

Current legal position on container detention in Australia.

Over the last few years the topic of container detention has sparked vivid legal discussions and enflamed the freight forwarding industry and importer's community in Australia.

Container detention can be defined as a daily charge imposed by a carrier on a party, usually the consignee under a bill of lading, for the use of a shipping container. Once a container is available to be picked up at the port of discharge, shipping lines allow a 7 to 10 days period without charge (free time period) for the container to be returned at a designated depot. Beyond the free time period a daily rate is charged and can be as high as AUD 200 per day.

In 2012 major shipping lines reduced their free time period to 7 days. This presentation aims at providing clarifications on position reached by the recent case law.

Between 2010 and 2012 noteworthy cases were decided:

DV Kelly Pty Ltd v China Shipping (Australia) Agency Co Pty Ltd (General) [2010] NSWCTTT 136 (9 April 2010) The tribunal found in favour of DV Kelly and China Shipping was ordered to reimburse the sum of \$8,514 to DV Kelly.

This decision was challenged and appealed in the NSW Supreme Court. **China Shipping (Australia) Agency Co Pty Limited v D V Kelly Pty Limited [2010] NSWSC 1556 (14 December 2010)** which quashed the CTTT decision on the basis that it had not jurisdiction to hear claims falling within the Admiralty Act.

Ichiban Imports Pty Ltd v China Shipping Australia Agency Pty Ltd (General) [2011] NSWCTTT 153 (15 April 2011) Tribunal member J Levingston found that the container detention charges in dispute were not a penalty but a charge for use of the container after discharge and therefore upheld.

Cosco Container Lines Co Ltd v Unity Int'l Cargo Pty Ltd [2012] NSWDC 122 (29 March 2012). This decision reinforces the view that container detention charges are not penalties but rather agreed contractual rates for the hire of containers.

Shipping Lines are now arguably in a stronger position to pursue unpaid detention charges against Importers and Freight Forwarders. And in 2012 this position was exacerbated by major shipping lines' decision to reduce the container free time period from 10 to 7 days from the time of availability at the wharf.

Loss prevention:

What can you do to ensure detention charges are kept to a minimum:

- **Keep track of import containers and free time period**
- **Reinforce the need for your customers to leave empty container ready for dehire in secured places and not on public roads exposed to theft.**
- **Ensure that full set of clearance document is submitted to customs brokers in time before arrival of the vessel.**

- **Communicate early with Shipping Lines** when unable to return containers within free time period. Detention can be waived or negotiated.

Detention charges are generally not covered by liability insurance. There are some exceptions and of course insurer's wording will differ however the following situation might be covered:

- Containers are being detained or delayed due to the insured's or insured's agent's error.
- Detention charges accrue because of the total failure of the consignee to collect the goods (shipment has been abandoned) some liability insurers have cover for uncollected/abandoned cargo
- Detention charges accruing following the theft of a container whilst in the care of a subcontractor (cartage company etc...) Liability insurers should cover the DV of the container (Loss or damage to third party property).