



Litigation, Business, International Trade, and Transportation Law Newsletter

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Litigation Tip: *Shop for your venue before there is even a lawsuit*

by *Oscar Gonzalez, Attorney*

Everyone knows that home turf is important in sports. Home turf does not automatically decide who wins or loses, but there is a reason that Las Vegas bookies never ignore home turf in point spreads. Home turf is important.

Home turf is also important in the law. In fact, I think it may be even more important in the law than in sports. In both sports and the law, you try to recruit impartial judges or referees. The Winter Olympics are being held even as I write this. You are likely to see controversies erupt in figure skating and other style competitions, but speed is speed and most winners will be judged by the clock, not humans. There are some lingering doubts whether a few NBA refs have fixed games, but news of that controversy is noteworthy because it is such a departure from the impartiality we have come to expect from professional sports. With the advent of instant replay and cameras recording the action from every conceivable angle, plus the redundant effect of digital media and social networking, the fans, coaches, and owners are unlikely to allow even the smallest indication of a tainted outcome go unnoticed and unaddressed.

Are courts and administrative agencies as fair?

Like sports, there is an official record that can, upon objection, be reviewed and corrected, upon appeal to a higher tribunal if necessary. However, the costs to appeal in time and money can be daunting. In addition, there are different forces acting upon judges and agencies to act without prejudice. Unlike sports, if a judge or jury makes a mistake, we do not boo them, or if we do, we are likely to

spend a couple days in jail on a contempt charge. Most importantly, when a judge or jury is being asked to decide who wins and who loses, it typically involves thorny issues that require a judgment call. The merits, as with beauty in figure skating, are in the eye of the beholder. Try as hard as they can (and the level of effort varies greatly), and though they invoke all manner of case law and judicial precedent, a case is as likely to be determined by geographic location as by the merits. The nomination and confirmation process of US Supreme Court justices is tendentious not primarily because of the personal quirks or talents of a nominee (Justice Thomas being a notable exception), but because political groups fear that the nominee's ideological predilections will color her or his decisions against them. Las Vegas bookies would have a hard time handicapping most lawsuits because the outcomes are considered utterly predictable and seemingly predetermined ("it's better to know the judge than the law" goes the old bromide).

Seasoned business people know that there are jurisdictions where it is redress is futile, where a win is almost a guarantee, or where at least everyone gets almost a fair chance. The goal is to draft contracts that get you the fairest chance possible.

An accomplished litigator can help balance the odds during a lawsuit, but that is putting the cart ahead of the horse. A good lawyer and wise client will do a little forum shopping and make sure that advantageous and mandatory jurisdiction clauses find themselves into any contract or agreement. If there is an impending lawsuit, the lawyer and client should consider the preemptive advantage of filing first in a preferred venue or, if beaten to the punch, formally requesting a change of venue. Failing that, there are other options, including securing the assistance of local counsel.



Haiti Quiz

Haiti is in the news because of a monumental natural tragedy and a people's strength and dignity that dwarfs that tragedy. But how much do you know about our Caribbean neighbor? Take this quiz and find out. It's free and no registration is required. Instant scoring. Here is the link: www.exportimportlaw.com/feb2010quiz/

Other Quizzes

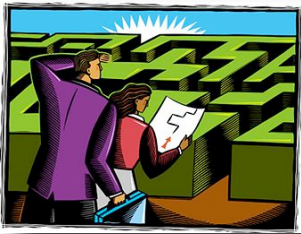
If you like this month's quiz, try our other quizzes:

Gasoline
Iran, Cuba, and N. Korea
Pirates
Fines and Penalties
World Holidays
Halloween
Alexander Hamilton
China
Export
News Update

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Prior Disclosures, Protests, and Submissions - The Wisdom of Hiring a Law Firm



Importers rely heavily on customs brokers, forwarders, and consultants to make sure freight ships on time, to the right place, and within legal restrictions. For the most part, brokers, forwarders, and consultants excel at their craft. They are the

intermediaries that power international trade. However, importers and exporters often encounter situations that demand an expertise that goes way beyond what non-legal consultants can or should offer.

Submissions to CBP, FDA, and other agencies should be prepared and filed only by an experienced lawyer. Do not kid yourself that you will save money by preparing the submission yourself or hiring a consultant. A healthy portion of the practice of any customs attorney stems from having to clean up the damage from a submission that was prepared by the importer, consultant, or even another lawyer who just did not have the needed expertise.

Prior disclosures, protests, and other submissions are official statements of arguments and facts that the importer files with the federal government. Repeat. You do not want to mess around with the feds. We will not go into the parade of horrors from misrepresenting a fact or misinterpreting or misapplying a law, but it is sufficient to say that importers can at the very least expect the submission to be rejected, with penalties, fines, and liquidated damages serving to compound the pain.

The actions of consultants, brokers, and forwarders are imputed to the importer. Thus, outside of some dramatic divergence from what the importer instructed, the importer is held responsible and liable for all the actions of its consultants. If your broker, forwarder, or consultant contributed to an error that is the subject to your submission, you can see that there is a potential for a conflict of interest as well. In contrast, a lawyer is a trained advocate whose overriding obligation is to represent you zealously and without a competing allegiance. A lawyer can also write, an essential skill for written submissions. Importers need to craft winning arguments and preserve rights and obligations if those arguments fail. To achieve this level of competence, importers must retain legal advocates who are steeped in the complexities of the regulatory law that governs the importation of goods into the US. Finally, hiring a lawyer shelters your communications and discoveries from third parties through the attorney-client privilege, a benefit unique to the legal profession.

These articles are recent press verbatim releases from the Department of Justice.

U.K. Firm Pleads Guilty to Illegally Exporting Boeing 747 Aircraft to Iran - Firm Agrees to Pay \$15 Million in Fines

Balli Aviation Ltd., a subsidiary of the United Kingdom-based Balli Group PLC, pleaded guilty in the U.S. District Court for the District of Columbia to a two-count criminal information in connection with its illegal export of commercial Boeing 747 aircraft from the United States to Iran, announced David Kris, Assistant Attorney General for National Security; Channing D. Phillips, U.S. Attorney for the District of Columbia; Thomas Madigan, Acting Deputy Assistant Secretary of Commerce for Export Enforcement; and Adam J. Szubin, Director of the Department of Treasury's Office of Foreign Assets Control. Under the plea agreement, Balli Aviation Ltd. agreed to pay a \$2 million criminal fine and be placed on corporate probation for five years. The \$2 million fine, combined with a related \$15 million civil settlement among Balli Group PLC, Balli Aviation Ltd., the U.S. Department of Commerce's Bureau of Industry and Security (BIS), and the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), that was also announced today, represents one of the largest fines for an export violation in BIS history. Under the terms of the related civil settlement, Balli Group PLC and Balli Aviation Ltd. have agreed to pay a civil penalty of \$15 million of which \$2 million will be suspended if there are no further export control violations. In addition, Balli Aviation Ltd. and Balli Group PLC are denied export privileges for five years, although this penalty will be suspended provided that neither Balli Aviation nor Balli Group commits any export violations and pays the civil penalty. Under the terms of the settlement, Balli Group PLC and Balli Aviation, Ltd. will also have to submit the results of an independent audit of its export compliance program to BIS and OFAC for each of the next five years.

Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme

The president of a Miami-Dade County, Fla.,-based company pleaded guilty to engaging in monetary transactions involving property derived from a scheme to bribe former Haitian government officials, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division; U.S. Attorney Jeffrey H. Sloman of the Southern District of Florida; and Daniel W. Auer, Special Agent in Charge of the Internal Revenue Service, Criminal Investigation (IRS-CI) Miami Field Office. According to the criminal information filed on Feb. 1, 2010, Jean Fourcand, 62, of Miami, was the president and director of Fourcand Enterprises Inc. In pleading guilty, Fourcand admitted that he received funds between November 2001 and August 2002 originating from U.S. telecommunications companies for the benefit of an official of the Republic of Haiti's state-owned national telecommunications company, Telecommunications

D'Haiti (Haiti Teleco). Fourcand admitted during his guilty plea that some of these funds were received from an intermediary company, J.D. Locator Services Inc. Juan Diaz, the president of J.D. Locator, pleaded guilty on May 15, 2009, to conspiracy to commit violations of the Foreign Corrupt Practices Act (FCPA) and money laundering. Fourcand also admitted that Robert Antoine,

the former director of international relations at Haiti Teleco, was the recipient of the bribes. According to court documents, various U.S. telecommunications companies sent money to Diaz who would then disperse the funds by issuing J.D. Locator checks made payable to Fourcand Enterprises. For example, Fourcand admitted that he received a check for \$18,500 on Feb. 20, 2002, drawn on J.D. Locator Service's bank account, which he deposited into an

account in the name of Fourcand Enterprises. This check contained a false invoice number to make the payment appear to be for legitimate services when in fact the money was intended for Antoine. Fourcand admitted that he used these funds to engage in a real estate transaction that benefited Antoine. The charged crime carries a maximum penalty of 10 years in prison and a fine of the greater of \$250,000 or twice the value of the property involved in the transaction. Fourcand also agreed to forfeit \$18,500 as part of his guilty plea.

Customs broker sentenced to prison for defrauding Massachusetts company out of over \$1 million

Gregory Manuelian, age 50, of Manhasset, N.Y., was sentenced to 24 months in prison, to be followed by 3 years of supervised release (12 months of which will be in home detention with electronic monitoring) and ordered to pay \$1,188,886.97 in restitution, based on charges that Manuelian defrauded his client, B-K Medical Systems, a Danish subsidiary of Massachusetts-based Analogic Corporation, by repeatedly submitting phony customs documents which indicated that B-K owed customs duties on goods that were actually duty free. Manuelian operated a customs brokerage in Jamaica, New York called Marquis Clearance, Ltd., and had served as B-K's customs broker since 1980. When B-K's goods entered the United States, Manuelian, on behalf of Marquis Clearance, ordinarily paid duties and routine charges on them, and then faxed invoices to B-K listing the goods and the duties Manuelian pre-paid on B-K's behalf. B-K reimbursed Manuelian for the duties, along with a brokerage fee. In 1996, the US Commerce Dept. began to phase out the duties on the types of medical equipment imported by B-K, such that by 1999, the goods were duty free, but Manuelian continued to bill B-K for pre-paid duties on its equipment, even though he paid none. Manuelian mailed B-K bogus customs forms which showed a duty owed on the medical equipment, usually equal to 5.3% of the equipment's value. In so doing, Manuelian repeatedly induced B-K to reimburse him for duties that he never actually paid, in amounts ranging from \$1000 to \$9000. By the time B-K discovered its loss in 2006, Manuelian had defrauded it out of a total of approximately \$1.2 million.



Study for the Customs Broker Exam at the San Antonio Holiday Inn Riverwalk

March 15-18

217 North St. Mary's St. San Antonio,
Texas 78205-2303

The Holiday Inn Riverwalk is located directly on the banks of the Riverwalk, and just a two-minute stroll to all that the Riverwalk has to offer. There are a limited number of hotel rooms available for our students. The savings are significant, about \$60 per night. First come, first served. We email our students the discount code and information upon request.

Our course is unique. We have a pass rate of 94%, and we offer personalized homework, 24/7 online material, and weekly 1-hour review sessions. Our boot camps are not boring lectures and rote learning. Instead, we teach what to study, how to study, and what to avoid studying. Our boot camps are interactive and intensive.

More info:

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www.bestcustomsbrokercourse.com

(214) 720-7720



Customs Broker Exam Preparation Tip: **Be calm, but don't get too comfortable**

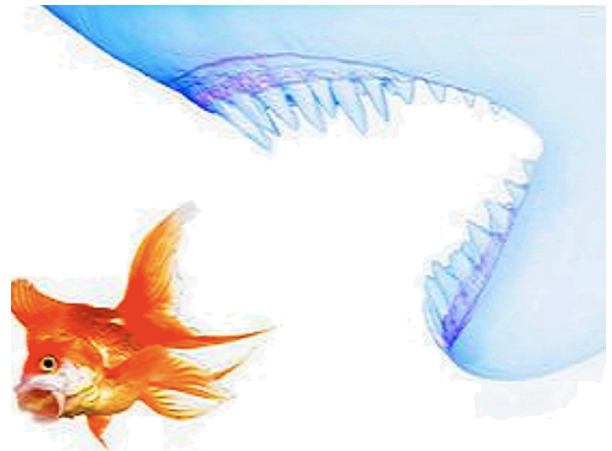
Have you ever heard anyone say that they do well on exams only when they cram, that they can function best when they are running behind schedule? These adrenalin junkies extract a heavy emotional and physical toll not only on themselves, but also on anyone else feeling the ripples from the chaos. There are a few statistical outliers -- gifted anomalies who can master daunting material in a fraction of the time of most earthbound humans - but the science constantly shows that this personality type is more apt to crash and burn than to succeed.

There is no match for thoroughly preparing for a test, but do not get too comfortable. You cannot anticipate everything that can happen you when you study or sit for the customs broker exam. However, you can cultivate an attitude of calmness, of inner balance that will prevent you from being thrown off kilter by surprises. Here are some possible techniques: Take a couple of quizzes in unfamiliar places, preferably with a lot of distractions. People talking, not enough space, with the thermostat too high or too low. Simulate what would happen if you arrive late to the real exam by shaving off 15 minutes from the time you have. Take plenty of restroom breaks during your practice exam. Try breathing exercises and meditation techniques. Yoga works for many students. Keep a healthy diet. Get sufficient sleep before the exam. Our experience shows that you lose at least 5-10 percentage points by going into the broker exam sleepy or hungry, or after eating a heavy meal or junk food.



THIS FRIDAY!! Surviving CBP Audits - An Importer's Guide Webinar February 26, 2010 (Friday) 11 am - 12 noon Central

Importers fear audits from US Customs and Border Protection (CBP). With good reason. The Obama Administration promises to step up enforcement, and odds are that your company will be audited. CBP audits can last a long time (even years), can consume huge chunks of company resources, and can result in large fines and penalties. The good news is that we can teach you tried and true strategies to help prevent an audit, prepare for an audit that is on its way, or help you survive and thrive if you are already in an audit.



This one-hour webinar, presented by a leading customs attorney, will cover the regulatory and legal context of CBP audits, with an emphasis on Focused Assessments (FAs) and the Importer Self-Assessment (ISA) Program. Importers will come away with the tools to develop policies and procedures for any compliance situation before, during, or after the audit.

Registration: \$99 per line. Free for clients (current or former). Register at www.exportimportlaw.com.

Do-Gooder Corner: TRAFFIC Wildlife Trade News www.traffic.org

The Los Angeles Times recently ran a riveting article about the illegal importation into the USA of bush meat. There is a growing market of people eating endangered species. This vile practice is driven partly by tradition and partly by the allure of trying food that is not only decadent, but maybe even illegal. Fortunately, there is a website dedicated to providing the public with the latest information on this illicit trade. It's called TRAFFIC (www.traffic.org), "the wildlife trade monitoring network, works to ensure that trade in wild plants and animals is not a threat to the conservation of nature." The website is jointly run by the World Wildlife Fund (WWF) and the International Union for Conservation of Nature.



Webinar :
***Surviving CBP Audits -
An Importer's Guide***
February 26, 2010 (Friday)
11 am - 12 noon Central
Cost: \$99
You may register at
www.exportimportlaw.com or
info@exportimportlaw.com.

January	February	March
April	May	June
July	August	September
October	November	December

March 4, 2010
11 am - 12 noon Central
Cost: \$99
You may register at www.exportimportlaw.com or
info@exportimportlaw.com

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