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Article 7: Warehouse Receipts, Bills of Lading and other Documents of Title

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the state statute somewhat "but carries forward the one-year limitation" in which notice must be given.

COMMENT

Georgia modified the Official Version of Section 4-406(4) by changing the time limit within which notice of a forged indorsement must be given to the bank by a customer. The limits contained in Section 4-406(4) of the Official Version run from the time the statements containing the forged or altered checks are made available to the customer. It should be noted that the Official Version specifically distinguishes between the length of time notice to a bank must be given under Section 4-406(4) for the customer to be able to assert a claim for payment of an item with a forged indorsement (three years) and one with his unauthorized signature or alteration of the instrument (one year).

R.W.D.

ARTICLE 7: WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

SECTION 7-204. Duty of Care; Contractual Limitation of Warehouseman's Liability

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

ANNOTATION

**WORLD PRODS., INC. V. FREIGHT SERVICE, INC.*
222 F. Supp. 849 (D.N.J. 1963)

Plaintiff's goods were damaged beyond use while stored in the defendant's warehouse when a severe hurricane caused unusually high tides. The portion

* Code constructed but did not govern the case.

of the warehouse where the goods were stored extended over a river. Plaintiff brought an action based on negligence and breach of the bailment contract. The defendant denied liability and asserted that even if it were liable, its liability had been contractually limited by the provisions of the warehouse receipt which provided that the defendant would not be liable for acts beyond its control. It also provided that for damage caused by acts within its control, the amount of its liability would be limited.

The court based its decision on then prevailing New Jersey case law, under which there was a presumption of negligence on the part of a warehouseman if he returned bailed goods in a damaged condition. The court found that the goods were damaged by acts within the defendant's control and held that even though the goods were damaged by the unusually high tides caused by the hurricane, the defendant's negligence in storing the goods in the area extending over the river was a substantial factor in causing the plaintiff's loss. In determining the extent of the defendant's liability, the court held that the plaintiff was bound by the limitation of damages clause set forth in the receipt since the parties were on equal commercial footing. The court cited Sections 7-204(1), (2) and 2-719(3) as justifying its holding had the Code been in effect.

COMMENT

The result of this case would have been the same if the Code had controlled. Section 7-204(1) imposes a subjective standard of care upon a warehouseman as to stored goods. The parties may agree to increase the duty, but, absent such an agreement, the warehouseman is only liable for damages which could have been avoided by the exercise of the prescribed care. In addition, Section 7-204(2) allows a warehouseman to limit his liability by contract. The court's citation of Section 2-719(3), which permits a seller of commercial goods to limit his liability for consequential damage, was apparently used by the court to point out that the Code permits persons on equal commercial footing to limit their liability.

Many states, including New Jersey, raise a presumption of negligence on the part of a warehouseman when he returns bailed goods in a damaged condition. Section 7-403(1)(b) contains optional language which puts the burden of proving negligence upon the person entitled to the goods under the document. In states, such as New Jersey, where the optional language was not adopted, prior law determines which party has the burden of proving negligence.

R.W.D.

SECTION 7-403. **Obligation of Warehouseman or Carrier to Deliver; Excuse**

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable [, but the burden of establishing negli-

gence in such cases is on the person entitled under the document];

Note: The brackets in (1)(b) indicate that State enactments may differ on this point without serious damage to the principle of uniformity.

CASES ANNOTATED UNDER OTHER SECTIONS

*WORLD PRODS., INC. v. FREIGHT SERVICE, INC.
222 F. Supp. 849 (D.N.J. 1963)

See the Annotation to Section 7-204, *supra*.

ARTICLE 8: INVESTMENT SECURITIES

SECTION 8-106. Applicability

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

CASES ANNOTATED UNDER OTHER SECTIONS

WELLAND INV. CORP. v. FIRST NAT'L BANK

* 81 N.J. Super. 180, 195 A.2d 210 (1963)

See the Annotation to Section 8-406(1), *infra*.

SECTION 8-406. Duty of Authenticating Trustee, Transfer Agent or Registrar

- (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities
 - (a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
 - (b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

ANNOTATION

WELLAND INV. CORP. v. FIRST NAT'L BANK

81 N.J. Super. 180, 195 A.2d 210 (1963)

The plaintiff, a New Jersey investing corporation, advanced money to Lane receiving as security his pledge of common stock certificates of defendant issuer, Mercury Photo., a Delaware corporation. The value of the stock dropped appreciably and upon Lane's failure to repay and his refusal

* Code constructed but did not govern the case.