

Shanghai Maritime Court, the People's Republic of China

Civil Judgment

(2006) Hu Hai Fa Shang Chu Zi No.266

Plaintiff: Touchroad International Logistics Center (China) Ltd.

Domicile: Rm. 1101, 11/F, Hollywood Plaza, 610 Nathan Road, Mong Kok, Kowloon, HKSAR, PRC

Legal representative: He Liehui, director of the said company

Agent ad litem: Benjamin Lau

Defendant: Pacific International Lines (Pte) Ltd.

Domicile: 140 Cecil Street #Q3-00, PIL Building, Singapore 069540

Legal representative: Zhang Ziqiang, Managing Director of the said company

Agent ad litem: Zhou Qi

Agent ad litem: Zhou Ping

Defendant: Pacific International Lines (China) Ltd., Shanghai Branch

Domicile: Rm. 601, Shanghai Bund International Tower, 99 Huangpu Rd, Hongkou District, Shanghai, PRC

Defendant: Pacific International Lines (China) Ltd.

Domicile: Rm. A, 10/F, Block D, Fuhua Mansion, No. 8 Chao Yang Men Bei St., Dong Cheng District, Beijing, PRC

Legal Representative: Zhang Songsheng, Board Chairman of the said company

Agent ad litem: Zhou Qi

Agent ad litem: Zhou Ping

The Plaintiff, Touchroad International Logistics Center (China) Ltd., resorted to this Court on April 26, 2006 against the Defendants, Pacific International Lines (Pte) Ltd. (hereinafter referred to as PIL), Pacific International Lines (China) Ltd., Shanghai Branch (hereinafter referred to as PIL Shanghai) and Pacific International Lines (China) Ltd. (hereinafter referred to as PIL China), in a cause of action for indemnification for loss and damage of the cargoes under an ocean shipping contract. Upon accepting the action on April 29, 2006, this Court duly formed a collegial panel. During the period of trial, the Defendants, PIL China and PIL raised objections to jurisdiction respectively on May 23, 2006 and June 20, 2006 on the ground of the provisions on jurisdiction as specified on the back of the B/L, according to which the Chinese courts shall have no jurisdiction on the case in question. On July 3, 2006, the Court ruled to dismiss the objection to jurisdiction as raised by such two Defendants. PIL appealed against the ruling to the Higher People's Court of Shanghai Municipality on August 7, 2006, and the Higher People's Court of Shanghai Municipality ruled to dismiss the appeal and sustained the original ruling on October 9, 2006. This Court tried the case in public on November 15, 2006. Benjamin Lau, Agent ad litem of the Plaintiff, and Zhou Qi and Zhou Ping, Agents ad litem of the Defendants, PIL and PIL China appeared in the Court to participate in the proceedings, while the Defendant PIL Shanghai was in default of appearance upon due summon by this Court, and the Court made a trial by default. Trial of the case has been concluded so far.

The Plaintiff, Touchroad International Logistics Center (China) Ltd., alleges that in March 2005, the Plaintiff purchased from Zhejiang Daheng Light Textile Industry Co., Ltd. (hereinafter referred to as Daheng Company) two batches of garments and polyester quilts valued US\$189,034.4 FOB Shanghai. And then the Plaintiff resold the said cargoes to Jamflash Trading C.C. in South Africa at a price of US\$198,486.12. The Plaintiff entrusted PIL to convey the said cargoes. On March 26, 2005, PIL Shanghai issued two sets of B/Ls Nos. SHAJNB050000171 and SHJNB050000174 on behalf of PIL. The B/Ls specified that the shipper was the Plaintiff, the consignee was to order, the port of loading was Shanghai, China, the port of discharge was Durban, South Africa, the place of delivery was a container yard in Johannesburg, South Africa, and the said cargoes were placed in two containers Nos. PCIU9957523 and PCIU9753113. However, after the cargoes were discharged in Durban and forwarded to Johannesburg by train, a train derailing accident occurred, which caused loss and damage to the cargoes of the Plaintiff. Jamflash Trading C.C. refused to accept the said cargoes on the ground of severe damage and delayed delivery of them. Upon negotiation between the Plaintiff and PIL, the said cargoes were shipped back to Shanghai, China from Port Elizabeth, South Africa on January 11, 2006. After the cargoes were shipped to Shanghai in February 2006, upon inspection by an inspection institution, loss of the cargoes was appraised to be US\$100,500. The Plaintiff alleges that PIL, as the carrier, failed to perform its obligation of taking care of the cargoes properly and made the Plaintiff's cargoes damaged, and PIL Shanghai, as the B/L issuer, shall, jointly and severally with PIL, indemnify the Plaintiff for the economic losses incurred in accordance with the provisions of the maritime law. Furthermore, whereas PIL Shanghai is a branch of PIL China, in accordance with the Chinese laws, PIL China shall also jointly and severally indemnify the Plaintiff for the losses incurred. The Plaintiff requests the Court to order the three Defendants to indemnify the Plaintiff for the cargo loss of US\$68,370.9, the outward freight of US\$24,218, the back freight of US\$3,030, the inspection fee of RMB15,800 (equivalent to US\$1,962.73 at an exchange rate of 1:8.05), and the storage fee of RMB23,400.2 (equivalent to US\$2,906.86 at an exchange rate of 1:8.05).

The Defendant PIL answers in the hearing that what the inspection report reflects is the loss after the cargoes were shipped back to Shanghai Port, there had been a long time between the inspection and the train derailing accident, and the cargoes had been delivered to the destination in South Africa, therefore, the inspection report cannot prove that the cargo loss was caused during the carriage by PIL. The carrier's liability for the cargo loss shall be limited to CIF price at the port of loading, and the Plaintiff's claims for such indemnification other than for shortage and direct loss arising from the damage, are beyond the indemnification coverage of the carrier.

The Defendant PIL China answers in the hearing that PIL Shanghai just issued the B/Ls on behalf of PIL, and it has neither carried the cargoes actually nor entered into any ocean shipping contract with the Plaintiff; therefore, PIL Shanghai shall not indemnify the Plaintiff therefor, and PIL China, as the superior legal person of PIL Shanghai, shall not be liable therefor either.

The Plaintiff PIL Shanghai has neither lodged any answer brief or evidence, nor appeared in the Court to participate in the proceedings, so it shall be deemed that PIL Shanghai has waived its rights of evidence adduction, cross examination and reply thereto.

During the court hearing, neither the Plaintiff nor the Defendants have any objection to the following facts: in March 2005, the Plaintiff entrusted Shanghai Sea & Wind International Logistics Co., Ltd. to book space with PIL Shanghai for the shipping of a batch of garments and polyester quilts. On March 26, 2005, PIL Shanghai issued two sets of B/Ls Nos. SHAJNB050000171 and SHJNB050000174. The B/Ls specified that the shipper was the Plaintiff, the consignee was to order, the notify party was RIAANBERGH & ASSOCIATES, the port of loading was Shanghai, China, the port of discharge was Durban, South Africa, the place of delivery was a container yard in Johannesburg, South Africa, and the said cargoes were placed in two containers Nos. PCIU9957523 and PCIU9753113. In the issuance column on the B/Ls, it was specified that PIL Shanghai issued the B/Ls in the capacity of an agent, and the B/Ls were with the letterheads of PIL. On March 29, 2005, Daheng Company declared to the customs of the People's Republic of China for the export of the cargoes. The declaration form showed that the total value of the cargoes was US\$189,034.4, in which men's knitted T-shirts totaled up to 27,648 at a unit price of US\$2.05; women's knitted tops totaled up to 9,792 at a unit price of US\$5.5; and polyester quilts totaled up to 14,500kg at a unit price of US\$5.4138. In April 2005, the cargoes were discharged in Durban, South Africa and forwarded to Johannesburg, South Africa. During the trip, a train derailling accident occurred, and Foreshore Ships Agency, the agent of PIL in the port of destination in South Africa, informed RIAANBERGH & ASSOCIATES of such accident for many times. On January 11, 2006, PIL Shanghai, in the capacity of an agent, issued the original B/L No. PLZCNSHA0500121. The letter head of the B/L specified that PIL, the shipper was RIAANBERGH & ASSOCIATES, the consignee was the Plaintiff, the port of loading was Port Elizabeth, South Africa, the port of discharge was Shanghai, China, and the cargoes were placed in three containers Nos. PCIU4496964, PCIU4494513 and PCIU3958749. Moreover, the B/L specified that the said cargoes were those ever placed in two containers Nos. PCIU9957523 and PCIU9753113 and shipped to South Africa. On December 23, 2005 and February 8, 2006, Shanghai Sea & Wind International Logistics Co., Ltd. respectively paid the outward freight of US\$24,218 and the back freight of US\$ 3,030 to PIL Shanghai. On March 15, 2006, the Plaintiff paid the equivalent freight to Shanghai Sea & Wind International Logistics Co., Ltd..

On February 5, 2006, the cargoes were shipped back to Shanghai Port, China and discharged in Tenma Warehouse located in Shanghai Waigaoqiao Bonded Zone. As entrusted by the Plaintiff, China Certification & Inspection Group Shanghai Co., Ltd. inspected the cargoes on February 17, February 21 and February 24, 2006 successively, and issued an inspection report on March 14, 2006. The inspection report said that "in the process of unpacking, we found the exterior packages of the cargoes were damaged or stained to different degrees, some exterior packages were lost, and some cargoes were exposed and broken". It was concluded in the inspection report that the polyester quilts were short by 566 sets, totally lost by 144 sets, 30% devaluated due to partial stain and damage by 2,080 sets, needed to have exterior package replaced by 350 sets, and if calculated at US\$26.25 per quilt, and US\$3.11 per wrappage, the loss of quilts alone totaled up to US\$36,106; the men's garments were short by 2,911, 40% devaluated due to

partial stain and mould by 3,087, needed to have exterior package replaced by 21,650, and if calculated at US\$2.1525 per garment, and US\$0.0635 per wrappage, the loss of men's garments alone totaled up to US\$10,298.61; the women's garments were short by 1,936, 40% devaluated due to partial stain and mould by 3,563, needed to have exterior package replaced by 4,293, and if calculated at US\$5.775 per garment, and US\$0.1158 per wrappage, the loss of women's garments alone totaled up to US\$21,965.69. On May 11, 2006, the Plaintiff paid the inspection fee of RMB15,800 to China Certification & Inspection Group Shanghai Co., Ltd..

In addition, the Defendant PIL China is an independent legal entity funded and established by PIL in China, and upon authorization by PIL, PIL China has the right to issue B/Ls on behalf of PIL. The Defendant PIL Shanghai is a branch established by PIL China in Shanghai.

The foregoing facts are substantiated by the following evidences: the original B/L No. PLZCNSHA0500121 and booking note as submitted by the Plaintiff; the advices of damage accident sent by Foreshore Ships Agency, the agent of PIL in the place of destination in South Africa, to RIAANBERGH & ASSOCIATES on April 18, April 20 and May 5, 2005; the inspection report issued by China Certification & Inspection Group Shanghai Co., Ltd. on March 14, 2006; the freight invoices issued by PIL Shanghai to Shanghai Sea & Wind International Logistics Co., Ltd. on December 23, 2005 and February 8, 2006 as well as the freight invoice issued by Shanghai Sea & Wind International Logistics Co., Ltd. to the Plaintiff on March 15, 2006; the ocean shipping space booking agreement entered into between the Plaintiff and Shanghai Sea & Wind International Logistics Co., Ltd. on March 8, 2005; the export declaration form in respect of the cargo export declared by Daheng Company to the customs of the People's Republic of China; the inspection fee invoice issued by China Certification & Inspection Group Shanghai Co., Ltd. to the Plaintiff on May 11, 2006; the original B/Ls Nos. SHAJNB050000171 and SHJNB050000174 submitted by the Defendant PIL. Neither the Plaintiff nor the Defendants PIL and PIL China raise any objection to the authenticity of the foregoing evidences submitted by the other. The Court deems that the parties to a case shall have the right to reasonably dispose of their litigious rights within the scope as prescribed in the laws. Since the Plaintiff and the Defendants PIL and PIL China raise no objection to the evidences submitted by the other, the Court admits the materials into evidence and confirms the foregoing facts to which the Plaintiff and the Defendants have no objection.

In light of the statements made and evidences adduced by both parties in the process of court hearing, the points of dispute on facts of this case are the following: I. whether the cargoes were delivered or not after they had been carried into the container yard in Johannesburg, South Africa, and who placed the cargoes within the initial two containers into the three containers in which the cargoes were shipped back; II. whether the cargoes were damaged in the train derailling accident occurring in the process of carriage in South Africa or not; III. how to calculate the unit price of the cargoes; IV. whether the loss of storage fee alleged by the Plaintiff is in connection with this case or not.

I. Dispute on whether the cargoes were delivered or not after they had been carried into the container yard in Johannesburg, South Africa, and who placed the cargoes within the initial two containers into the three containers in which the cargoes were shipped back.

The Plaintiff alleges that since the cargoes failed to be delivered after they had been carried into the container yard in Johannesburg, South Africa, the Plaintiff was forced to surrender the outward B/Ls to PIL Shanghai and demanded it to ship the cargoes back as a result that the consignee had refused to take delivery of the cargoes, and the containers were replaced by the carrier. In order to support its foregoing allegations, the Plaintiff has submitted the following evidences:

Evidence I, a set of original B/Ls No. PLZCNSHAO500121, the freight invoices issued by PIL Shanghai to Shanghai Sea & Wind International Logistics Co., Ltd. on December 23, 2005 and February 8, 2006 as well as the freight invoice issued by Shanghai Sea & Wind International Logistics Co., Ltd. to the Plaintiff on March 15, 2006; the original booking note in respect of the Plaintiff entrusting Shanghai Sea & Wind International Logistics Co., Ltd. to go through the formalities of back shipment. The Plaintiff alleges that the foregoing evidences can prove that the Plaintiff was the actual principal of back shipment contract, and the Defendant PIL Shanghai withdrew the outward B/Ls from the Plaintiff and issued back B/L to the Plaintiff. The Defendants PIL and PIL China acknowledge the authenticity of the back B/L and the freight invoice. The two Defendants allege that the shipper as specified on the back B/L was RIAANBERGH & ASSOCIATES, while RIAANBERGH & ASSOCIATES was the agent of the buyer, so it can testify that the cargoes were delivered in South Africa. The two Defendants further allege that the shipping note was executed by and between the Plaintiff and Shanghai Sea & Wind International Logistics Co., Ltd.; therefore, it's difficult to identify its authenticity. The Court deems that, since the Defendants PIL and PIL China raise no objection to the authenticity of the back B/L and freight invoice, the Court admits such back B/L and freight invoice into evidence. As specified in the back B/L, such back B/L was issued by PIL Shanghai in Shanghai, China, it is obvious that the back B/L was issued not to RIAANBERGH & ASSOCIATES, the shipper as specified in the back B/L, but to the Plaintiff, which is enough to prove that the Plaintiff was the actual shipper to the back shipment contract. Although the shipping note was executed by and between the Plaintiff and Shanghai Sea & Wind International Logistics Co., Ltd., such evidence and the back freight invoice can corroborate mutually, and can substantiate the facts that the Plaintiff has ever entrusted Shanghai Sea & Wind International Logistics Co., Ltd. to book space with PIL Shanghai and to go through the formalities of back shipment, the Court admits the shipping note into evidence.

Evidence II, the photocopy of advice of refusal of cargoes issued by RIAANBERGH & ASSOCIATES on September 13, 2005. The Plaintiff alleges that, the advice of refusal of cargoes can substantiate that the buyer refused to accept the cargoes on the ground of delayed delivery by the carrier and damage of cargoes, and the cargoes were not delivered actually in the place of delivery in South Africa. The Defendants PIL and PIL China answer that the advice of refusal of cargoes is a photocopied one, and has not been certified by a notary public, so the two defendants have objection to its authenticity. The Court deems that, there is no any mark of fax on the advice of refusal of cargoes, so it shall be considered as a photocopied one. Although the

Plaintiff fails to provide the original advice of refusal of cargoes, whereas the PIL has acknowledged during the court hearing the facts that the cargoes were delayed to arrive at the place of delivery in South Africa by reason of the train derailing accident, and the cargoes were shipped back to Shanghai, China, the Court confirms the fact that the consignee in South Africa refused to accept the cargoes.

The Defendants PIL and PIL China allege that the cargoes were delivered at the place of delivery, PIL withdrew the outward B/L from the consignee, and then RIAANBERGH & ASSOCIATES entrusted PIL to ship the cargoes back, and the cargoes were reloaded into other containers by RIAANBERGH & ASSOCIATES. In order to support their foregoing allegations, the two Defendants have submitted two sets of original B/Ls Nos. SHAJNBO50000171 and SHAJNBO50000174, on the back of which the Plaintiff's seal was affixed for endorsement. The two Defendants allege that the two outward B/Ls can substantiate that B/Ls have ever been circulated, and PIL withdrew the B/Ls from the consignee in South Africa. The Plaintiff answers that, although the Plaintiff's seal was affixed on the back of the B/Ls for endorsement, but the B/Ls have not been circulated, they were surrendered to PIL by the Plaintiff to get the back B/L. The Court deems that, taking into account the undisputed facts and shipping practices, there are two possibilities for PIL withdrawing the outward B/Ls endorsed by the Plaintiff, the first possibility is the Plaintiff transferred the endorsed outward B/Ls to the consignee, and the consignee surrendered such B/Ls to PIL to take delivery of the cargoes; the second possibility is the Plaintiff surrendered the endorsed outward B/Ls to PIL to get the back B/L. However, as alleged by the two Defendants, if the cargoes were taken delivery by the consignee, and then the consignee demanded PIL to ship them back to Shanghai, China, the back B/L could not have been issued by PIL Shanghai in Shanghai, China. Obviously, there are conflicts between the facts alleged by the two Defendants and the contents specified on the back B/L; therefore, the Court does not acknowledge the facts alleged by the two Defendants.

In light of the evidences admitted, the facts found by the Court are: the cargoes in question failed to be delivered actually after they had been conveyed to the place of delivery, a container yard in Johannesburg, South Africa. Because the consignee refused to accept the cargoes, and the Plaintiff, through Shanghai Sea & Wind International Logistics Co., Ltd., surrendered the endorsed outward B/Ls to PIL Shanghai to get the back B/L issued by PIL Shanghai to the Plaintiff in Shanghai, China. Since the cargoes failed to be delivered in the place of delivery in South Africa, and the cargoes were all the time under the control of the carrier, it can be inferred that the replacement of containers must have been made by the carrier.

II. Dispute on whether the cargoes were damaged in the train derailing accident occurring in the process of carriage in South Africa or not.

The Plaintiff alleges that the cargoes were damaged in the train derailing accident occurring in South Africa, and the inspection made by the inspection institution as entrusted by the Plaintiff can truthfully reflect such loss of cargoes suffered in the accident. The Plaintiff has submitted the advices of damage accident sent by Foreshore Ships Agency, the agent of PIL in the place of destination in South Africa, to RIAANBERGH & ASSOCIATES on April 18, April 20 and

May 5, 2005, and such advices of damage accident specified that “all container operated by PIL were totally damaged”. The Plaintiff alleges that the contents on such advices of damage accident can prove the Plaintiff’s cargoes were damaged in the accident, moreover, the appearance and lead seals of the containers used by the carrier to ship the cargoes back to Shanghai, China were in good order, which can prove there was no damage to the cargoes after they had been reloaded into the containers; therefore, the inspection made by the Plaintiff in Shanghai Port can reflect the conditions of the cargoes when they were carried to the place of delivery in South Africa. The Defendants PIL and PIL China raise no objection to the authenticity of the advices of damage accident, but they answer that such advices of damage accident failed to specify the damage and loss of the cargoes in question in the accident, so the damage and loss arising from other causes cannot be excluded. The Court deems that, since the advices of damage accident specified that “all container operated by PIL were totally damaged”, and the carrier replaced the containers loading the cargoes, it can be inferred that the cargoes in question were damaged to some degree in the train derailing accident occurring in South Africa. Moreover, the appearance and lead seals of the containers used by the carrier to ship the cargoes back were in good order, and the two Defendants fail to provide any evidence to substantiate that the cargoes were damaged during the storage in the place of delivery in South Africa or during the return trip, so it can be inferred that the cargoes had been damaged before the carrier replaced the containers. Taking into account the cargo damage and loss identified in the inspection report, it can be inferred that there is causality between the cargo damage and the train derailing accident occurring in South Africa.

The Defendants PIL and PIL China allege that there is no causality between the cargo damage and the train derailing accident occurring in South Africa, but they fail to provide any evidence.

In light of the evidences admitted, the facts found by the Court with regard to the points of dispute are: the cargoes were damaged in the train derailing accident occurring during the trip from Durban, South Africa to the place of delivery, a container yard in Johannesburg, South Africa.

III. Dispute on how to calculate the unit price of the cargoes.

The Plaintiff alleges that the value of the cargoes shall be calculated at the rates of US\$26.25 per quilt, US\$2.1525 per men’s garment and US\$5.775 per women’s garment. The Plaintiff has submitted the original packing list, invoice and declaration form provided by Daheng Company, the original sales contract executed by and between the Plaintiff and Daheng Company on March 1, 2005, the original sales contract executed by and between the Plaintiff and South Africa-based Jamflash Trading C.C. on March 3, 2005, and the inspection report issued by China Certification & Inspection Group Shanghai Co., Ltd. on March 14, 2006. The Plaintiff alleges that, the foregoing evidences can substantiate that the Plaintiff purchased 3,140 sets of polyester quilts at a unit price of US\$25, 27,648 men’s garments at a unit price of US\$2.05, and 9,792 women’s garments at a unit price of US\$5.5 from Daheng Company, and then resold them respectively at a price of US\$26.25 per quilt, US\$2.1525 per men’s garment and US\$5.775 per

women's garment to South Africa-based Jamflash Trading C.C.. The Defendants PIL and PIL China raise no objection to the authenticity of the inspection report, but they answer that, the unit prices used in the inspection report to calculate the lost value are inconsistent with those as specified in the declaration form; therefore, the calculation result concluded in the inspection report is groundless. Other evidences are irrelevant to the Defendants, so their authenticity have not been identified. The Court deems that, the unit prices used in the inspection report to calculate the lost value cannot corroborate with the declaration form and other evidences provided by the Plaintiff; therefore, the Court does not admit the lost value concluded in the inspection report. The quantities and unit prices of the cargoes as specified in the sales contract executed by and between the Plaintiff and Daheng Company on March 1, 2005 and in the export declaration form in respect of the cargo export declared by Daheng Company to the customs of the People's Republic of China can corroborate mutually; therefore, the Court admits them into evidence. The unit prices of the cargoes as specified in the sales contract executed by and between the Plaintiff and Jamflash Trading C.C. on March 3, 2005 are inconsistent with those as specified in the declaration form, while as a documentary evidence accepted and filed by the state customs, the declaration form shall prevail over the sales contract executed by and between the Plaintiff and the South Africa-based buyer in terms of their probative force on the actual value of the cargoes; therefore, the Court does not admit the unit prices of cargoes as specified in the sales contract executed by and between the Plaintiff and Jamflash Trading C.C. on March 3, 2005.

The unit prices of cargoes alleged by the Defendants PIL and PIL China are unascertained, but the two Defendants fail to submit any evidence.

In light of the foregoing evidences admitted, the facts found by the Court are: the value of cargoes at the port of loading shall be subject to the export declaration form and the sales contract executed by and between the Plaintiff and Daheng Company on March 1, 2005, i.e. 3,140 sets of polyester quilts at a unit price of US\$25, 27,648 men's garments at a unit price of US\$2.05, and 9,792 women's garments at a unit price of US\$5.5.

IV. Dispute on whether the loss of storage fee alleged by the Plaintiff is in connection with this case or not.

The Plaintiff claims that RMB23,400 of the storage and logistics fee arising from shipping the cargoes back shall be borne by the three Defendants. The Plaintiff has submitted the following evidences: the loss list self-produced by the Plaintiff, the original invoice issued by Tenma Sangyo (Shanghai) Co., Ltd. to Shanghai Touchroad International Trading Ltd. on March 2, 2006, and the settlement agreement on storage fee executed by and between the Plaintiff and Shanghai Touchroad International Trading Ltd. on March 5, 2006. Such agreement said "your company has advanced in full the storage and logistics fee under the B/L No. PLZCNSHAO500121 collected by Tenma Sangyo (Shanghai) Co., Ltd. for our company. Whereas your company owes our company US\$25,800.48 payment for goods, our company suggests the said storage and logistics fee shall be offset with part of the payment for goods." The Plaintiff alleges that such evidences can substantiate that the storage and logistics fee arising from shipping the cargoes under the B/L No.

PLZCNSHAO500121 back was RMB23,400, and the Plaintiff has paid it through letting the other party deduct the payment for goods owed by the other party. The Defendants PIL and PIL China answer that the storage fee invoice failed to indicate the batch of cargoes from which the cost arose, so it should be irrelevant to this case. The settlement agreement on storage fee and the loss list were produced by the Plaintiff itself, so the Defendants throw doubt on their authenticity. The Court deems that the storage fee invoice issued by Tenma Sangyo (Shanghai) Co., Ltd. was not directed against the Plaintiff for it neither indicated the batch of cargoes for which the fee would be collected, nor indicated the storage period, so it cannot prove that the storage fee is an essential cost arising from shipping the cargoes in question back, and it should be irrelevant to this case. The Court does not admit it into evidence. The settlement agreement on storage fee and the loss list were produced by the Plaintiff itself, and there is no relevant evidence to corroborate the contents therein; therefore, the Court does not admit them into evidence.

The Defendants PIL and PIL China allege that the storage fee claimed by the Plaintiff is irrelevant to this case, but they fail to provide relevant evidence.

Since the Plaintiff fails to provide any evidence with probative force to substantiate that the storage fee claimed by it was an essential cost arising from shipping the cargoes in question back, the Court does not admit the claim by the Plaintiff for RMB23,400 storage and logistics fee arising from shipping the cargoes in question back.

In respect of the cause of action and governing laws, the Court deems that both the outward shipping contract and back shipping contract in question fall within the scope of the ocean shipping contracts concerning multimodal transport as prescribed in the *Maritime Code of the People's Republic of China*. Therefore, the cause of action of this case should be about loss and damage of cargo under an ocean shipping contract. The Defendants PIL China and PIL Shanghai are two Chinese companies, the place of issuance of the B/Ls, the port of loading, and the port of destination of back shipment are all located in China; furthermore, during the court hearing, both the Plaintiff and the Defendants PIL and PIL China request to make the case governed by the Chinese laws. The Defendant PIL Shanghai fails to appear in the Court to participate in the proceedings without due reason, so it shall be deemed that PIL Shanghai has waived its litigious right. Therefore, the Court deems there is a close connection between the Chinese laws and this case, and the governing laws used to settle the dispute under this case shall be the laws of the People's Republic of China.

In respect of the legal status of the three Defendants, the Court deems the identification of the carrier should be chiefly based on the contents on the B/L and the acts done by the parties concerned in the process of carriage. Seen from the outward B/Ls and back B/L under this case, the B/Ls were in PIL's favor. When PIL Shanghai was issuing the three sets of B/Ls, it indicated that the carrier was the beneficiary of the B/Ls, and during the court hearing, PIL also acknowledged that it had actually carried the cargoes. Therefore, it can be identified that PIL must have been the carrier. It is ascertained that PIL China is an independent legal entity funded and established by PIL in China, and PIL China has the right to issue B/Ls on behalf of PIL, while PIL Shanghai, as a branch of PIL China, shall also be entitled to issue B/Ls on behalf of PIL.

Therefore, the carrier under this case must have been PIL, and PIL Shanghai must have been the agent of such carrier in issuing B/Ls.

In respect of the indemnification liability of the three Defendants for the shortage and damage of the cargoes, the Court deems that, the advices of damage accident sent by Foreshore Ships Agency, the agent of PIL in the port of destination in South Africa, to RIAANBERGH & ASSOCIATES, specified that “all containers operated by PIL were totally damaged”, and PIL actually replaced the containers loading the cargoes, so it can be inferred that the cargoes in question were damaged to some degree in the train derailing accident occurring in South Africa. Moreover, the appearance and lead seals of the containers used by the carrier to ship the cargoes back were in good order, and PIL also fails to provide any evidence to substantiate that the cargoes were damaged during the storage in the place of delivery in South Africa or during the return trip, so it can be inferred that the cargoes had been damaged before PIL replaced the containers. In combination with the cargo damage and loss identified in the inspection report, it can be inferred that there is causality between the cargo damage and shortage and the train derailing accident occurring in South Africa. PIL shall be obliged to take care of the cargoes properly, and liable for indemnification for the cargo damage and loss arising from breaching its obligations. The Article 103 of the *Maritime Code of the People's Republic of China* prescribes “the responsibility of the multimodal transport operator with respect to the goods under multimodal transport contract covers the period from the time it takes the goods in its charge to the time of their delivery”; therefore, for an ocean shipping contract concerning multimodal transport, the period during which a carrier takes charge of the goods shall be the responsibility period of such carrier. In this case, although the Plaintiff and the carrier of PIL actually entered into two ocean shipping contracts, including the outward shipping and the back shipping contracts, the evidences provided by the Plaintiff show the cargoes in question failed to be delivered after they were shipped from Shanghai, China to the place of delivery in South Africa, and the cargoes were under the control of the carrier all the time till they were shipped back to Shanghai Port, China; therefore, the responsibility of the carrier with respect to the cargoes shall cover the period from the time it takes the cargoes in its charge in Shanghai to the time of their delivery in Shanghai after the cargoes has been shipped back, and any shortage and damage of the cargoes occurring during such period shall rest with the carrier. Although there had been a long time between the inspection by the Plaintiff to the cargoes and the derailing accident occurring to the train loading the cargoes, the advices of damage accident sent by Foreshore Ships Agency, the agent of PIL in the port of destination in South Africa, to RIAANBERGH & ASSOCIATES also failed to expressly indicate that the cargoes in question were damaged due to the accident; therefore, the Plaintiff has no direct evidence to substantiate that the shortage and damage of the cargoes resulted from the accident. Since the cargoes were under the control of the carrier all the time, it can be inferred that the shortage and damage of the cargoes shall be within the responsibility period of the carrier of PIL, while PIL fails to adduce any evidence to substantiate that the shortage of the cargoes resulted from any other cause the liability for which the carrier might be exempted from; therefore, PIL shall be liable for the shortage and damage of the cargoes in question. The Defendant PIL Shanghai was just the agent issuing the outward B/Ls and the back B/L, and it did not take charge of the cargoes actually, while PIL China

has not participated into the carriage; therefore, such two Defendants shall not assume the liability of the carrier.

In respect of how to calculate the indemnification amount for the shortage and damage of cargoes, The Court deems, in light of the contents as specified in the declaration form and the inspection report provided by the Plaintiff, the indemnification amount for lost cargoes in question shall total up to US\$: 34,365.55, which includes 566 sets short and 144 sets totally lost polyester quilts calculated at a unit price of US\$25; 2,911 short men's garments calculated at a unit price of US\$2.05; and 1,936 short women's garments calculated at a unit price of US\$5.5. The indemnification amount for damaged cargoes shall total up to US\$28,930.3, which includes 2,080 sets polyester quilts being 30% devaluated due to partial stain and damage and 350 sets polyester quilts needing to have exterior package replaced, calculated at US\$25 per quilt and US\$3.11 per wrappage; 3,087 men's garments being 40% devaluated due to partial stain and mould and 21,650 men's garments needing to have exterior package replaced, calculated at US\$2.05 per garment, and US\$0.0635 per wrappage; and 3,563 women's garments being 40% devaluated due to partial stain and mould and 4,293 women's garments needing to have exterior package replaced, calculated at US\$5.5 per garment, and US\$0.1158 per wrappage. The losses of payment for the said three cargoes due to shortage and damage total up to US\$63,295.89.

In respect of whether the outward freight, back freight, inspection fee and storage fee claimed by the Plaintiff shall be indemnified by the carrier, the Court deems that, the evidences provided by the Plaintiff can substantiate that there were shortage and damage of the cargoes arising from the train derailing accident in South Africa, and the cargoes failed to be carried to the place of delivery in time, therefore, the consignee refused to accept the cargoes. As to this aspect, it can be inferred that the fault of PIL resulted in the failure of the Plaintiff's attempt to ship the cargoes to and sell them in South Africa, and the outward freight paid by the Plaintiff shall be treated as the actual loss suffered by the Plaintiff and to be indemnified by PIL. Meanwhile, on the condition that the consignee expressly refused to accept the cargoes, it is a proper action for the Plaintiff to make the cargoes shipped back to prevent the loss from worsening. Pursuant to Article 119 (2) of the *Contract Law of the People's Republic of China*, the reasonable costs defrayed by the parties concerned to prevent loss from worsening shall be assumed by the defaulting party; therefore, the Defendant PIL shall indemnify the Plaintiff for the back freight. In respect of the inspection fee paid by the Plaintiff, it is an essential cost for the Plaintiff to ascertain the lost amount of the cargoes, and shall be assumed by PIL. In respect of the storage fee claimed by the Plaintiff, since the Plaintiff fails to provide any evidence with probative force to substantiate that such storage fee was an essential cost arising from shipping the cargoes back, the Plaintiff shall assume the consequence from failure in burden of proof; therefore, the Court does not admit the RMB23,400 storage fee arising from shipping the cargoes back, as claimed by the Plaintiff.

In light of the foregoing statements, pursuant to Article 13, Article 64 (1) and Article 130 of the *Civil Procedural Law of the People's Republic of China*, Article 103 and Article 106 and Article 269 of the *Maritime Code of the People's Republic of China*, and Article 107, Article 113 (1) and

Article 119 of the *Contract Law of the People's Republic of China*, the Court enters into judgment as follows:

I. The Defendant PIL shall pay the Plaintiff Touchroad International Logistics Center (China) Ltd. the losses of payment for goods of US\$63,295.89, the outward freight of US\$24,218, the back freight of US\$3,030 and the inspection fee of RMB15,800, within ten days from the effective date of this Judgment;

II. Dismiss other claims from the Plaintiff Touchroad International Logistics Center (China) Ltd..

The court acceptance fee of this case, RMB13,160.55, shall be assumed by the two parties with the Plaintiff Touchroad International Logistics Center (China) Ltd. bearing RMB1,046.74 and the Defendant Pacific International Lines (Pte) Ltd. bearing RMB12,113.81. The Defendant Pacific International Lines (Pte) Ltd. shall pay the court acceptance fee undertaken by it to the Plaintiff within seven days from the effective date of this Judgment.

In the case of dissatisfaction with this Judgment, the Plaintiff Touchroad International Logistics Center (China) Ltd., the Defendants Pacific International Lines (China) Ltd., Shanghai Branch or Pacific International Lines (China) Ltd. may, within fifteen days, or the Defendant Pacific International Lines (Pte) Ltd. may, within thirty days from the date of service of this Judgment, lodge a petition for appeal to this Court and submit the duplicate(s) of such petition for appeal to the Higher People's Court of Shanghai Municipality in line with the numbers of the counterparty.

Chief Judge: Xin Hai
Judge: Wang Guoliang
Acting Judge: Zhong Ming
December 18, 2006
Clerk: Zhang Duan