



December 2009

# **WAREHOUSE LEGAL UPDATE**

## **Contract Pitfalls**

Recent Issues and Developments

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**December 15, 2009 @11:00-am 11:45-am**

# FISHER KANARIS, P.C.

- Fisher Kanaris, P.C. is a civil litigation law firm that offers experienced advice, counsel and representation for a variety of legal matters throughout the world. Founded in 1992 by a diverse group of attorneys, the Firm has steadily grown, building an exemplary reputation for cost-effective, innovative and well-prepared advocacy.

# WAREHOUSE LEGAL PRACTICE GROUP

- In our Warehouseman's Legal Liability Practice, the attorneys at Fisher Kanaris, P.C. have represented warehousemen across the United States, including owners and insurers of refrigerated and dry storage warehouses of all types, ages and sizes. Cases handled by Fisher Kanaris, P.C. have involved the storage of all types of products and materials, ranging anywhere from ice cream, dry goods, raw materials, paper products, boats, printing presses and liquor.

# IWLA CLAIMS AND LITIGATION COUNSEL

- In 2003, the IWLA appointed FISHER KANARIS, P.C. as Claims and Litigation Counsel.
- Since that time, FISHER KANARIS, P.C. has assisted the IWLA and its members in all facets of their legal needs.

# **RECENT LEGAL INQUIRIES AND CONTRACT PITFALLS**

- **TERMINATION CLAUSES**
- **FLEXIBLE FEES**
- **WAREHOUSE LIENS**
- **INDEMNIFICATION**
- **LIMITATION OF DAMAGES AND CAPS**
- **ALL RISK INSURANCE**
- **SPACE REQUIREMENTS WITH NO MINIMUMS**
- **REQUIRED TO FOLLOW PROCEDURES BUT NEVER SUPPLIED**
- **NO SIGNED AGREEMENT**
- **NO AGREEMENT AT ALL**
- **AUDIT AND YOU PAY**
- **LIABILITY FOR THEFT/EMPLOYEE DISHONESTY**

# Duty of Care

A warehouseman is liable for damages for loss or injury to the goods caused by its 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.

*Section 7-204(1) Uniform Commercial Code*

# **BEWARE**

## **Termination Clauses**

- Can you terminate?
- Can they terminate?
- Capitol Recovery
- Tied to KPIs
- Poorly worded termination clauses
- Liquidated Damages?

# Flexible Fees

## Is Your Customer Losing Money?

- Asking for Concessions
- Before you make concessions, MAKE it non-admissible
- Warn employees not to make promises
- All modifications must be in writing
- Know termination clause ?
- Negotiations
- Don' t take the blame

# Warehouse Liens

- Don't give it up!
- Not specifically asking you to give it up but saying you must if their "financing company requests
- Bankruptcy Issues
- Get a general lien
- Do you really want the product?

- **Specific Lien vs. General Lien**

- General lien specifically referenced on warehouse receipt document expands scope of lien to cover money advanced, interest, insurance, transportation, labor, weighing, cooperating and other charges and expenses in relation to such goods and for the balance on any other accounts that may be due.

# Indemnification

- Way too broad
- More depositors want it
- Do you have insurance to cover it
- How much insurance do you need

# Limitation of Damages and Caps

- Damage Limit Caps
- Limits higher than product
- No limit
- Limit is not applied to mysterious disappearance
- Complicated formula

# All Risk Insurance

- Why do they want it
- How much will it cost
- Do you want to go down this road
- Is it really all risk
- What if insurance cost goes up

# Space Requirements with No Minimums

- Must hold space but they may use it
- Rates not tied to minimums so what is contract really worth
- How long must you continue to hold open space
- What are penalties if you fail to make space available

# Required to Follow Procedures But Never Supplied

- Required to follow their procedures but procedures never provided
- Make an exhibit
- Do not agree to accept updates automatically
- Their policies do not normally translate into your operation

# No Signed Agreement

- Will be a contract interpretation question for judge
- Much easier to enforce written
- Account can leave anytime
- Bankruptcy issues
- No more hand shakes
- Few companies will continue to operate this way

# **No Agreement At ALL!!**

- No protections
- Insurance issues
- Flexible termination
- Financing issues

# Audit and YOU PAY!

- New audit procedures
- Disruption
- Outsiders in your building
- If discrepancy, you pay cost of audit and missing product
- Build in limit for cost
- Make auditor responsible for injury
- Get lead time

# Liability For Theft/Employee Dishonesty

- No conversion
- No necessarily breach of standard of care
- Insurance
- Background checks
- Agreements want you to be strictly liable
- Get shrinkage allowance
- Report all crimes