HIGH COURT OF AUSTRALIA

Public Information Officer

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SIEMENS LTD v SCHENKER INTERNATIONAL (AUSTRALIA) PTY LTD AND SCHENKER INTERNATIONAL (DEUTSCHLAND) GMBH

Siemens could recover just a portion of the cost of damage to a shipment of telecommunications equipment because a limit on liability for such loss while the goods were airlifted from Germany to Melbourne applied all the way to the transport company's warehouse, the High Court of Australia held today.

In 1996 Siemens Australia imported from its German parent a consignment of equipment as part of a contract with Telstra. Transport was undertaken by the German and Australian arms of Schenker. Siemens and Schenker had had a standing arrangement since the 19th century. At Tullamarine Airport the consignment was collected by Schenker Australia for delivery to its warehouse. Some equipment fell off the truck due to the driver's negligence.

Siemens Australia sued Schenker Australia and Schenker Germany in the Supreme Court of New South Wales. The Schenker companies did not dispute their liability for the accident but sought to limit it either by reference to the International Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention) or by reference to the air waybill issued by Schenker Germany. The Court rejected both limitation provisions and awarded Siemens $1.69 million including interest. The Court of Appeal agreed the Warsaw Convention did not apply but held that the waybill governed the rights and obligations of the parties, including limitation on liability, and reduced damages to $US74,680 plus interest. Siemens Australia appealed to the High Court which upheld the Court of Appeal decision.

The High Court agreed the Warsaw Convention did not apply beyond the limits of an aerodrome and that the waybill did. Clause 4 of the waybill specified that where the Warsaw Convention did not apply, the carrier's liability was limited to $US20 per kilogram of goods damaged or lost. Siemens Australia argued that the waybill only applied to "carriage by air". The Schenker companies argued that the waybill continued to operate at least until the consignment was delivered to the warehouse so it applied to damage to the consignment en route there.

The High Court held that the Schenker argument was valid because Clause 4 operated only in respect of carriage to which the Warsaw Convention did not apply so "carriage" had a different meaning. Secondly, the terms of the standing agreement appeared to include transport to the warehouse. Thirdly, the statutory regime permitted no other possibility as Schenker Australia had permission under the Customs Act to have customs inspections performed at the warehouse, provided goods were taken directly there. Therefore, the damage sustained while complying with such requirements fell within the terms of clause 4 of the waybill.

The High Court, by a 3-2 majority, dismissed the appeal with costs.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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