Canada Ltd. and manufactures automobiles at a plant located in Ingersoll, Ontario, Canada.

2. The Plaintiff, Aisin World Corporation of America (AWA), is a company registered to do business in the State of Michigan. It is in the business of selling parts and components manufactured by Aisin AW Co. Ltd. of Japan to automobile manufacturers including Cami.

3. The Defendant, WSL Shipping Lines Inc. (WSL), is a company registered to do business in the State of Washington, with offices at 840 South 333rd Street, Federal

Way, Washington. WSL operates as an ocean carrier and multimodal transportation company and serves customers in approximately 10 ports in Japan, Korea, China and North America. WSL has a fixed-day, weekly sailing schedule from various ports and carries forest products, containerized and oversized cargo.

4. The Defendant, AS Borgestad Shipping (AS Borgestad), is a company or partnership registered to do business under the laws of Norway, and was at all material times the registered owner of the ship "WSL Anette" (the Ship), a container vessel of 28,805 gross tons registered at Nassau, Bahamas.

5. The Defendant, Canadian National Railway Company (CN) is a company incorporated under the laws of Canada with a head office at 935 rue de la Gauchetiere, Montréal, Quebec, and with offices at 4000 Deltaport Way, Ladner, BC. CN is a transcontinental railway providing freight services including the intermodal movement of containers.

6. WSL was the charterer of the Ship pursuant to a charter agreement with AS Borgestad.

7. Since 1991 or 1992, WSL has provided ocean carriage and multimodal carriage services to Cami on an annual basis, carrying various containers for Cami from Japan to Canada via the port of Seattle, Washington, USA.

8. Cami and WSL have historically entered into an annual service contract providing for carriage of containers from Japan to Toronto, Ontario, via the port of Seattle, Washington (the Service Contract).

9. As was customary, Cami and WSL entered into individual Service Contracts for the 2004 and 2005 shipping years. Cami and WSL have been unable to locate copies of the signed Service Contracts for 2004 and 2005. Copies of the unsigned Service Contracts for 2004 and 2005 are collectively attached as Schedule "1".

10. In this case, pursuant to its Service Contract with Cami, WSL issued a shipping document numbered WWSUAE123NGS4007 and dated December 2, 2004 at Nagoya Japan (the WSL Shipping Document). It was understood by WSL and Cami that the terms of any agreement between them would include, *inter alia*, the applicable Service Contract and the particular WSL Shipping Document.

11. As was customary, upon shipment, an original two-sided WSL Shipping Document was provided by WSL, or its agents, to AWA or its agents. AWA retained the original of the WSL Shipping Document.

12. By the WSL Shipping Document, WSL acknowledged having received on board the Ship then lying at Nagoya, Japan, a cargo of 15 sealed containers with cargo as described on the WSL Shipping Document. As regards the present action, the cargo which is the subject matter of this action consists of automatic transmission assemblies

(the Assemblies) and automatic transmission control modules (the Modules) carried on custom designed racks in five of the 15 containers (collectively, the Goods) as follows:

Container No.	**Contents**
TTNU1900026	Packages 20 P/T (152 U/T and 152 P/C) 15,705kg
TRLU2372215	Packages 20 P/T (152 U/T and 152 P/C) 15,705kg
TRIU3769835	Packages 20 P/T (152 U/T and 152 P/C) 15,705kg
TOLU3036890	Packages 20 P/T (152 U/T and 152 P/C) 15,705kg
IPXU2237809	Packages 20 P/T (152 U/T and 152 P/C) 15,705kg

13. As was customary with containerized cargo, the containers were delivered to WSL in Japan with seals intact, and, as was customary, WSL did not inspect the Goods. The Goods were carried on 19 custom designed racks each holding 8 Assemblies and one custom designed rack holding 152 Modules. Attached collectively as Schedule "**3**" are photographs of the Goods taken after the Derailment in the warehouse at CN yard Concord, Ontario, as follows:

    (a) transmissions off the racks (Schedule 3A);

    (b) transmissions on the racks (Schedule 3B); and

    (c) empty racks (Schedule 3C).

14. The Plaintiffs Cami and AWA were, at all material times, purchasers and sellers respectively of the Goods on terms FOB [Free On Board] Nagoya, Japan. Attached as Schedule "**4**" is a copy of the sales invoice from AWA to Cami.

15. WSL and CN were parties to Confidential Transportation Agreement No. 009246 (the Confidential Contract) under which CN agreed to transport commodities, including the Goods, for WSL from its Vancouver Intermodal Terminal in Surrey, B.C., to its Brampton Intermodal Terminal in Brampton, Ontario. The Confidential Contract expired on April 30, 2005. Relevant excerpts from the Confidential Contract are attached as Schedule "**5**".

16. As part of its obligation to carry the Goods from Nagoya, Japan, to Toronto, Ontario, Canada, WSL subcontracted carriage of the Goods from Vancouver, British Columbia, to Toronto, Ontario, to CN. Truck transport of the Goods from the CN container yard in Toronto to Ingersoll, Ontario was to be for Cami's account.

17. Ocean carriage from the port of Nagoya, Japan to Seattle, Washington, took place in December 2004. On or about December 20, 2004, the Goods were carried by truck from Seattle, Washington, to Vancouver, British Columbia, and delivered into the care, custody and control of CN at CN's Vancouver Intermodal Terminal. The Goods departed CN's Vancouver Intermodal Terminal on CN Train Q11251 30 on December 30, 2004.

18. CN created an electronic data interchange (EDI) waybill for each of the five containers, copies of which are attached as Schedule "**6**". No hard copy documents were generated.

19. On or about January 2, 2005, during rail transit of the 15 containers including the Goods by CN from Vancouver, British Columbia, to Toronto, Ontario, there was a derailment of railway cars at or near Longlac, Ontario, resulting in physical damage to some or all of the Goods (hereinafter referred to as the Derailment). Attached as Schedule "**7**" are photographs of the derailment scene.

20. Terms of the Confidential Contract were not disclosed to AWA or to Cami at any time prior to the Derailment. However the Plaintiffs were aware that the contract of carriage with WSL would necessitate WSL subcontracting the carriage of the Goods from Vancouver to Toronto to CN.

21. Attached as Schedule "**8**" is CN Freight Tariff CN007589-AZ.

22. By Order of the Court made March 5, 2008, it was ordered, *inter alia*, that: (1) all issues concerning any question as to damages shall be determined separately after trial on the remaining issues, if such issues need to be decided; and (2) the parties shall proceed to trial on the remaining issues (i.e., liability and any limitation of liability) with evidence adduced by way of Statement of Agreed Facts and Documents, affidavit evidence of witnesses, examination for discovery questions and answers, and

affidavits of expert witnesses, without prejudice to any party's right to seek leave to call a witness at trial.

[7] The trial of this action proceeded on February 24, 2009 and continued until February 26, 2009.

[8] By consent Order dated May 14, 2009, the March 5, 2008 bifurcation Order was amended as follows:

> Pursuant to Rule 107 of the Federal Courts Rules, all issues pertaining to any limitations of liability available to the Defendants in relation to the claims by the Plaintiff shall be determined by trial separately from the issues of liability of the Defendants generally and the assessment of any damages. The determination of any available limitations of liability shall be on the assumption that the Defendants are liable to the Plaintiff but that assumption is without prejudice to any defences that the Defendants may later raise when, and if, the issues of liability generally and the assessment of any damages are tried.

As a result of the above amended Order, by consent, only issues relating to limitations of liability available to the Defendants will be addressed in these reasons.

III. Issues

[9] The parties to this action agree that the following questions are before the Court for determination:

(1) Can WSL limit its liability by the terms of the WSL Shipping Document and, if so, what is that limitation?

(2) Can CN limit its liability to the Plaintiffs by the terms of the Confidential Contract and, if so, what is that limitation?

(3) Can CN limit is liability to the Plaintiffs by the terms of the WSL Shipping Document and, if so, what is that limitation?

[10] Before turning to the above issues, it is useful to determine whether the WSL Shipping Document is a bill of lading or a waybill.

IV. Analysis

1) Is the WSL Shipping Document a bill of lading or a waybill?

Introduction

[11] Determination of the nature of the shipping document used will have an important bearing on the issues raised in this proceeding. To that end it is therefore useful to understand the distinction between the various shipping documents used in the industry, and particularly, for our purposes, the distinction between a bill of lading and a waybill.

[12] A bill of lading is defined as "a document used in international sales to process the delivery of goods by sea. It is widely employed in liner shipping and on chartered ships in some trades." (Edgar Gold, Aldo Chircop & Hugh Kindred, *Maritime Law* (Toronto: Irwin Law, 2003), at 408.)

[13] The courts have generally accepted that a bill of lading serves three purposes: it is a receipt for the goods, it represents the contract of carriage and it is a document of title: see *Canadian General Electric Co. v. Armateurs du St-Laurent Inc.*, [1977] 1 F.C. 215 at para. 14; *The Rafaela S.* [2005] 1 Lloyd's Rep. 347 at para. 38 (*The Rafaela S. (HL)).*

[14] During the nineteenth and well into the twentieth century, a bill of lading was the main instrument used to process the carriage of goods by sea. Later in the twentieth century, however, the advantageous advances in cargo handling techniques achieved by the introduction of computers and containers have transformed the carriage of goods by liner ships. As a result of these changes, a variety of new transport documents have been developed and put increasingly into use in place of bills of lading. These new documents include straight bills of lading and waybills. Bills of lading, straight bills of lading, and waybills are now all commonly issued in connection with contracts for the carriage of goods. (Gold, Chircop & Kindred, *Maritime Law* (Toronto: Irwin Law, 2003), at 407).

[15] Straight bills of lading "are those which make the goods deliverable to an identified person as consignee and either contain no words importing transferability or contain words negativing transferability" (*Carver on Bills of Lading,* Sir Guenter Treitel & F.M.B. Reynolds, ed., 2nd ed, (London: Thomson-Sweet & Maxwell, 2005), at 1-007). Straight bills of lading remain, however, documents of title and as stated above, must be presented at the port of discharge in order to effect delivery (*The Rafaela S. (HL),* at para. 20).

[16] Therefore, it is now understood that a bill of lading may be negotiable or non-negotiable depending on its terms. Both forms of a bill of lading require, however, that the carrier, or its agents, may only deliver the cargo to the holder of the bill (*Timberwest Forest Corp. v. Pacific Link Ocean Services Corp.*, 2008 FC 801, at para. 13). In other words, whatever its form, a bill of lading must be presented at the port of discharge to ensure the delivery of the goods. This is because both a negotiable and non-negotiable bill of lading are documents of title (*The Rafaela S*, [2003] 2 Lloyd's Rep. 113 (C.A.) (*The Rafaela S (CA))* at 143, paras. 136-141, aff'd *The Rafaela S. (HL)* at paras. 20-21).

[17] A waybill, on the other hand, is distinguished from both bills of lading and straight bills of lading based on the fact that waybills are not documents of title. As such, they need not be presented to the carrier (*The Rafaela S. (HL)*, at para. 46; Gold, Chircop & Kindred, at 414). A waybill remains, however, a receipt for goods and evidence of a contract of carriage.

[18] I will now turn to the positions of the parties with respect to the nature of the WSL Shipping Document at hand.

Position of the parties

[19] It is the position of the Plaintiffs that the WSL Shipping Document is a straight bill of lading. WSL is of the view that its Shipping Document is a waybill.

[20] The WSL Shipping Document is the best evidence of the contract between the parties. Its interpretation requires that its terms be considered in the context of the intentions of the parties as

evidenced by the contract as a whole (*BG Checo International Ltd. v. British Columbia Hydro & Power Authority*, [1993] 1 S.C.R. 12 at 23-24).

[21] To that end we turn to the plain language of the terms of the contract. The jurisprudence teaches that we may consider the surrounding circumstances or commercial setting of the contract in determining the intention of the parties: see *Canada Law Book Co. v. Boston Book Co.* (1922), 64 S.C.R. 182, at 185.

Plain language of the WSL Shipping Document

[22] Captain Noel Asirvatham (Captain Asirvatham), the National Sales Manager Canada for the Defendant WSL, annexed to his affidavit a copy of the WSL Shipping Document as exhibit "A" and a copy of what he describes as a WSL bill of lading as exhibit "B". Both exhibits are reproduced in the schedule to these reasons. Upon comparing the two documents, I observe the following:

1. On the top left hand side of exhibit "A" we find the term "waybill". The term "original bill of lading" is found at the same location on exhibit "B". I note that these terms appear where you would expect to find the title of the document.
2. On the top right hand side of both exhibits "A" and "B", beneath the WSL logo, we find a box containing the printed term "Bill of Lading No." which provides a space for the document number.
3. There is a stamp on exhibit "A" which reads:

Straight Bill of Lading
(Waybill)

Delivery will be made to the named consignee, or his authorized agent, on production of proof of identity at the port of discharge or delivery, whichever is applicable.

CARGO MAY NOT BE DIVERTED, RECLAIMED OR CONVEYED. Delivery of cargo may not be delayed except to satisfy carrier's lien.

4. There is a stamp on exhibit "A" which reads: "Non-Negotiable Waybill"
5. There are terms attached to the shipping document in exhibit "A". It is not disputed that there are identical terms attached to the WSL bill of lading, although not found in exhibit "B".
6. At the very bottom of both exhibits "A" and "B" there is a space provided in which to indicate the number of documents signed. Exhibit "A" shows that only one (1) document was signed, whereas exhibit "B" shows that three (3) are to be signed.

[23] Consideration of the differences between the two documents will assist in determining the nature of the WSL Shipping Document.

[24] The fact that we find the term "waybill" on the WSL Shipping Document where one would expect to see the title of the document is indicative of a waybill. This is especially persuasive in the circumstances given that the term "original bill of lading" is found at the same location on the document purported to be an example of a WSL bill of lading, as evidenced in exhibit "B" of Captain Asirvatham's affidavit.

[25] There is printed on both documents the term “Bill of Lading No.”. This may be indicative of a bill of lading. However, as stated above, the documents also contain terms that are stamped on their face. It is well established that printed terms are subordinate to stamped terms. *Metalfer v. Pan Ocean* [1998] 2 Lloyd’s Rep. 632 at 636-637; John D. McCamus, *The Law of Contracts* (Toronto: Irwin Law, 2005), at 726-727)**.** Here, for the following reasons, both stamped terms suggest that the impugned shipping document is a waybill. Therefore, this printed term is of little assistance in determining the issue.

[26] The stamp found on exhibit “A” which states “Non-Negotiable Waybill” in my view requires no elaboration. It is indicative of a waybill.

[27] The other stamp found on exhibit “A”, reproduced above at item 3 in para. 22, includes in part the words “Straight Bill of Lading (Waybill)”. As explained above, it is understood that waybills are not straight bills of lading. Due to the apparent confusion of terms, these words are of little assistance in determining the true nature of the shipping document.

[28] This other stamp on exhibit “A” also indicates that delivery is to be made to the named consignee “on production of proof of identity at the port of discharge”. There is no requirement that the WSL Shipping Document be presented at the port of discharge. It is settled jurisprudence that a straight bill of lading must be presented at the port of discharge. As stated earlier, this characteristic of a straight bill of lading distinguishes it from a waybill which is not a document of title. It follows, therefore, that the stamp found on exhibit “A”, dispensing with the requirement to produce the shipping document at the port of discharge, suggests that the document is a waybill.

[29] Next, Captain Asirvatham, well aware of the ongoing practice relating to the preparation and use of the WSL Shipping Document between the parties, attests that WSL only uses two forms of shipping documents: waybills or bills of lading, with identical terms. Since the terms on both documents are identical, they cannot be used to differentiate between the two forms of shipping documents used by WSL. In my view, these terms will be applicable to the shipping document whether it is found to be a bill of lading or a waybill notwithstanding that the terms refer to a bill of lading.

[30] Finally, the evidence indicates that bills of lading, which are documents of title, are usually issued in triplicate so that a copy is available for production at the port of discharge. In this case, only one copy of the WSL Shipping Document was issued. This is consistent with the fact that the document is not a document of title. This factor is a further indication that the shipping document in question is a waybill.

[31] To summarize, on its face, the WSL Shipping Document is entitled "waybill", both stamps suggest that the WSL Shipping Document is a waybill, and the terms attached to the shipping document cannot be used to differentiate between a waybill and a bill of lading. Further, only one copy of the WSL Shipping Document was issued, and its presentation was not required for delivery of the Goods. In my view, the above findings indicate that the shipping document is a waybill and not a bill of lading. I now turn to consider whether the intention of the parties is supportive of such a conclusion.

The Intent of the Parties

[32] There is little evidence in this case concerning the intention of the parties regarding the WSL Shipping Document. We do know that Cami and WSL have been doing business together since 1991 or 1992, and have customarily entered into annual service contracts. Captain Asirvatham's undisputed testimony is that, due this longstanding relationship, WSL and Cami deal on a "waybill" basis in order to simplify the transportation of commodities for both parties. The Plaintiffs have adduced no evidence on this point. Captain Asirvatham explains that, a "waybill basis" means that, in contrast to a "bill of lading", the document is not meant to be negotiable and the tendering of the document is not necessary to effect delivery of the cargo.

[33] Dispensing with the negotiability and title aspects of the bill of lading is indicative of a desire to employ the use of a less onerous shipping document. This has become commonplace in modern cargo transportation, as mentioned earlier in these reasons, through the use of waybills.

[34] Given that the Plaintiff Cami and WSL have been doing business since 1991 or 1992, and have customarily entered into annual service contracts involving the shipment of containerized goods, given the movement towards the use of simplified shipping documents in the industry, and given Captain Asirvatham's uncontradicted evidence, I am left to conclude that the parties intended the use of a more efficient and expedited shipping process which, in the circumstances, involves the use of a waybill.

[35] Based on the above analysis, I therefore find that the parties intended to contract on a waybill basis. This is consistent with the language of the waybill. I therefore find that the WSL Shipping Document at issue is indeed a waybill.

2) Can WSL limit its liability by the terms of the WSL Shipping Document (waybill) and, if so, what is that limitation?

[36] As previously stated, WSL entered into a contract of carriage with Cami evidenced by the waybill and its attached terms. WSL also entered into a Confidential Contract with CN to provide for the inland carriage of goods to destination.

[37] The Plaintiffs claim that WSL's liability should be determined by the Confidential Contract WSL negotiated with CN. WSL, on the other hand, submits that its liability to the Plaintiffs is governed by the terms of the waybill.

[38] In my view, this question is resolved by reference to the terms of the Confidential Contract. Term 5 of the Confidential Contract is entitled "Liability and Claims" and reads as follows:

> Except as otherwise provided in any schedule to this contract, the liability of CN for any alleged loss, damage or delay to the Commodity shall be identical to the standards applicable to a Canadian rail common carrier, as specified in Railway Traffic Liability Regulations, SOR/91-488.

[39] Clearly, it is only CN's liability which is contemplated in this contract. Since WSL has not otherwise agreed with Cami to limit its liability in accordance with the terms of the Confidential Contract, WSL's liability to the Plaintiffs is not limited by the Confidential Contract. I therefore reject the Plaintiffs' argument. I now turn to the terms of the waybill.

What is the limitation?

[40] Clause 8 of the waybill provides that "the ocean carrier's responsibility with respect to the goods shall in all cases, including where the goods are lost or damaged while in the custody of the inland carrier, be governed by COGSA or the Hague Rules, whichever is applicable, as provided in Clause 2 herein." "Ocean Carrier" is defined in Clause 1 of the waybill as follows:

> "Ocean Carrier" shall mean Westwood Shipping Lines, the owners, the operator, demised charterer, and also any time charterer or person to the extent bound by this bill of lading who performs the ocean transportation of the cargo described on the face of the bill of lading.

In the instant case there is no dispute that WSL is the Ocean Carrier for the purposes of the waybill. Liability issues between Cami and WSL are therefore governed by clause 8 of the waybill.

[41] Pursuant to Clause 8 of the waybill, WSL's liability is governed by COGSA or the Hague Rules, whichever is applicable, as provided in Clause 2 of the waybill. Clause 2 is a Clause Paramount which essentially sets out by which regulatory regime the parties agreed to be bound. It reads as follows:

> This bill of lading shall have effect subject to all of the provisions of the United States Carriage of Goods by Sea Act, approved April 16, 1936 ("COGSA"). <u>If, however, the Hague Rules or the Hague-Visby Rules (collectively "the Hague Rules") are made compulsorily applicable to this bill of lading in the country where a dispute hereunder is adjudicated, then this bill of lading shall have effect subject to the Hague Rules.</u> Nothing herein shall be deemed a surrender by the Ocean Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under COGSA or the Hague Rules, whichever applicable. The provisions of COGSA or the Hague Rules whichever applicable apply to GOODS stowed on deck, and shall govern before the GOODS are loaded on and after they are discharged from the vessel and throughout CARRIAGE of GOODS by the OCEAN CARRIER and the

> INLAND CARRIER, if the CARRIAGE includes through transportation, and until the GOODS are delivered. The OCEAN CARRIER shall also have the benefit of all other statutes of the United States or any other country which may be applicable and which grant the OCEAN CARRIER exemption from or limitation of liability. [Emphasis added.]

[42] Since COGSA applies only if the Hague-Visby Rules are not compulsorily applicable to this waybill in Canada, the first step in determining which regime governs the transportation under this waybill is to examine whether or not the Hague-Visby Rules are compulsorily applicable.

[43] Section 43 of the *Marine Liability Act* (2001, c.6) is the statutory provision giving the Hague-Visby Rules force of law in Canada in respect of contracts for the carriage of goods by water between different states. These states are enumerated in Article X of the Hague-Visby Rules. It is undisputed that both Canada and Japan are contracting states for the purposes of Article X. (Affidavit of Shuji Yamaguchi, signed January 29, 2009).

[44] The Hague-Visby Rules only apply to "contract[s] for carriage". This term is defined in article 1 of the Hague-Visby Rules as those contracts covered by "a bill of lading or any similar document of title". Since the Shipping Document at issue is not a bill of lading, in order for the Hague-Visby Rules to compulsorily apply, the waybill must be a "similar document of title". As mentioned above, it is clear, that waybills, by definition, are not documents of title.

[45] Since the impugned shipping document is not a bill of lading or similar document of title the Hague-Visby Rules do not compulsorily apply. It follows therefore, pursuant to Clause 2 of the waybill, that the applicable regulatory regime in this instance is COGSA.

[46] Professor William Tetley, in his treaties entitled *Marine Cargo Claims*, 4 Ed, (Quebec: Thompson Carswell, 2008) vol. 2 at 2304, informs us that countries such as the U.K., South Africa, New Zealand, Singapore, Australia, and the Nordic countries, have all passed legislation which enables the Hague-Visby Rules (or adaptations thereof) to apply to sea waybills. Clearly then, those jurisdictions did not consider that the Hague-Visby Rules applied to sea waybills on their own accord. No such legislation providing for the application of the Hague-Visby Rules to sea waybills has been passed in Canada.

[47] COGSA contains a specific limitation of liability formula. This is found at subsection 4(5) which reads:

> Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

[48] The parties have also agreed on a valuation of the Goods in Clause 14 of the waybill which is very similar to the language of COGSA itself. Clause 14 states:

> It is agreed and understood that the meaning of the word "package" includes containers, vans, trailers, pallets and unitized cargos and all pieces, articles or things of any description whatsoever except goods shipped in bulk.
>
> In the event of any loss or damage to goods exceeding in actual value $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight units, the value of the GOODS shall be deemed to be $500 per package or per customary freight unit as the case may be, and OCEAN CARRIER'S liability, if any, shall be determined on the basis of a value of $500 per package or per customary freight unit unless the nature of the GOODS and a higher value shall be declared by the MERCHANT in writing before shipment and inserted herein and extra charges paid. Charges for excess value declarations shall apply as per OCEAN CARRIER'S tariff. In the event of a higher value being declared by the MERCHANT in writing and inserted herein and extra freight being paid thereon if required, the OCEAN CARRIER'S liability, if any, for loss or damage to or in connection with the goods shall be determined on the basis of such declared value and pro rata of such declared value in the case of partial loss or damage, provided such declared value does not exceed the actual value of the GOODS.

[49] The parties have agreed, therefore, that in the event of damage to goods exceeding in actual value $500 per package lawful money of the United States, the packages will be deemed to have a value of $500 lawful money of the United States. This is consistent with the limitation of liability provisions set out in COGSA.

[50] Determining the total amount of WSL's liability will rest, therefore, on what is meant by a "package". This term is not defined in COGSA, and clause 14, cited above, does nothing more than state that essentially anything can be a package except goods carried in bulk. Clearly the Goods are not bulk.

[51] The Plaintiffs contend that "package" is to be defined as the individual Assemblies and Modules. Both CN and WSL contend that "package" should be defined as a pallet.

[52] Both Canadian and American jurisprudence teach that the interpretation of the term "package" must be done in accordance with the intention of the parties (*J.A. Johnston Co. v. Tindefjell (The)*, [1973] F.C. 1003, at para. 10). Evidence of this intent is found in the contractual agreement between the parties as set forth in the shipping document as well as the surrounding circumstances (*International Factory Sales Service Ltd. v. Alexandr Serafimovich (The)*, [1976] 1 F.C. 35, at para 28, aff'd *Consumers Distributing Co. v. Dart Containerline Co.* [1979] F.C.J. No. 1113; *Tindefjell*, at para. 10; *Binladen BSB Landscaping v. M.V. Nedlloyd Rotterdam*, 759 F. 2d 1006, at 1012). It is well accepted in the U.S. jurisprudence that a "package", under COGSA, must refer to the result of some preparation for transportation "which facilitates handling but which does not necessarily conceal or completely enclose the goods" (*Binladen*, at 1012). See also *Royal Ins. Co. of America v. Orient Overseas Container Line Ltd.*, 408 F. Supp. 2d. 415 (Dist. Ct., 2005) rev'd on other grounds 525 F. 3d. 409 (Sixth Circuit C.A., 2008). Evidence of packaging and preparation for transport are also important factors in determining what constitutes a package in Canadian jurisprudence (*Dart Containerline Co.*, at para. 25; *Serafimovich*, at para. 37).

[53] Given the similarity between the American and Canadian approaches in interpreting the term "package" under COGSA and the Hague Rules respectively, my analysis will be informed by jurisprudence of both jurisdictions. Whether a "package" is defined as a pallet or as individual Assemblies and Modules will depend on the intention of the parties as evidenced by the language of the waybill and the surrounding circumstances, including preparation for transportation.

[54] On the face of the waybill, it is unclear whether anything is written under the column "NO. OF PACKAGES", however, at the lower portion of the waybill and across this column, we find written "(15) containers only". No party to this proceeding argues that a container is a package. Therefore, nothing can be concluded from the information in this column.

[55] Also on the face of the waybill, in the column entitled "DESCRIPTION OF PACKAGES AND GOODS," we find included the words: "15 containers (300 pallets <2,280U/T&2,280P/C>)". The evidence indicates that each container contained 20 custom designed pallets, 19 of which held eight Assemblies and one which held 152 Modules. It follows that the above entry found on the face of the waybill indicates the following cargo: 15 containers containing in total 300 custom designed pallets which hold in total 2,280 Transmissions and 2,280 Modules.

[56] On the second page of the waybill we find the "container summary sheet". Here all 15 containers are listed, and a series of columns serves to describe each one. Under the column entitled "Packages", for each container it is written "20 P/T (152 U/T&152P/C)" which, as stated above, means 20 pallets containing 152 Assemblies and 152 Modules. In my view, a plain reading of this form indicates that it is the pallet that is considered to be the package. This is consistent with information contained in the column describing "packages" on the face of the waybill. This interpretation is also consistent with the Australian jurisprudence. In *El Greco (Australia) Pty. Ltd. and Another v. Mediterranean Shipping Co. S.A.*, [2004] 2 Lloyd's Rep. 537 (Fed. C. Aust.), the Federal Court of Australia found at para. 287 that under the Hague Rules, "[i]f the bill identifies X

packages each containing Y pieces or items of cargo then there will be X packages not Y unites enumerated."

[57] The evidence reveals that it is customary for WSL to use specially designed custom pallets provided to it by the Plaintiffs. The Plaintiff AWA fabricates the racks or pallets in accordance with the Plaintiff Cami's specifications and is also the owner of the pallets. Clearly then, the decision to use pallets is the Plaintiff's. This factor has led American courts to find that the pallet is not merely used by the carrier to secure the Goods in place, but rather that the pallet is used by the shipper to prepare the goods for shipment, and is thus a "package" (*Standard Electrica, S. A. v. Hamburg Sudamerikanische Dampfschifffahrts-Gesellschaft,* 375 F.2d 943, at 946 (2d Cir. N.Y. 1967)).

[58] The evidence also reveals that the transmissions are put onto the racks without being individually covered. Rather, a plastic cover was placed over the pallet holding eight transmissions. Christine Michelle Osborne, a witness for the Plaintiff Cami, attests that the logical purpose of the plastic cover is to protect the Goods from water damage or debris, a common purpose in packaging. She also attests that that packaging of the Goods, in this case, meant the placing of the Goods on the custom made pallets.

[59] Given this description of the Goods by Christine Michele Osborne, I do not accept that the individual Assemblies or Modules are packages. As the jurisprudence teaches, a plain language meaning of "package" must connote some form of preparation for shipment or protection during handling. The Assemblies and Modules, in this case were never intended to be shipped individually or outside of a pallet. Indeed the evidence of Ms. Osborne suggests that packaging involved the

placement of the transmissions on the pallets. While the Plaintiff's U.S. law expert, Mr. Russell Williams, Esq., cites cases for the proposition that pieces of cargo within a pallet were packages, these cases involve pieces which are themselves individually wrapped and referred to as cartons, pails, or the like. The circumstances here are different, the transmissions and modules are not individually wrapped, they are simply placed and secured on the pallet and then the pallet is covered in plastic as a single unit.

[60] The Assemblies and Modules at issue here are not individually prepared for transportation. The evidence clearly points to the placement of the units on the pallets as the method adopted to prepare the goods for transportation. This supports the contention that a pallet constitutes the "package" for the purposes of the waybill.

[61] I find therefore, based on the intention of the parties as evidenced by the language of the waybill, the method by which the Goods were prepared for transportation, the purpose of the pallets and the lack of individual wrapping for the Assemblies and Modules, that a "package" for the purposes of the waybill is defined as a pallet.

[62] WSL's liability pursuant to section 4(5) of COGSA is limited to a maximum of $500 per package which in the circumstances is a pallet. The value of a pallet will be determined in accordance with Clause 14 of the waybill. As stated above, Clause 14 provides that in the event of loss or damage to goods which exceed in value $500 per package lawful money of the United States, the value of that package is deemed to be $500 lawful money of the United States. It follows,

in the circumstances, that loss or damage to a pallet will be deemed to be $500 lawful money of the United States, if the value of that pallet exceeds $500 lawful money of the United States.

[63] I note as well that, at all times prior to the shipment, it was open to Cami to declare the value of the cargo and seek greater coverage. This, of course, would likely have meant a higher premium and increased transportation costs. By acting as it did, Cami made a business decision. It balanced the increased costs of enhanced coverage against the risk of a greater loss in the event of damage to the goods shipped by reasons of the limitation of liability provisions in the shipping document.

3) Can CN limit its liability to the Plaintiffs by the terms of the Confidential Contract and, if so, what is that limitation?

[64] The Plaintiffs are not parties to the Confidential Contract entered into between WSL and CN. The question is, whether absent privity of contract between CN and the Plaintiffs, can CN nevertheless rely on the Confidential Contract with WSL to limit its liability to the Plaintiffs. The English jurisprudence has addressed the issue of lack of privity of contract in the context of bailment. In *Morris v. Martin*, [1966] 1 Q.B. 716, the English Court of Queen's Bench held that an owner, in suing a sub-bailee for reward, is bound by the terms of the contract between the bailee and sub-bailee if the owner had expressly or impliedly consented to the terms of the subcontract. This approach was adopted in Canada in the context of contracts for the carriage of goods by sea, and most recently followed in *Boutique Jacob Inc. v. Canadian Pacifique Railway Co.*, 2008 FCA 85 (*Boutique Jacob* (FCA)).

[65] At first instance, in *Boutique Jacob Inc. v. Canadian Pacifique Railway Co.*, 2006 FC 217 (*Boutique Jacob* (FC)), Mr. Justice de Montigny wrote at para. 27 of his reasons:

> In a maritime law context, the Privy Council also held that the authorization to sub-contract the whole or any part of the carriage of the goods "on any terms" demonstrated that the owner had "expressly consented" to the sub-bailment of their goods on any terms, and that the scope of that express consent was broad enough to include an exclusive jurisdiction clause (See *K.H. Entreprise (The) v. Pioneer Container (The)*, [1994] 2 A.C. 324; see also *Singer Co (U.K.) Ltd. v. Tees and Hartlepool Port Authorty*, [1988] 2 Lloyd's Rep. 164). [Emphasis added.]

[66] The above finding is undisturbed on appeal. Here, as in *Boutique Jacob*, the owner Cami agreed that, "[t]he OCEAN CARRIER shall be entitled to subcontract on any terms the whole or any part of the handling and CARRIAGE of the GOODS" (emphasis added). As in *Boutique Jacob*, this indicates that Cami has expressly consented to the terms of the sub-bailment to CN.

[67] In Canada, the liability of rail carriers is governed by the *Canadian Transportation Act* (1996, c. 10) (the CTA). Pursuant to section 137 of the CTA, a rail carrier may only limit its liability by way of a written agreement signed by the shipper. In *Boutique Jacob* (FCA), at para. 47, it was found that the shipper, for the purposes of the CTA, is the entity which directly contracts with the rail carrier. In that case, as in this case, it is the ocean carrier who is the shipper for the purposes of the CTA. It follows, therefore, that since the Confidential Contract is signed by WSL, the ocean carrier, this would satisfy the section 137 requirement of the CTA. The Confidential Contract is a written contract signed by the shipper.

[68] Therefore, it appears that a rail carrier may bind an owner of goods to the terms of a sub-contract in accordance with the principles of bailment mentioned above. In *Boutique Jacob* (FCA) the Court found that Boutique Jacob (the owner) was bound to the tariff found in the Confidential Contract between OOCL (the ocean carrier) and Pacific Rail, a common carrier. I now turn to the applicable provisions of the Confidential Contract.

[69] I begin by setting out the relevant terms of the contract:

> 4. INCORPORATION BY REFERENCE
> This contract incorporates by reference all tariffs, rules and regulations which are applicable to the transportation of the Commodity except to the extent that such tariffs, rules and regulations are in conflict with this Contract. In the event of any conflict, the terms and conditions of this Contract shall govern.
>
> 5. LIABILITY AND CLAIMS
> Except as otherwise provided in any schedule to this Contract, the liability of CN for any alleged loss, damage or delay to the Commodity shall be identical to the standards applicable to the Canadian rail common carrier, as specified in Railway Traffic Liability Regulations, SOR/91-488.
>
> SCHEDULE 1, PART 1, NOTE 1
> Rates shown herein are subject to all rules, regulations, terms and conditions, and accessorial charges as published in Tariff CNR 7589 series.

Position of the parties

[70] CN claims that, in this contract, liability is limited by the terms of the CN Tariff 7589 (the Tariff). CN argues that, pursuant to Clause 5, since the Tariff is found in the schedule to the contract, liability is to be determined in accordance with the Tariff.

[71] The Tariff at issue is entitled “Local Competitive Freight Tariff on Freight Loaded in or on Railway Operated Intermodal Equipment and Transported on Railway Flat Cars”. It is a 116 page document consisting of 19 pages of rules and followed by detailed rate tables. Item 300 of the rules is entitled “limitation of liability” and provides a limitation of liability formula. CN contends that under this provision of the Tariff, its liability is limited to the lesser of the four amounts set out in the Tariff.

[72] Both WSL and the Plaintiffs argue that the Confidential Contract does not properly incorporate the limitation of liability provisions of the Tariff, and, as a result, liability is to be determined under the *Railway Traffic Liability Regulations* SOR/91-488 (the Regulations) pursuant to Clause 5. They explain that while the Tariff is referenced in the Schedule to the Confidential Contract, it is referenced only in relation to rates. Thus, there are no terms within the Schedule concerning the limitation of liability. The Plaintiffs therefore contend that any incorporation of a limitation of liability by operation of Clause 4 would conflict with clause 5 of the Confidential Contract. That Clause expressly provides that CN’s liability is that of a common carrier as specified under the Regulations.

[73] CN takes the position that the Tariff is properly incorporated. It argues that Clause 4 of the Confidential Contract incorporates the Tariff by reference and Clause 5 refers to the schedule wherein the Tariff is mentioned. Further, CN contends that, since the Tariff is published on CN’s website, it has properly notified WSL of the limitation of liability provisions found therein.

Analysis

[74] Clause 5 is the only clause in the Confidential Contract purporting to deal with limitations on liability. This clause provides that CN's liability is the same as the standards applicable to a Canadian rail common carrier as specified in the Regulations except where otherwise provided in a schedule to the Contract. While Clause 4 provides for the incorporation of the impugned Tariff by reference, it does so only to the extent that the tariffs are not in conflict with the Confidential Contract. If there is conflict, it is the terms of the Confidential Contract which prevail. It follows that, based on the clear language of Clauses 4 and 5, the limitation of liability provisions in the Tariff cannot be incorporated by operation of Clause 4 because those provisions would be in conflict with the terms of Clause 5. The only issue, then, is whether or not the provisions in the Tariff pertaining to limitation of liability are properly incorporated into a schedule to the Confidential Contract.

[75] It is undisputed that the terms contained in the Tariff regarding liability were not brought to WSL's attention, nor was the issue of the limitation of CN's liability ever discussed between the parties. As a result, there is no parole evidence to consider and I need only look to the terms of the contract itself.

[76] Clause 5 of the Confidential Contract entitled "LIABILITY AND CLAIMS" contains a specific liability formula. As previously mentioned, this formula limits liability to the standards applicable to a Canadian rail common carrier as provided for in the Regulations unless specified otherwise in a schedule to the contract. Nowhere in any schedule is there mention of a limitation of liability. The notes to schedule 1 mention that the rates found in the schedule are "subject to all

rules, regulations, terms and conditions, and accessorial charges as published in Tariff CNR 7589 series". On a plain reading, this suggests that the rates are subject to modification in accordance with the Tariff. What is more, this wording incorporates the Tariff into the Confidential Contract only in respect to rates. No reference is made to limitation of liability, nor can one be inferred.

[77] In my opinion, the language of Clause 5 is clear. It incorporates the Tariff only for the purpose of subjecting the rates to all rules, regulations, terms and conditions and other charges as provided in the Tariff. No reference is made to the limitation of liability provisions found in the Tariff. Clause 5 expressly provides that liability of the carrier is subject to the Regulations unless otherwise provided for in a schedule. The schedules to the Confidential Contract do not otherwise provide.

[78] Given that the language of the Confidential Contract does not incorporate the liability provision found in the Tariff, CN's argument, that proper notice to WSL was effected by virtue of publication on its website, is not relevant.

[79] It is noteworthy that CN now incorporates the full version of the type of limitation clause found in CN Freight Tariff 7589 directly into the body of its schedule to its confidential contracts under the heading "Lading Loss and Liability Application".

[80] Based on the above analysis, I find that the limitation provisions of the Tariff are not incorporated into the Confidential Contract. The liability regime agreed to by WSL and CN pursuant to the Confidential Contract, is that which is found in the applicable provisions of the

Regulations. Therefore, the Plaintiffs, having agreed to allow WSL to subcontract on any terms, are bound by the terms of the confidential Contract which limits CN's liability in accordance with the Regulations.

[81] I am mindful that, in *Boutique Jacob* (FC) in finding that the Plaintiff was bound to the terms of the subcontract, Justice de Montigny stated, at para. 33:

> …The terms and conditions found in OOCL's waybill [the sub-carrier] are of the type that would ordinarily be expected to be found in that sort of contract, and are certainly not unreasonable or unconscionable. Moreover, these terms are very similar to those accepted by Jacob [the Plaintiff] in Pantainer's [non-vessel operating carrier] bill of lading. Consequently, Jacob cannot argue that they were taken by surprise and that they could not foresee the OOCL's limitations.

[82] In the present case, the relevant terms of the subcontract are those which limit CN's liability in accordance with the Regulations. Since the Regulations are issued pursuant to the CTA, they should be familiar to all in the industry and are not, in my view, onerous or unreasonable. Nor can it be said that anyone has been taken by surprise.

What is this limitation?

[83] Section 4 of the Regulations provides that a rail carrier is liable in respect of goods in its possession, for any loss of or damage to the goods or for any delay in their transportation unless that liability is limited by the Regulations. Defences available to the rail carrier are found at section 5(1) of the Regulations and provide that a rail carrier shall not be liable for any loss or damage resulting from (a) an act of God, (b) war or an insurrection, (c) a riot, strike or lock out, (d) a defect in the

goods, (e) any act, negligence or omission of the shipper or owner of the goods, (f) an authority of law, or (g) a quarantine. There is no evidence on the record to support any of these defences. As a result, none of them apply in the circumstances. Therefore, CN is liable for any loss of or damage to the Goods or for any delay in their transportation.

4) Can CN limit its liability to the Plaintiffs by the terms of the WSL Shipping Document and, if so, what is that limitation?

[84] As previously discussed, the limitation of liability provisions of the waybill are found at Clause 2, the Clause Paramount, and Clause 14, the Valuation Clause. Clause 6 of the waybill extends the benefit of these clauses to CN. Clause 6 is known in the industry as an Himalaya clause.

[85] Himalaya clauses were developed in order to protect third parties. These clauses extend the benefits of the contract of carriage to any third party engaged by the carrier to fulfill the carrier's obligations under the contract of carriage. Such clauses are well accepted in the industry and are widely used. Clause 6 of the waybill reads as follows:

> The OCEAN CARRIER shall be entitled to subcontract on any terms the whole or any part of the handling and CARRIAGE of the GOODS. Every employee, agent and independent contractor of the OCEAN CARRIER, including the Master, officers, crew members of the vessel and stevedores, longshoremen, terminal operators, INLAND CARRIER, and others used and employed by the OCEAN CARRIER in the performance of services in relation to the GOODS and the goods of others, shall be beneficiary of the bill of lading and shall be entitled to all defenses, exemptions, and limitations of liability to which the OCEAN CARRIER is entitled hereunder and under the applicable laws; and in, entering into this contract, the OCEAN CARRIER does so not only on its own behalf, but also as agent and trustee for each of the persons and companies described above, all of whom shall be deemed parties to the contract evidenced by this bill of lading.

[86] The language of Clause 6 clearly extends the benefits of the waybill, including limitations of liability to which WSL is entitled, to CN the "INLAND CARRIER". As stated earlier, the CTA provides that a rail carrier may only limit its liability by way of a signed agreement by the shipper. For CN to be able to benefit from the limitations of liability in Clause 6, it must therefore first be determined whether the waybill at issue is a written agreement signed by a shipper within the meaning of section 137 of the CTA.

[87] I find the waybill at issue to be a written agreement signed by the shipper for the purposes of section 137 of the CTA. This is so because the waybill is a signed agreement by WSL, which I have previously determined to be the shipper for the purposes of section 137. To find that the waybill is not such an agreement would be tantamount to saying that, in Canada, Himalaya clauses cannot protect third party rail carriers. Such a result would not be in keeping with the weight of the jurisprudence. For example, the Federal Court of Appeal in *Boutique Jacob* held that should the rail carrier not have the benefit of its Confidential Contract it would, alternatively, be able to benefit under the upstream Himalaya clauses (*Boutique Jacob* (FCA), at para. 59).

[88] I now turn to consider whether CN can, in the circumstances of this case, limit its liability to the Plaintiffs by the terms of the waybill.

Position of the parties

[89] The Plaintiffs do not take issue with the use of Himalaya clauses in general, however they submit that by limiting its liability under the terms of the Confidential Contract, CN cannot now rely on the terms of the Himalaya clause to limit its liability.

[90] Both CN and WSL submit that CN may benefit from the terms of the waybill.

Analysis

[91] As explained above, the Himalaya clause has the effect of extending to third parties all benefits of the contracting parties under the waybill, including those provisions that limit liability. In my view, the clear language of Clause 6 extends these benefits to CN, notwithstanding the existence of the Confidential Contract. Clause 6 provides, in part, that "…the Ocean Carrier shall be entitled to subcontract on any terms…", and that "…others used and employed by the Ocean Carrier in the performance of services in relation to the goods and the goods of others, shall be beneficiary of the bill of lading and shall be entitled to all defenses, exemptions, and limitations of liability to which the Ocean Carrier is entitled hereunder…". It follows that, by agreement, WSL has the right to subcontract to CN on any terms, and whatever the terms, CN remains a beneficiary under the waybill. WSL and the Plaintiffs agreed to extend the benefit notwithstanding any terms agreed to in the sub-contract.

[92] Further, the Himalaya clause is specifically engaged where a subcontract for the performance of part or the entire contract of carriage has been signed. To allege that the existence of a subcontract is a bar to accessing the benefits of the terms of the waybill ignores the very purpose of the Himalaya clause.

[93] In *K.H. Enterprise v. Pioneer Container,* [1994] 1 Lloyd's Rep 593, at 603 Lord Goff of Chieveley writes:

> …If it should transpire that there are in consequence two alternative regimes which the sub-bailee may invoke, it does not necessarily follow that they will be inconsistent; nor does it follow, if they are inconsistent, that the sub-bailee should not be entitled to choose to rely upon one or other of them as against the owner of the goods.

Therefore, notwithstanding the existence of the Confidential Contract, CN has not contracted out of the benefit of the waybill. Instead, CN should be free to choose between the two regimes and limit its liability according to whichever is most beneficial to it. CN can therefore elect to limit its liability under the terms of the Confidential Contract or by the terms of WSL's waybill.

What is the limitation?

[94] Should CN choose to avail itself of the terms of the waybill, its limitation of liability would be the same as that of WSL. As determined above, in the circumstances, WSL's limitation of liability is $50,000 USD It follows that CN's limitation of liability would also be $50,000 USD.

VI. Conclusion

[95] In summary, as mandated by the amended bifurcation Order, I conclude as follows in respect to limitations of liability of the defendants CN and WSL. I find that WSL's liability is limited by the terms of the waybill and the contract of carriage is governed by the terms of COGSA. As such, WSL's limitation of liability is $500 USD per package. In the circumstances I define a package to be a pallet. CN can choose to avail itself of the limitation of liability agreed to in its Confidential Contract or the limitation of liability in the waybill as against the Plaintiffs. In the event CN chooses the latter, its limitation of liability is the same as that of WSL.

[96] The issue of costs is reserved. The parties are to meet and endeavour to reach agreement with respect to costs. On or before Friday, August 21, 2009, they should communicate with the Court in order to advise as to whether they require any further time in order to attempt to agree on costs. If there is no agreement, the Court will receive written submissions as to costs no later than September 18, 2009.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES, for the reasons given above, that:

1. The WSL Shipping Document is a waybill;
2. WSL's liability is limited by the terms of the waybill;
3. the contract of carriage is governed by the terms of COGSA;
4. in the circumstances, a "package" is defined as a pallet;
5. WSL's limitation of liability is $500 USD per package;
6. CN can choose to avail itself of the limitation of liability agreed to in its Confidential Contract or the limitation of liability in the waybill as against the Plaintiffs. In the event CN chooses the latter, its limitation of liability is the same as that of WSL; and
7. the issue of costs is reserved. On or before Friday, August 21, 2009, the parties are to communicate with the Court in order to advise as to whether they require any further time in order to attempt to agree on costs. If there is no agreement, the Court will receive written submissions as to costs no later than September 18, 2009.

"Edmond P. Blanchard"

Judge

SCHEDULE

WAYBILL

WESTWOOD SHIPPING LINES

SHIPPER/EXPORTER (COMPLETE NAME AND ADDRESS)
AISIN AW CO., LTD ON BEHALF OF
AISIN WORLD CORP. OF AMERICA
10 TAKANE, FUJII-CHO
ANJO CITY. AICHI PREF., JAPAN
TEL: (0566) 73-1545 FAX: (0566) 73-1378

BOOKING NO. MNGWSL400278 | BILL OF LADING NO. WWSU AE123NGS4007

EXPORT REFERENCES

CONSIGNEE (COMPLETE NAME AND ADDRESS)
CAMI AUTOMOTIVE, INC.,
300 INGERSOLL, INGERSOLL,
ONTARIO, CANADA N5C 4A6

FORWARDING AGENT, F.M.C. NO.
AZUMA SHIPPING CO., LTD.

POINT AND COUNTRY OF ORIGIN OF GOODS

NOTIFY PARTY (COMPLETE NAME AND ADDRESS)
1) SAME AS CONSIGNEE
2) AISIN WORLD CORP. OF AMERICA
24330 GARNIER ST., TORRANCE,
CA 90505 U.S.A.
ATTN: IMPORT / EXPORT DPT.

STRAIGHT BILL OF LADING

ALSO NOTIFY-ROUTING & (WWWSU)

Delivery will be made to the named consignee, or his authorized agent, on production of proof of identity at the port of discharge or delivery, whichever is applicable.

CARGO MAY NOT BE DIVERTED, RECLAIMED, OR CONVEYED. Delivery of cargo may not be delayed except to satisfy carrier's lien.

PRE CARRIAGE BY | PLACE OF RECEIPT: NAGOYA, CY

VESSEL: WESTWOOD ANETTE | VOY NO.: 123E | PORT OF LOADING: NAGOYA, JAPAN | LOADING PIER/TERMINAL

PORT OF DISCHARGE: SEATTLE, U.S.A. | PLACE OF DELIVERY: TORONTO, CY ON | TYPE OF MOVE: FCL/FCL IPI

CARRIER'S RECEIPT — PARTICULARS FURNISHED BY SHIPPER

MARKS & NOS./CONTAINER NOS	NO. OF PKGS	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT (KGS)	MEASUREMENT (M3)
MARKS AS PER ATTACHED SHEET CONTAINER NUMBER AS PER ATTACHED SHEET		SHIPPER'S LOAD & COUNT AUTOMATIC TRANSMISSION & AUTOMATIC TRANSMISSION CONTROL MODULE HS CODE: 8708.40, 9032.89 NON-MANUFACTURED WOOD PACKAGING MATERIAL AND DUNNAGE ARE NOT USED WAYBILL 15 CONTAINERS (300 PALLETS<2, 280U/T&2, 280P/C>)	235,575	474.480

This is Exhibit " A " referred to in the affidavit of Noel Asirvatham made before me on Feb. 16 2009

A Commissioner for taking Affidavits for British Columbia

FREIGHT COLLECT AS ARRANGED
SAY: FIFTEEN (15) CONTAINERS ONLY

NON-NEGOTIABLE
WAYBILL
*Applicable only when used as Intermodal Bill of Lading

Shipped on Board the above vessel
Date - 2 DEC 2004

SHIPPER'S DECLARED VALUE $
IF NO VALUE, DECLARED LIABILITY LIMITED PER CLAUSE 14

FREIGHT PAYABLE AT/BY DESTINATION

FREIGHT & CHARGES	WEIGHT/MEASUREMENT	RATE	PER	PREPAID	COLLECT
" FREIGHT AS ARRANGED "					
DECLARED VALUE CHARGE					

RECEIVED in external apparent good order and condition, except as otherwise described herein, the number of packages listed in the Carrier's Receipt, said to contain the goods described in the Particulars Furnished by Shipper (contents, weight and measurement are unknown to Carrier) to be transported to the port of discharge, or to such other place authorized or permitted herein, or as near thereto as the vessel can get, lie and leave, always in safety and afloat, and without delay, and there to be delivered to consignee or authorized receiver, or on-carrier on payment of all charges due thereon. Carrier shall have right to carry containers on deck per clause 10 and 18.

IN ACCEPTING THIS BILL OF LADING, the shipper, consignee and owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions whether written, printed or stamped on the front or back hereof, any local customs or privileges to the contrary notwithstanding.

IN WITNESS WHEREOF the carrier by its agent has signed ONE (1) bill(s) of lading, all of this tenor and date, one of which being accomplished, the other(s) to stand void and

Dated at NAGOYA, JAPAN

For WESTWOOD SHIPPING LINES INC. as Agents
Millennium Shipping Ltd.
As Agents

By

Date - 2 DEC 2004

FORM 449 (12-93)

(a)

CONTAINER SUMMARY SHEET

Vessel: Westwood Anette 123E

Container	Seal	SID NO.	Size	Type	Packages	Kgs	M3	T/W	G/W
TTNU 1900026	WSL136817	263770001	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
TRLU 2372215	WSL136887	263770002	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
CAXU 2154518	WSL136898	263770003	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
TRIU 3769835	WSL136893	263770004	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
TRLU 2388783	WSL136836	263770005	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FSCU 3589552	WSL136862	263770006	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
TOLU 3036890	WSL136900	263770007	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
CAXU 2839899	WSL136827	263770008	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
IPXU 2237809	WSL136851	263770009	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
TRLU 2376545	WSL136821	263770010	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FSCU 7362063	WSL136813	263770011	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FSCU 7463243	WSL136884	263770012	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FBLU 3061893	WSL136860	263770013	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FSCU 3291830	WSL136853	263770014	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905
FSCU 3344863	WSL136852	263770015	20	DRY	20 P/T (1520/T&152P/C)	15,705	31.632	2,200	17,905

TOTAL: 15 containers 235,575 kgs.

ATTACH SHEET

CAMI

PART NO. 24223318

PALLET NO. S0006651-S0006764

MADE IN JAPAN
AISIN WORLD CORPORATION OF AMERICA
P.O.NO 000826

PART NO. 24223318
PALLET NO. S0006784-S0006802

PART NO. 2422561
PALLET NO. S0009539-S0009671

PART NO. 24223561
PALLET NO. S0009691-S0009709

PART NO. 24233994
PALLET NO. S0000254-S0000266

PART NO. 24233994
PALLET NO. S0000269-S0000270

Westwood Shipping Lines P.O. Box 9777 Federal Way, WA 98063-9777

1. DEFINITIONS

"OCEAN CARRIER" shall mean Westwood Shipping Lines, the owners, the operator, demised charterer, and also any time charterer or person to the extent bound by this bill of lading who performs the ocean transportation of the cargo described on the face of the bill of lading.

"INLAND CARRIER" shall include any carrier by land, water or air, apart from the OCEAN CARRIER, which participates in the through transportation of goods moving under this bill of lading.

"MERCHANT" includes the shipper, holder, consignee, receiver of the goods, any person owning or entitled to the possession of the goods or of this bill of lading and any one acting on behalf of any such person.

"GOODS" means the whole or part of the cargo received from the shipper and includes any container whether furnished by the CARRIER or MERCHANT, trailer, transportable tank, flat or pallet, or any similar article used to consolidate GOODS.

"CARRIAGE" means the whole of the operations and services undertaken by the OCEAN CARRIER in respect of the GOODS.

"VESSEL" means the vessel upon which it is proposed that the GOODS shall be carried during all or part of their carriage between the initial port of loading and the final port of discharge. The VESSEL may be either a feeder vessel or an ocean vessel and this term shall include any alternative or substitute vessel to the vessel named.

"FREIGHT" includes all charges payable to the OCEAN CARRIER in accordance with the applicable tariff, charter party, contract of affreightment and this bill of lading.

2. CLAUSE PARAMOUNT

This bill of lading shall have effect subject to all of the provisions of the United States Carriage of Goods by Sea Act, approved April 16, 1936 ("COGSA"). If, however, the Hague Rules or the Hague-Visby Rules (collectively "the Hague Rules") are made compulsorily applicable to this bill of lading in the country where a dispute hereunder is adjudicated, then this bill of lading shall have effect subject to the Hague Rules. Nothing herein shall be deemed a surrender by the Ocean Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under COGSA or the Hague Rules, whichever applicable. The provisions of COGSA or the Hague Rules whichever applicable apply to GOODS stowed on deck, and shall govern before the GOODS are loaded on and after they are discharged from the vessel and throughout CARRIAGE of GOODS by the OCEAN CARRIER and the INLAND CARRIER, if the CARRIAGE includes through transportation, and until the GOODS are delivered. The OCEAN CARRIER shall also have the benefit of all other statutes of the United States or any other country which may be applicable and which grant the OCEAN CARRIER exemption from or limitation of liability.

3. INCORPORATION OF TARIFF

The terms of the OCEAN CARRIER'S applicable tariff are incorporated herein. Copies of the applicable tariff are obtainable from the OCEAN CARRIER or its agents upon request. In the case of inconsistency between the terms and conditions of this bill of lading and the applicable tariff, this bill of lading shall prevail.

4. SCOPE OF VOYAGE

The scope of the voyage herein contracted from shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the VESSEL may sail beyond the port of discharge or in a direction contrary thereto or depart from the direct or customary route. The VESSEL may call at any port for the purpose of the current voyage or of a prior or subsequent voyage, omit calling at any port more than once, adjust equipment, dry-dock, go on ways or repair yards, shift berths, take fuel or stores, remain in port, sail without pilots, tow and be towed and save or attempt to save life or property.

5. GOVERNMENT LEVIED AND EXPENSES

The MERCHANT shall indemnify the OCEAN CARRIER for any expenses, duty, tax, fine or impost of whatsoever nature levies upon the OCEAN CARRIER by government authorities in connection with the GOODS. The MERCHANT shall indemnify the OCEAN CARRIER for any expenses incurred by the OCEAN CARRIER as a consequence of the MERCHANT'S failure to correctly or sufficiently mark, number, address or describe the GOODS, or the MERCHANT'S failure to comply with regulations of any kind with respect to the GOODS.

6. BENEFICIARIES OF CONTRACT, SUBCONTRACT

The OCEAN CARRIER shall be entitled to subcontract on any terms the whole or any part of the handling and CARRIAGE of the GOODS. Every employee, agent and independent contractor of the OCEAN CARRIER, including the Master, officers, crew members of the vessel and stevedores, longshoremen, terminal operators, INLAND CARRIER, and others used and employed by the OCEAN CARRIER in the performance of services in relation to the GOODS and the goods of others, shall be beneficiary of the bill of lading and shall be entitled to all defenses, exemptions, and limitations of liability to which the OCEAN CARRIER is entitled hereunder and under the applicable laws; and in, entering into this contract, the OCEAN CARRIER does so not only on its own behalf, but also as agent and trustee for each of the persons and companies described above, all of whom shall be deemed parties to the contract evidenced by this bill of lading.

7. LIBERTIES

The OCEAN CARRIER may substitute another vessel or forward the GOODS by subsequent vessel or vessels, or before or after the commencement of the voyage, may transfer the GOODS from point of receiving to point of loading or from point of discharge to point of delivery or from one dock to another, by any usual means of conveyance, or may forward and/or relay the whole or any part of the GOODS to any other vessel, whether operated by the OCEAN CARRIER or by others at the original port of shipment or at any other place or places and when necessary may forward the GOODS by any means. Any and all rights and exemptions accorded to the VESSEL in this bill of lading shall likewise apply to any of the conveyances mentioned in this clause.

In any situation whatsoever, including but not limited to political disturbances, strikes or work stoppages or closures or blockages of waterways, which in the judgment of the OCEAN CARRIER or Master, is likely to give rise to risk of capture, seizure, detention, damage, delay or disadvantage to the vessel, cargo and/or those on board, the OCEAN CARRIER or Master shall have the right to stop or delay the vessel awaiting removal of any such hindrance or obstruction, or to return the GOODS to the port of shipment, or to proceed via any other route, or to transfer the GOODS to crafts off shore and forward them by any means of conveyance to destination, all at the risk and expense of the MERCHANT. All storage charges in connection therewith, as well as all cost and expenses of forwarding and/or relaying shall be for the account of the MERCHANT and shall constitute a lien on the GOODS.

8. OCEAN CARRIER'S RESPONSIBILITY

The OCEAN CARRIER'S responsibility with respect to the GOODS shall in all cases, including where the GOODS are lost or damaged while in the custody of the INLAND CARRIER, be governed by COGSA or the Hague Rules, whichever is applicable, as provided in Clause 2 herein. The OCEAN CARRIER shall be entitled to the benefit of all limitations and exceptions from liability contained in COGSA or the Hague Rules including, but not limited to, those set forth in 46 USC sec 1304 (2) (a), (b), (d) - (k), (m) - (q), and Articles 4(2) (a), (b) (d) - (k) and (m) - (q), respectively.

The OCEAN CARRIER does not undertake that the GOODS shall arrive at the port of discharge at any particular time or in time to meet any particular market or use, and the OCEAN CARRIER shall not be responsible for any direct or indirect loss or damage which is caused through delay.

Nothing herein shall be deemed a waiver of any rights Westwood Shipping Lines may have against other carriers for indemnity or otherwise.

9. DESCRIPTION AND MARKINGS, WEIGHTS, ETC.

In no event shall the OCEAN CARRIER be liable for loss or damage to any contents not specified on the face hereof. In the absence of notations on this bill of lading and on the covering or containers of the GOODS that they are fragile or breakable or need special handling or stowage, OCEAN CARRIER may give the GOODS the care, handling and stowage appropriate to ordinary cargo. The MERCHANT warrants and agrees that the OCEAN CARRIER may assume that the GOODS are packed in the best approved method for goods of their type, and that the OCEAN CARRIER shall not be obligated to give them any care, handling or stowage beyond that appropriate to goods so packed.

With respect to GOODS shipped in containers, whether or not furnished by the OCEAN CARRIER, the OCEAN CARRIER shall not be responsible for the safe and proper packing, stuffing or stowing of goods in containers when done by the MERCHANT, consolidator or others on their behalf; and no responsibility shall attach to the OCEAN CARRIER for any loss or damage caused to the contents by shifting, overloading or improper packing, stuffing or stowing of such containers. The loading of such containers by the MERCHANT, consolidator or others on their behalf shall be *prima facie* evidence that they were sound and suitable for use. Such containers shall be properly sealed before shipment and the seal reference and identification reference on the container shall be shown herein.

The MERCHANT further agrees to be responsible for any damage, loss, delay or expense whatsoever to the VESSEL, other property, or to persons, resulting from any defect in the GOODS, shipper's packaging, securing and containerization.

10. SPECIAL CONTAINERIZED AND PERISHABLE GOODS

The OCEAN CARRIER shall have the right to carry fruits, vegetables, meats and any goods of a perishable or special nature in ordinary compartments, ordinary dry cargo containers or on deck and without special cooling, heating or ventilation facilities or attention unless this bill of lading contains a typewritten provision on the face hereof that goods will be carried in refrigerated or heated or ventilated spaces or container. Where a carrying temperature is noted on the face thereof, the OCEAN CARRIER shall exercise reasonable care to maintain the temperature at plus or minus two degrees Celsius from the noted temperature.

Unless a special agreement is made and inserted in this bill of lading the OCEAN CARRIER does not undertake and shall not be liable for failure to give the GOODS, whether or not of a perishable or special nature, any unusual or special care, handling, stowage, or facilities not given ordinary non-perishable general cargo, and the MERCHANT represents and warrants the GOODS do not require any such special care or facilities.

11. GENERAL AVERAGE

General average shall be adjusted, stated and settled according to the York/Antwerp Rules of 1974, at such port or place in the United States as may be selected by the OCEAN CARRIER and as to matters not provided for by these rules according to the laws and usage at the port of New York. Anything in this bill of lading to the contrary notwithstanding the cost of handling on board or discharging cargo, fuel or stores, whether at port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable the vessel to be repaired or remedied, if the repairs and/or restowage were necessary for the safe prosecution of the voyage.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the OCEAN CARRIER is not responsible, the GOODS and the MERCHANT, jointly and severally, shall contribute with the OCEAN CARRIER in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be incurred and shall pay salvage and special charges incurred in respect of the GOODS. If a salving ship is owned or operated by the OCEAN CARRIER, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

12. BOTH-TO-BLAME COLLISION

If a VESSEL comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, mariner, pilot or servants of the OCEAN CARRIER in the navigation or in the management of the VESSEL, the MERCHANT will indemnify the OCEAN CARRIER against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever to the MERCHANT paid or payable by other or non-carrying vessel or her owners to the MERCHANT and set off, recouped or recovered by other or non-carrying vessel or OCEAN CARRIER.

13. FREIGHT

Full freight to the port of discharge shall be considered completely earned on receipt of the GOODS by the OCEAN CARRIER, even if the VESSEL and/or goods are damaged or lost, or the voyage is changed, frustrated or abandoned.

FREIGHT may be calculated on the basis of any particulars concerning the GOODS furnished by the MERCHANT, but the OCEAN CARRIER may at any time weigh, measure and value the GOODS and open packages, containers or trailers to examine contents. If the MERCHANT'S particulars are found to be erroneous and additional freight is payable, the MERCHANT shall be liable for the additional freight and any expense incurred in examining, weighing, measuring and valuing the GOODS.

All such charges shall be paid in full without offset, counter-claim or deduction in the currency named on this bill of lading, or at the OCEAN CARRIER'S option in another unblocked currency of the OCEAN CARRIER'S choice. Conversion to an unblocked currency which is different than the bill of lading currency will be made at the highest US dollar selling rate of exchange effective on the third business day prior to the VESSEL'S departure from the first port of load for export cargo or for import cargo on the third business day prior to the arrival of the VESSEL at the first port of discharge.

The MERCHANTS shall be jointly and severally liable to the OCEAN CARRIER for the payment of all freight, charges, demurrage, deadfreight and other amounts due the OCEAN CARRIER and for failure of any or all to perform his or their obligations under the provisions of this bill of lading and they shall indemnify the OCEAN CARRIER against and hold it harmless from all liability, loss, or damage which the OCEAN CARRIER may sustain or incur arising or resulting from any such failure of performance by the MERCHANT.

Payment of freight to a freight forwarder or broker shall not be considered payment to the OCEAN CARRIER and shall be made at the MERCHANT'S sole risk.

The OCEAN CARRIER shall have a lien on the GOODS which shall survive delivery for all freight, and monies due the OCEAN CARRIER from the MERCHANT under this bill of lading, including the cost and expenses of exercising such lien, and it may without notice enforce this lien by public or private sale of the GOODS.

14. VALUATION

It is agreed and understood that the meaning of the word "package" includes containers, vans, trailers, pallets and unitized cargos and all pieces, articles or things of any description whatsoever except goods shipped in bulk.

In the event of any loss or damage to goods exceeding in actual value $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight units, the value of the GOODS shall be deemed to be $500 per package or per customary freight unit as the case may be, and OCEAN CARRIER'S liability, if any, shall be determined on the basis of a value of $500 per package or per customary freight unit unless the nature of the GOODS and a higher value shall be declared by the MERCHANT in writing before shipment and inserted herein and extra charges paid. Charges for excess value declarations shall apply as per OCEAN CARRIER'S tariff. In the event of a higher value being declared by the MERCHANT in writing and inserted herein and extra freight being paid thereon if required, the OCEAN CARRIER'S liability, if any, for loss or damage to or in connection with the goods shall be determined on the basis of such declared value and pro rata of such declared value in the case of partial loss or damage, provided such declared value does not exceed the actual value of the GOODS.

15. NOTICE OF LOSS OR DAMAGE

Unless written notice of loss or damage and the general nature thereof be given to the OCEAN CARRIER or its agent at the port of discharge before or at the time of the removal of the GOODS into the custody of the person entitled to delivery thereof under this bill of lading, such removal shall be *prima facie* evidence of the OCEAN CARRIER'S delivery of the GOODS as described in this bill of lading. If the loss or damage is not apparent, written notice must be given within three days of delivery.

16. TIME FOR SUIT

The OCEAN CARRIER and the VESSEL shall be discharged from all liability for any loss or damage, misdelivery, delay, or any claim of whatsoever kind, unless suit is brought within one year after the delivery of the GOODS or the date when the GOODS should have been delivered.

17. DISCHARGE AND DELIVERY

The Port authorities are hereby authorized to grant a general order for discharging immediately after the arrival of the VESSEL. The VESSEL may commence discharging immediately on arrival, and discharge continuously day and night, Sundays and holidays included, any custom of the port to the contrary notwithstanding.

At ports and places of discharge where the OCEAN CARRIER is required to discharge cargo into lighters or other craft by local law, local authorities or local custom, or where it has been so agreed or where piers and wharves which the VESSEL can reach, lie at or depart from always afloat are not available, or where prevailing conditions at the time render discharge to a pier or wharf dangerous or imprudent or would subject the VESSEL, GOODS and cargo of others to abnormal delay, the MERCHANT shall be required to furnish lighters or other craft and take delivery alongside the VESSEL in such lighters or craft from the VESSEL'S tackle at the risk and expense of the GOODS. In such cases, if MERCHANT fails or refuses to provide lighters or other craft, the OCEAN CARRIER acting as agent for the MERCHANT, may engage lighters or craft for the risk and account of the GOODS, and upon discharge of the GOODS into such lighters or craft, performance hereunder and delivery of the GOODS shall be completed and the OCEAN CARRIER shall not be under any further responsibility with respect to the GOODS.

18. STOWAGE

The OCEAN CARRIER does not guarantee underdeck stowage and shall have the right to carry containers, break bulk goods and yachts on deck without notice to the MERCHANT or any notation on the face hereof.

19. SPECIE AND VALUABLES

The OCEAN CARRIER shall not be liable for loss of or damage to gold, silver, precious stones or metals, jewelry, or treasures of any kind, bank notes, securities, silks, furs, lace, pictures, plates, china, glass, statuary or any article specified in Section 4281 of the Revised Statutes of the United States unless the OCEAN CARRIER is notified in writing at the time of shipment, and bills of lading are signed therefor, in which their nature and value are expressed, and extra freight paid for the assumption of extraordinary risk, and such articles will not in any case be loaded or landed by the OCEAN CARRIER. No such valuables shall be considered received by OCEAN CARRIER until brought aboard the ship by MERCHANT and put in the actual possession of, and a written receipt therefor is given by, the Master or other officer in charge. Such valuables will only be delivered by the OCEAN CARRIER aboard the vessel on presentation of bills of lading properly endorsed and upon such delivery on board the OCEAN CARRIER'S responsibility shall cease. If delivery is not so taken promptly after the VESSEL'S arrival at the port of discharge, the GOODS may be retained aboard or landed or carried on, solely at the risk and expense of the GOODS.

20. DELIVERY BY MARKS

The OCEAN CARRIER shall not be liable for failure to deliver in accordance with leading marks unless such marks shall have been clearly and durably stamped or marked upon the GOODS by the MERCHANT before shipment in such a manner as to clearly identify such GOODS and their port of discharge. GOODS that cannot be identified as to marks and unclaimed GOODS not otherwise accounted for may at OCEAN CARRIERS option be allocated for completing delivery to the various consignees of goods of like character in proportion to any apparent shortage.

21. FINAL AGREEMENT

All agreements on freight engagements for the shipment of the GOODS are superseded by this bill of lading, and all its terms, whether written, typed, stamped or printed are accepted and agreed to by the MERCHANT to be binding as fully as if signed by the MERCHANT, any local customs or privileges to the contrary notwithstanding. If required by the OCEAN CARRIER, one signed bill of lading duly endorsed must be surrendered to the agent of the VESSEL at the port of discharge in exchange for delivery order.

ORIGINAL
BILL OF LADING

WESTWOOD SHIPPING LINES®

Shipper/Exporter (Complete Name and Address) [redacted]	Booking No/Job Ref: WEE000005318
	Bill of Lading No.: WWSUTS012VHA0048
	Invoice No.
	Export References: 1. Freight Forwarder Ref: 00511430/00511447
	2. Shipper Reference: 00511269
Consignee (Complete Name and Address): TO THE ORDER OF THE SHIPPER	Forwarding Agent FMC No. [redacted]
	Point and Country of Origin of Goods: CANADA
Notify Party (Complete Name and Address): [redacted] 16-1, KONAN 2 CHOME, MINATO-KU, TOKYO, JAPAN, 108-0075	Also Notify / Special Instructions

This is Exhibit "B" referred to in the affidavit of Noel Asirvatham made before me on Feb. 16 2009

A Commissioner for taking Affidavits for British Columbia

Pre-Carriage	Place of Receipt: VANCOUVER, BC, CANADA		
Vessel: SANTIAGO	Voy No.: 012W	Port of Loading: VANCOUVER, BC, CANADA	Loading Pier/Terminal
Port of Discharge: HAKATA, JAPAN	Place of Delivery: HAKATA, JAPAN	Type of Move: LOC	CY-CY

CARRIER S RECEIPT		PARTICULARS FURNISHED BY SHIPPER	SHIPMENT REC D Jan-06-09	
Marks & Nos./Container Nos	No of Pkgs	Description of Packages and Goods	Gross Weight	Measurement
	13	40ST CONTAINERS	473202KGS	
	7	40HC CONTAINERS		
		SPF KD HT LUMBER		
511269 511447		372 PACKAGES 65,880 PIECES		
511430		GROSS(GR:) 616.128 MFBM		
		NET(NT:) 406.613 MFBM		
		NET(NT:) 959.500 M3		
		SUMMARY ID NO.:SUM0277		
		FREIGHT PREPAID		
		SHIPPER'S LOAD, COUNT AND STOW		
		SHIPPED ON BOARD DATE		
		Jan-12-2009		

Container #	Seal #	PACKAGES	LOAD WGT KGS
CAXU7231005	3217608	20	25,045
FSCU4183655	3217722	12	21,319
INBU4950504	3217732	12	21,320
INBU5087810	3217613	20	24,518
MAXU4511173	3217687	20	25,045
MAXU4598450	3217678	18	25,108
TRIU5498970	3217705	20	25,045
TRLU4415208	3217710	17	23,021
TRLU4642177	3217654	12	21,320
TTNU4036289	3217719	12	21,320
TTNU4545877	3217787	12	21,320

* SEE ATTACHED RIDER

For US exports only: These commodities, technologies, or software were exported from the United States in accordance with the Export Administration Regulations, Diversion contrary to U.S. law prohibited.

Shipper's Declared Value $: **If NO VALUE DECLARED, LIABILITY LIMITED PER CLAUSE 14**

Freight Payable At/By: SEATTLE

Freight & Charges	Weight/Measurement	Rate	Per	Prepaid	Collect
CW5071 4407000000					

"Received in external good order and condition, except as otherwise described herein, the number of packages listed in the Carrier's Receipt, said to contain the goods described in the Particulars Furnished by Shipper (contents, weight and measurement are unknown to Carrier) to be transported to the port of discharge, or to such other place authorized or permitted herein, or so near thereto as the vessel can get, lie and leave, always in safety and afloat and without delay, and there to be delivered to consignee or authorized receiver, or on-carrier on payment of all charges due thereon. Carrier shall have right to carry containers on deck per clause 10 and 18."

Dated at: SEATTLE

By WESTWOOD SHIPPING LINES, INC. AS CARRIER

In ACCEPTING THIS BILL OF LADING, the shipper, consignee and owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions whether written, printed or stamped on the front or back hereof, any local customs or privileges to the contrary notwithstanding.

by

IN WITNESS WHEREOF the carrier by its agents has signed 03 bill(s) of lading, all of this tenor and date, one of which being accomplished, the others to stand null and void.

Date: Jan-12-09

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1600-05
STYLE OF CAUSE:	Cami Automotive, Inc. and Aisin World Corporation of America v. Westwood Shipping Lines Inc., AS Borgestad Shipping and CN AND BETWEEN: Westwood Shipping Lines Inc. Third Party Plaintiff And Canadian National Railway Company Third Party
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	February 24-26, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	BLANCHARD J.
DATED:	June 24, 2009

APPEARANCES:

Barry Oland and Leona Baxter	FOR THE PLAINTIFFS
Tom Keast and Andrew Epstein	FOR THE DEFENDANT CN RAIL
Graham Walker and Dionysios Rossi	FOR THE DEFENDANT WESTWOOD SHIPPING

SOLICITORS OF RECORD:

Oland and Co. 604-683-9621	FOR THE PLAINTIFFS
Watson Gopel Maledy 604-686-1301	FOR THE DEFENDANT CN RAIL
Borden Ladner Gervais 604-687-5744	FOR THE DEFENDANT WESTWOOD SHIPPING