Uruguay – Case on Carrier's Liability

I am grateful to Henry Saint Dahl, the President of the Inter-American Bar Foundation, for contributing this report on this case from Uruguay.

On October 10, 2008, the Civil Court of Appeals in Montevideo, Uruguay, affirmed the decision of the 14th Civil Court of Montevideo in *Royal & Sun Alliance Seguros Uruguay Sociedad Anónima v. Panalpina, Pantainer Express Line* holding that in a multimodal transportation contract between Guatemala and Montevideo, Guatemalan law exempted the carrier from liability when the carrier had followed instructions from the owner, which lead to the cargo being stolen from the place where it was left in custody.

The court applied Art. 2399 of the Uruguayan Civil Code and, as the most important conflict rule, Art. 34 (4) (b) of the 1889 Montevideo Civil International Law Treaty (Tratado sobre Derecho Internacional Civil de 1889), which states that

> *… contracts concerning things certain are ruled by the law of the place where they are situated at the time the contract is made … if the effects of such contracts relate to a special place, those contracts are ruled by the law of such place.*

The court held that the effect of the contract related to Guatemala, which made Guatemalan law applicable. In its turn, Art. 817 of the Guatemalan Commercial Code relieved the carrier from liability when the total or partial loss of the cargo resulted from "an act or instructions given by the owner or his representative." Interestingly, domestic Uruguayan law would have lead to the opposite result since it imposes strict liability on the carrier (obligación de resultado). The mere fact that the cargo did not arrive to its final destination would have made the carrier liable.

In support of the applicability of Guatemalan law, the judgment stressed that the relevant events (instructions given and cargo stolen) took place in Guatemala.

The text of the decision was provided by Uruguayan attorney Eduardo Lapenne.