

Callidus News

JANUARY 2026

ADVOCATES, CONSULTANTS & NOTARY

BRANCHES: DUBAI | MALAYSIA | DELHI | MUMBAI | KOLKATA | CHENNAI | COCHIN info@calliduscmc.com

Dubai

Business Avenue Building
Office # 713, Port Saeed Road,
P.O. Box # 90992, Dubai, UAE.
Tel: +97142956664
Fax: +97142956099

Malaysia

19-19, Menara Mutiara
Central, Jalan Desa Aman 1
Cheras Business Centre
56000 Kuala Lumpur
HP: +6012-213 5619

Delhi

D 1st 145 Basement (Rear)
Lajpat Nagar R 1
New Delhi - 110 024
Tel: +91 11 4132 1037

Mumbai

8-B, Dariya Building
2nd Floor, In between American
Dry Fruits & Zara, Dr. D.N.Road
Fort, Mumbai 400 001
Tel: 022-22853371

Chennai

Old No. 123, New No.255,
3rd Floor, Hussiana Manzil,
Ankapanaiken Street,
Parrys, Chennai - 600 001
Tel: +91 98 40 844463

Cochin

Near St. Joseph's High
School Chittoor Road,
Cochin - 12, India
Tel: +91 484 2391895
office@callidusindia.com



FREIGHT FORWARDER LIABILITY IN OCEAN FREIGHT: NAVIGATING COMMONWEALTH MARITIME LAW

For decades, freight forwarders operated within a grey area of maritime law—positioned contractually as intermediaries, yet often assuming practical responsibility for cargo moving through increasingly complex multimodal supply chains. The central question—whether a freight forwarder acts as a principal carrier or merely as an agent—has profound implications for liability exposure. Commonwealth courts have consistently clarified that this distinction depends not on contractual labels, but on the substance

of the forwarder's conduct. The New South Wales Court of Appeal decision in *Cro Travel Pty Ltd v Australia Capital Financial Management Pty Ltd* (2018) marked a pivotal shift in this analysis. The court confirmed that forwarders may face liability not only in contract or negligence, but also for breach of warranty of authority and misleading or deceptive conduct under consumer protection legislation. This expanded liability framework requires modern freight forwarders to understand international carriage conventions, common

law principles governing agency and principal status. It also necessitates practical risk-mitigation strategies essential for operating safely across jurisdictions.

Agent versus Principal: The Threshold Determination

The nature and extent of a freight forwarder's liability turns on a single threshold issue: whether it acts as a principal carrier or as an agent. An agent forwarder is liable only for failure to exercise reasonable care in selecting and supervising third parties



THOUGHT
for
the MONTH

Reputation is built on
what you do when no one
is watching

WARREN BUFFETT

Callidus

and is not responsible for loss or damage caused by ocean carriers or stevedores, unless it negligently appointed them. A principal forwarder, by contrast, assumes the full liability regime of an ocean carrier, including responsibility for cargo loss or damage, subject to statutory limitation provisions.

This distinction also determines whether a forwarder may rely on the protections available under international maritime conventions such as the Hague-Visby Rules, the Hamburg Rules, and, more recently, India's Carriage of Goods by Sea Act, 2025.

International Convention Framework

Hague-Visby Rules

The Hague-Visby Rules, incorporated into the carriage of goods legislation of major Commonwealth jurisdictions including the United Kingdom, Australia, Canada, and India, form the backbone of international ocean carriage liability. A freight forwarder qualifies as a "carrier" under these Rules when it contracts directly with the shipper to transport goods.

The Rules impose a duty on carriers to exercise due diligence to make the vessel seaworthy and to properly load, handle, stow, and discharge cargo. Liability for loss or damage is limited to 666.67 Special Drawing Rights (SDR) per package or 2 SDR per kilogram, whichever is higher. These limits, however, are available only to forwarders acting as principal carriers; agent forwarders cannot rely on them.

While the Rules provide a list of excepted causes—such as acts of God, navigational error, inherent vice, and shipper negligence—they apply only during the "tackle-to-tackle" period. This leaves forwarders exposed during pre-loading and post-discharge inland transport phases, where losses frequently occur, and where forwarders often exercise direct control.

Hamburg Rules

The Hamburg Rules adopt a markedly different approach. Rather than relying on enumerated exceptions, they impose

presumed carrier fault unless the carrier proves that all reasonable measures were taken to avoid the loss. The Rules extend responsibility from the time the carrier takes charge of the goods at the port of loading until delivery at the port of discharge and expressly impose liability for delay, capped at 2.5 times the freight.

Although major Commonwealth trading nations have not ratified the Hamburg Rules, their influence continues to grow through bilateral agreements and regional trade arrangements, making them increasingly relevant to forwarders operating across multiple jurisdictions.

Determining Status under Commonwealth Case Law

Commonwealth courts have consistently emphasized that legal status is determined by substance rather than form. Factors indicating principal carrier status include issuing a house bill of lading, providing door-to-door service, assuming responsibility for the entire multimodal movement, failing to expressly disclose agency status, or retaining original ocean bills while issuing house bills to customers.

In *Jones v European and General Express* (1920), the court articulated the foundational principle that a forwarding agent is not a carrier unless it undertakes delivery itself. This position was reinforced in *C.A. Pisani & Co Ltd v Brown, Jenkinson & Co Ltd* (1939), which confirmed that an agent's obligation is limited to exercising reasonable care in selecting third parties.

However, later cases illustrate how easily a forwarder may cross the line into principal liability. In *Carrington Slipways Pty Ltd v Patrick Operations Pty Ltd* (1991), the court recognised that a forwarder could act simultaneously as agent vis-à-vis the ocean carrier and principal vis-à-vis the shipper, creating uncertainty over negotiability and liability. In *Comalco Aluminium Ltd v Mogal Freight Services Pty Ltd* (1993), the Federal Court held that a forwarder issuing a negotiable house bill marked "TO ORDER" and offering door-to-door service was a principal carrier liable for loss throughout the multimodal journey, including pre-loading stages.

The Impact of Cro Travel

The decision in *Cro Travel* fundamentally expanded forwarder liability beyond traditional boundaries. The court identified two independent causes of action.

First, the forwarder was held liable for breach of warranty of authority. By signing bills "for the Carrier" and "as agent," the forwarder implied that it had authority from the ocean carrier to issue negotiable documents. It did not. This breach was actionable by third parties, including financiers who relied on the house bills as security.

Second, the court found the forwarder liable for misleading or deceptive conduct under the Australian Consumer Law. By circulating two sets of negotiable bills for the same cargo, the forwarder created confusion regarding which document controlled delivery rights. The court rejected arguments that the financier's lack of maritime sophistication should reduce liability, emphasizing that consumer protection legislation safeguards the vulnerable, not merely the careful.

Crucially, *Cro Travel* demonstrates that even forwarders acting as agents may face substantial exposure where documentation misrepresents authority or creates uncertainty over cargo control.

Liability Mitigation Strategies

Effective liability management rests on three pillars: contractual discipline, structural protections, and comprehensive insurance.

Forwarders must clearly disclose agency status on all documentation using express language such as "Agent Only" or "Acting on behalf of [Carrier]." Written authority from ocean carriers must be obtained before issuing any transport document bearing the carrier's name.

The *FIATA Model Rules for Freight Forwarding Services* (2019 Edition) provide widely recognised industry-standard protections. These rules distinguish agent liability—limited to failure to exercise due diligence—from principal liability, which aligns with the applicable mode of transport. They also establish exclusions for undeclared

valuables, dangerous goods, indirect loss, delay, inherent defects, and shipper errors, while capping liability at 2 SDR per kilogram for cargo loss and limiting delay liability to the remuneration charged, subject to a nine-month suit bar.

Himalaya clauses play a critical role by extending liability limitations to servants, agents, and subcontractors, preventing cargo interests from circumventing agreed caps by suing operational parties directly. General Average indemnity clauses protect forwarders from exposure to contributions imposed following sacrifices made for the common safety of vessel and cargo.

No contractual mechanism, however, can fully eliminate exposure to breach of warranty of authority or misleading conduct claims. Comprehensive Freight

Forwarder Liability Insurance remains essential, covering cargo loss or damage, third-party liability, errors and omissions arising from documentation or customs misstatements, and exposure to General Average and salvage charges.

Operational best practices complement these measures. Forwarders should maintain meticulous records of carrier authorizations, ensure timely notice of loss or damage, conduct regular audits of subcontractors, and clearly document liability regimes applicable to each leg of a multimodal movement.

Conclusion

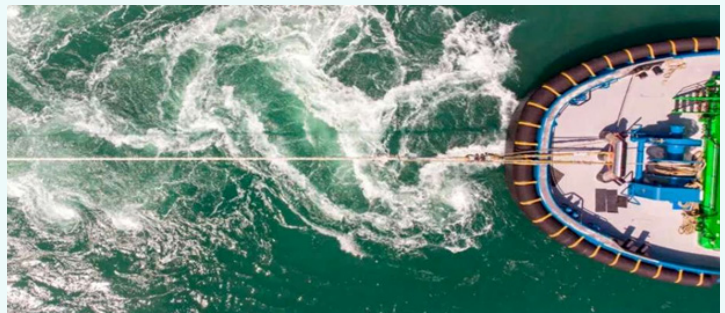
Freight forwarder liability in Commonwealth jurisdictions is shaped by international conventions, common law agency principles, and an expanding application of consumer

protection legislation. While the agent versus principal distinction remains foundational, Cro Travel demonstrates that even nominally “agent” forwarders face significant exposure where authority is misrepresented or documentation creates confusion over negotiability and delivery rights.

The sustainable management of forwarder liability lies in transparent and professional engagement with all stakeholders. Contractual clarity, industry-standard terms, written carrier authority, comprehensive insurance, and disciplined operational practices are no longer optional—they are essential. As maritime law continues to evolve, forwarders who prioritise competence and transparency will find that their strongest competitive advantage lies not in avoiding responsibility, but in managing it effectively ■

HOT NEWS

INDIA LAUNCHES ITS FIRST FULLY ELECTRIC TUGBOAT UNDER GREEN PORT PUSH



In a major step towards maritime decarbonisation, Swedish energy storage specialist Echandia has been selected to supply the battery system for India’s first fully electric tugboat, set to operate at Deendayal Port Authority, Kandla, under the Government of India’s Green Tug Transition Programme. The vessel will run on a 4.4 MWh battery system, enabling zero-emission port operations.

The battery solution is engineered for a 15-year operational life, aligning with the full charter period agreed between Ripley Group and the port

authority. Following Ripley’s successful bid for the charter tender, Kongsberg Maritime was appointed as system integrator, with Echandia selected through a competitive tender process to deliver the battery technology.

A critical requirement of the project was the ability to support 30,000 charge cycles over 15 years without mid-life battery replacement—a performance benchmark Echandia says it was uniquely positioned to guarantee.

This electric tug marks the first phase of a broader national programme, with

16 electric tugs planned by 2027, followed by approximately 150 additional vessels, and a long-term target of 400 electric tugs by 2040.

Echandia already maintains a strong footprint in India, having supplied battery systems for Kochi water buses and the Varanasi ferry network. Commenting on the milestone, Rakshith Sachitanand, Senior Strategist at Echandia, noted that the company is proud to support India’s maritime electrification journey and contribute to the decarbonisation of ports and inland waterways ■

Courtesy : www.themaritimestandard.com

Address: Near St. Joseph’s High School, Chittoor Road, Cochin- 12, India, T:+91 484 2391895, office@callidusindia.com

Disclaimer The materials contained in our News Letter and our accompanying e-mail have been prepared solely for information purpose. Neither Callidus nor any of its affiliates make any warranties in relation to the use or reproduction of its contents. The information contained in the news letter is solely for academic and discourse purposes, meant for private circulation; this e-mail message and it’s attachments may be confidential, subject to legal privilege, or otherwise protected from disclosure, and is intended solely for the use of the intended recipient(s). If you have received this communication in error, please notify the sender immediately and delete all copies in your possession.