



Fighting in the Courts to get good decisions!



In Brazilian jurisprudence, there is a growing number of decisions that determine the application of the Montreal Convention in lawsuits filed by insurance companies, in recovery proceedings against air carriers. Brazil is a signatory to the aforementioned Convention, which establishes limits on liability in international cargo and passenger transport.

However, the article that mentions the liability limitation makes room for an important interpretation. According to the provisions of article 22, item 03, the carrier will be responsible for the full compensation when there is a declaration regarding the value of the goods, in the Air Waybill. Faced with this interpretative opening, Barbuss has been fighting in the Courts and, recently, obtained a very important favorable decision, to obtain full compensation.

Case Summary

In a recovery lawsuit filed on behalf of Insurance Company (cargo loss), a decision was obtained in which the thesis that the "declaration of value" can be made freely was accepted. This means that any source of evidence that the carrier is aware of the value shipped must be taken into account for the application of the full indemnity. In this case, the Court understood that the mention of the Commercial Invoice, contained in the bill of lading, is sufficient evidence to demonstrate that the carrier was aware of the value shipped, and therefore cannot benefit from liability limitations. After the decision, there was an agreement to recover 90% of the indemnified amount.

The decision is important to encourage insurers to continue seeking full recovery against air carriers, even if the Montreal Convention is applicable, because it is the Convention itself that allows exceptions to the liability limitation.

If you have any casualty or any problem with your cargo, do not hesitate to contact us:

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