



Loss and Damage at Airport Warehouses – Which Liability Regime Applies

Whilst the UK's departure from the European Union will cause some changes to the import and export documentation processes between those two blocs, many other trade issues will remain unaffected by the split. That is particularly the case where trade is governed by International Conventions, which have been adopted by individual countries, rather than treaties. Much of the law which underpins the movement of goods between countries by road, air and sea is pursuant to International Conventions.

Perhaps the most important of these is the Hague Visby Rules-The Hague Rules as Amended by the Brussels Protocol 1968, which limits the liability of carriers of cargo by sea; the Convention on the Contract for the International Carriage of Goods by Road 1956 (the CMR), which limits liability for carriers of cargo by road and the Montreal Convention 1999, which limits liability for carriers of passengers and cargo by air. Each of these Conventions have different regimes for calculating the amount at which the carrier can limit its liability. A carrier and the owners of the goods need to have a working knowledge of those differences in order to ensure that they are familiar with the outcomes for when things do not go as planned. Whilst many cargo owners take out insurance a large part of the market does not. This is particularly an issue for cargo owners who choose to ship cargo in containers or, transport cargo in trucks.

Legal decisions made by the Courts in different countries on the interpretation of these Conventions, tend to be treated with more reverence by other Courts, than say standard cases. However it is not unusual for there to be marked differences in the way certain countries interpret the conventions. For example under the CMR, the UK Courts have been keen to ensure that in cases of theft, the Carrier is able to limit liability, whilst the French and German Courts have been less reticent to do that.

As goods are often moved by a combination of different forms of transport i.e. by ship and road, or by air and road, it is important to know at what stage the rules of limitation cut off under each of the Conventions. This is not always as obvious as it may seem as one recent case heard by a Court in Germany highlights.

The case involved a consignment of freight that was transported by air from the USA to Germany. The cargo arrived at Frankfurt airport and was destined to be placed into a warehouse, for trucking to its final destination.

The cargo was found to be missing, after an inspection had been carried out at the warehouse. The owners of

the cargo sought compensation but a battle broke out over which sets of limitation rules the carrier of the goods could use. In this particular dispute the Montreal Convention limitation rights meant the carrier would pay a lower figure in reparation, than it would if the CMR applied. The owners of the goods therefore refused to settle calculated at the limitation figures in the Montreal Convention.

The Hamburg state court did not agree with the owner of the goods. At the time of the loss of the goods they took the view that German law did not apply and that the CMR convention was not applicable.

The CMR only started to apply once the cargo had been loaded onto the collecting vehicle for onward road transport. As that event had not occurred the Montreal Convention limitation rules still applied. Similar courts across the world are likely to follow suit. Whilst cargo is being stored in an airport the Montreal Convention rather than CMR will apply to claims for loss and damage.

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