

**DOCUMENTATION: HOW TO ENSURE THAT
YOUR FREIGHT FORWARDER IS DOTTING
THE “I’s” AND CROSSING THE “T’s”**

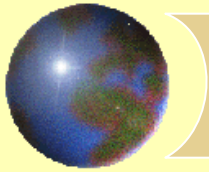
**EXPORT FORUM:
BEST PRACTICES FOR EXPORT SUCCESS**

**North Texas District Export Council
January 19, 2010**

**Daniel Mark Ogden, Esq.
NTDEC Vice-Chair**



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*Attorney & Counselor at Law
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DOCUMENTATION

Fact Situation

- **U.S. exporter contracts to ship automotive parts to Turkey**
- **Export contract is financed by L/C issued by First National Bank of Cyprus and confirmed by Citibank for the account of Turkish importer**
- **Major international freight forwarder hired by exporter to prepare L/C documentation and submit documentation to Citibank for payment of L/C proceeds to exporter**
- **Freight forwarder also operates as NVOCC and issues negotiable B/L to the order of First National Bank of Cyprus**

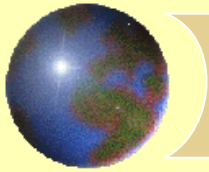


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Fact Situation

- **Freight forwarder prepares commercial invoice, which states that L/C issuing bank is “First National Bank of Cypress”**
- **Freight forwarder submits documentation to Citibank, which in turn transmits documentation to First National Bank of Cyprus, who then transmits documentation to importer**
- **Importer refuses to waive discrepancy in spelling of L/C issuing bank’s name**

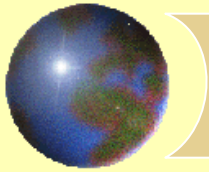


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Fact Situation

- **Freight forwarder resubmits corrected documentation to Citibank, albeit subsequent to L/C deadline for presentation**
- **Citibank, on instruction of First National Bank of Cyprus, refuses to pay L/C proceeds to exporter**
- **Exporter requests First National Bank of Cyprus to endorse B/L to exporter, but is informed by Bank that the B/L was endorsed (via forgery) to importer, who in turn cleared goods through customs**
- **Exporter is left holding the “proverbial bag”— no money and no goods**

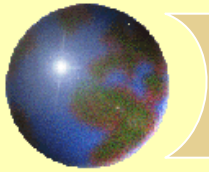


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Problems

- **Improper documentation preparation**
- **Lack of review of documentation by exporter**
- **Tardy presentation of documents to confirming L/C bank**
- **Contract with freight forwarder had no provision for liability of freight forwarder in case of negligence by freight forwarder in document handling**
- **Contract with freight forwarder covered freight forwarder's obligations both as a freight forwarder and a NVOCC**

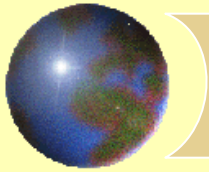


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Solutions

- **Contract with freight forwarder should state that exporter has the right to review all documentation prepared by freight forwarder prior to any submission to L/C bank for payment of L/C proceeds**
- **Contract with freight forwarder should state all documentation prepared by freight forwarder should be submitted to exporter “x” days prior to L/C presentation deadline**
- **Contract with freight forwarder should also state that documents must be submitted to L/C issuing or confirming bank “x” days prior to L/C presentation deadline**

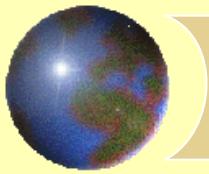


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Solutions

- **Contract with freight forwarder should include a provision that freight forwarder is liable in case of negligence by freight forwarder in document handling**
- **In situations where a freight forwarder is acting as both a freight forwarder and a NVOCC, maintain two separate contracts with freight forwarder**
- **Exporter should review all documentation prepared by freight forwarder prior to any submission of documentation by freight forwarder to L/C bank for payment of L/C proceeds**
- **Will need to negotiate these provisions**

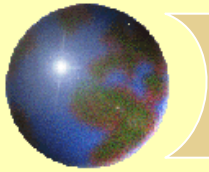


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Outcome

- **Exporter's initial legal counsel filed legal action for claim against freight forwarder for liability as a NVOCC under COGSA**
- **Freight forwarder offered \$500 to settle, which is COGSA limit per package**
- **After change of legal counsel, legal action was amended for claim against freight forwarder for negligence as a freight forwarder**
- **Freight forwarder settled case for \$150,000 which was amount of export contract**

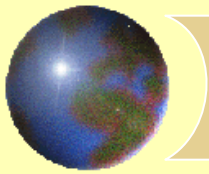


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