A look at some common CMR issues

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Prudent financial risk control requires owners of goods in transit to have those goods insured under a marine cargo policy rather than expect to recover claims in respect of loss or damage against the Carrier. Such cover, typically on an "all risks" basis, is readily available generally in the marine market on either a single order or an annual turnover basis. That a Carrier should be entitled to limit his liability for loss or damage to goods in transit is a recognised principle of both National and International Law. As with other International Transport Conventions such as Hague-Visby and Montreal which govern the rights and liabilities of parties to the contract of carriage by Sea and by Air respectively, the CMR convention determines the rights and liabilities of the parties including importantly the Carriers right to limit or exclude liability, in contracts for the international carriage of goods by road. **"The Convention on the Contract for the International Carriage of Goods by Road (CMR) done at Geneva on the 19th of May 1956"** to give it it's proper title and the protocol thereto of 1978 were incorporated into Irish Law by the "International Carriage of Goods by Road Act, 1990".

The Convention applies to every contract for the carriage of goods by road in vehicles for reward between countries of which at least one is a contracting party to the Convention. The 1990 Act gives the Convention the force of Law in Ireland and stipulates that Judicial Notice shall be taken of it. In effect this means that the Convention governs every contract for the movement of commercial goods by road into or out of Ireland with the exception of Ireland / UK traffic irrespective of the intention or otherwise of the parties.

The Shipping and Road Haulage Communities will be fully familiar with the broader terms and conditions of CMR but I venture to suggest that closer attention to what for the sake of argument I would refer to as the "housekeeping" aspects of CMR could contribute to much smoother and more cost efficient dispute resolution.

Ideally where goods are lost or damaged in transit a Cargo insurer should respond to the goods owner's claim and under the doctrine of subrogation recover, in the event of any liability established on the part of the Carrier any such contractual entitlement from the Carrier's Liability insurer. Hauliers are after all not in the Insurance business. Adverse weather and road conditions, parking issues and statutory rest requirements and an increasingly sophisticated hijacking environment particularly for target goods is plenty to contend with.

Judicial interpretation of the Convention generally tends to focus in on such areas as Articles 17, the Liability of the Carrier (particularly what should constitute a Defence under 17 (2)) and Article 29 and what constitutes "wilful misconduct" such as to deprive the Carrier of the right to limit liability, which liability in the absence of any such "wilful misconduct" is limited to 8.33 SDRs per kilogram of gross weight as legislated for by the protocol to the Convention.

To return to the "housekeeping aspects" though, it would seem to me that it could only benefit the parties to the contract, shipper and carrier alike and their respective Underwriters indeed were greater attention paid to the proper constitution of the Consignment Note as provided for in the Convention's Articles 4 to 9 inclusive.

Apart from effectively underlining the statutory application of the Convention regardless of what is understood between the parties, Article 4 is somewhat unhelpful from the practitioner's perspective in some respects in providing that;

"The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this convention".

In practice the more common problems experienced when attempting to investigate and resolve where the relevant responsibilities lie under a particular CMR contact are come across in the areas of;

- The production of the three original copies of the Consignment Note as legislated for in Art 5.
- The inclusion in the Consignment Note of the names and addresses of all the Carriers (*or parties who could be deemed to be Carriers) at any stage in the transit (Art 6 (1) inter alia).
- **(where the party who enters into the contract with the Shipper does not intend to carry the goods himself but rather subcontract to another carrier and intends thereby to act only as a freight forwarder, that party should ensure that the shipper understands that to be the case and is aware of any applicable underlying freight forwarding conditions. There is jurisprudence to suggest that even in such circumstances the freight forwarder might be deemed to be a first carrier under the terms of the Convention and that could have significant implications for his liability policy cover in the context of any CMR liability attributed to him in that eventuality.)*
- The senders instructions if any to the Carrier regarding insurance of the goods (Art 6 (2) inter alia).
- The adequate use of the reservations mechanism by the contracting or successive carriers (Art 8 & 9).One of the three original copies of the CMR Consignment note should accompany the goods from departure to final delivery and successive carriers should clause the consignment note if they have any reservations as to the condition of the goods when they take over the carriage. (This is crucial to the operation and interpretation of the provisions of Chapter V1 of the Convention on the position in relation to successive carriers)

Unquestionably were these details attended to as envisaged by the drafters of the Convention, the day to day dispute issues would not arise to anything like the same extent. The message for Goods owners is "have your goods insured rather than rely on any insurance the Carrier may have." The message for the Carrier is "ensure the incorporation of your trading terms and conditions into any and every contract for domestic haulage, ensure that when acting effectively as a freight forwarder in subcontracting to an actual carrier that appropriate freight forwarding terms and conditions are incorporated to cover that eventuality and finally ensure that you have appropriate CMR cover if you participate in any capacity in the international Carriage of goods by road.

(Whilst CMR applies statutorily to international road haulage only, there is nothing to prevent the voluntary incorporation of it's terms and conditions into particular domestic or Ireland / UK contracts. Known in the industry as "contract CMR" the onus is on the parties to demonstrate the proper incorporation of the CMR terms in the same way as for example IRHA or any other contractual terms need to be demonstrably incorporated if sought to be relied upon.)