

1st International Cargo Recovery Conference Japan

OKABE & YAMAGUCHI

S h u j i Y a m a g u c h i

NOTE: ©2008 Information herein is simplified and provided for discussion purposes only – not to be construed or utilized as legal advice. Counsel should be consulted for specific claims.

I Marine Claim

- ◆ HAGUE VISBY RULES
- ◆ International Carriage of
Goods by Sea Act (COGSA)

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1) Recoverable Amount

Cargo value at discharging place
market value
usually CIF value

COGSA 12-2

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Limitation

666.67 SDR per package
2 SDR per kilo
Whichever higher
COGSA 13 para 1

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The Container

The number of packages or units
enumerated in the B/L

→ package numbers in B/L

Not enumerated

→ Container

COGSA 13 para 3

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Breaking Limitation

Act or omission of the carrier
done with intent to cause
damage or recklessly and with
knowledge that damage would
probably result.

COGSA 13-2

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2) The notice

within 3 days
of the delivery

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3) The time bar

One year

COGSA Art 14

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4) The application of COGSA

US governing law clause valid

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- ◆ US local clause with Japanese governing law clause
- ◆ US package limitation can be broken
 - ➔ 666.67 SDR per package
 - or 2 SDR per kilo

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5) Jurisdiction Clause

The exclusive jurisdiction clause valid
clearly specified
not extremely unreasonable or
against the public policy.

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6) Lien

Cargo Claims



Lien over the ship regardless of
governing laws or B/L
jurisdiction one year time limit.

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II Inland Claim

Commercial Code

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1) Claim based on negligence

Carrier, their forwarder,
their employee

other persons involved.

The carrier should prove no
negligence existed.

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2) Claim Amount

Price of the goods
at the arrival the end place
no limitation

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Limitation in contract
may be overcome
if the carriers
themselves were negligent.

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Gross negligence



all the loss
can be recoverable

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Rail Road

Limitation ¥40,000 per kilo

Not more than ¥4,000,000 per contract

Animals	Cow or Ox	¥250,000 per head
	Calf	¥100,000 per head
	Horse	¥150,000 per head
	Pig	¥25,000 per head
	Dog	¥30,000 per head
	Other beast	¥20,000 per head
	Other animal	¥2,000 per kilo
		not more than ¥ 200,000

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Notice

2 weeks

Concealed damage

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Time Bar

1 year

if carrier knows the cargo damage,
5 years time limit

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III Air Claim

Montreal Convention

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Strict Liability

Exemption

- (a) inherent defect quality or vice of cargo
- (b) defective packing
- (c) war
- (d) act of authority

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Limitation

17 SDR per kilo

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Notice

14 days

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Time Bar

2 years

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IV Japanese Jurisdiction

Proceedings usually take
1 year or 1 year and half

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no - cure no - pay
or
Time charge

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Marine Claim

Package limitation is
666.67 SDR per package
2 SDR per kilo
higher than US law

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Inland

No limitation by law
The limitation can be
broken to claim against
the actual inland carrier.

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Court Charge

less than ¥100,000 (\$1,000)	¥1,000 (\$10
¥1million (\$10,000)	¥10,000 (\$100
¥5million (\$50,000)	¥30,000 (\$300
¥10million (\$ 1million)	¥50,000 (\$500

Plus postage \$100

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