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## Limitations of Warehouse Liability

by Daniel W. Raab, Esq.



In the past, I have discussed limitations of liability with regard to the Carmack Amendment and the Carriage of Goods by Sea Act. In this column, I am reviewing limitations of liability found on warehouse receipts.

If your client has a warehouse, he should make sure that he has limitations of liability in its warehouse receipt.

There are some Florida cases dealing with limitations of liability in a warehouse receipt. The case of *San Fisket, Inc. v. Atlanta Cold Storage, Corp.*, 347 So.2d 647 (Fla. 3<sup>rd</sup> DCA 1977), is a Florida case that held a low limit of liability. There was also a case in New York entitled *United States Gold Corp. v. Federal Express Corp.* 719 Fed. Sup. 1217, 1226 (S.D. NY, 1989), which specifically held that under the Uniform Commercial Code provisions adopted in both New York and Florida, a bailee may contractually limit its liability for negligence and refer to U.C.C. § S-309 (2).

If your client asks you to draft a warehouse receipt, you should make your client is aware that it can put in limitations of liability. In fact, your insurance carrier would prefer you to include such limitations of liability.

The one conceivable way around this could be if the warehouse itself was active in creating a conversion. See the case of *ICC Metals, Inc. v. Municipal Warehouse Co.*, 50 NY2d 657 (New York, 1980). The actual warehouse statutes state that the bailee's own conversion cannot be limited by the warehouse receipt. It is not necessarily easy to prove conversion.

There are organizations that are involved with creating standardized warehouse receipts. A standard form can be found in *Transportation Terms & Conditions*, 2<sup>nd</sup> Edition at p. 105. The standard warehouse agreement provides an opportunity for the depositor to declare a higher value. When you get a case like this, it is important to read the front and the back of the warehouse receipt.

Please be advised that at times many of the conditions refer to an online location. So if you are making a claim and you are informed that the limitations of liability are online, you should review the terms and conditions that are online. The case of *One Beacon Insurance Co. v. Crowley Marine Services*, 648 F.3d 258 (5<sup>th</sup> Cir. 2011), held that you could incorporate online terms into a contract. Another case which held this specifically with regard to a bill of lading is the case of *Ana Distrib. v. CMA-CGM (Am.) Inc.*, 329 F. Supp. 2d 565 (D.N.Y. 2004).

There is no reason to see why these legal principles would not be extended to a warehouse. This would be consistent with advances in modern day technology. Of course the safest thing to do is to have all of the terms and conditions on the front and the back as well as online, however it is likely that either online and/or on the back of the document should provide an adequate basis for limiting damages.

So if you have a claim against a warehouse, check the warehouse receipt. If you represent a warehouse, then check to see if the warehouse has a standard warehouse receipt. It is also a good idea for a party depositing cargo in the warehouse to have its own insurance given the limitations of liability that are on warehouse receipts.

*Daniel W. Raab, Esq. is an attorney with offices in Miami Dade County, Florida. He is a graduate of the Johns Hopkins University and the University Of Miami School Of Law. He is the author of Transportation Terms and Conditions, Chapter 47 of the New Appleman Practice Law Guide, Chapter 5 of the Benedict on Admiralty Desk Reference Book, and a Contributing Author to Goods In Transit. (See below). He has taught as an Adjunct Professor of Law at the University of Miami School of Law, St. Thomas University School of Law, and the Florida International College of Law.*