



Using the Hague/Hague Visby Rules to limit liability under Bills of Lading Contracts

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Identifying whether the Hague Rules or the Hague Visby Rules limitation regime is incorporated into a bill of lading is essential, when a carrier looks at whether it can effectively limit its liability/exposure. The differences between the two regimes when trying to limit liability using the package limitation in the Rules, can sometimes be significant. The Hague Rules has a higher package limitation figure on some packages than the Hague Visby Rules. On larger claims the package limitation differences in the two regimes can be significant.

In a recent Court of Appeal decision – *Yemgas FZCO V Superior Pescadores SA* [2016], the Court of Appeal were asked to examine whether the Hague Rules or the Hague Visby Rules had been incorporated into a bill of lading.

The dispute involved a consignment of machinery and equipment which was to be used in the construction of a liquid natural gas facility in Yemen. The consignment was loaded onto a vessel in Bessel in Antwerp, Belgium for discharge at Balhaf in the Yemen. The carriers issued 6 bills of lading which acknowledged the shipment of the cargo on board “in apparent good order and condition”. The terms of the Bills contained a “Clause Paramount” which contained the following sentence “The Hague Rules contained in the International Convention, for the Unification of certain rules relating to Bills of Lading, dated Brussels 25 August 1924 as enacted in the country of shipment should apply to this contract”.

The cargo was damaged en route to the Yemen and the loss was calculated to be USD 3.6 million. The parties to the dispute had come to an agreement that English law and jurisdiction would apply to the actual dispute. England has incorporated the Hague Visby Rules onto its statute books. Therefore, as the parties had agreed English Law the carrier was keen to have the benefit of the lower package limitation figures in the Hague Visby Rules applied to parts of the claim. The cargo interests were however keen to take advantage of the higher package limitation in the Hague Rules and they relied upon the wording in the Bill of Lading which stated that the Hague Rules under the original 1924 Convention should apply to the contract.

The first Court who heard the matter decided that the lower Hague Visby Rules applied. To get to that decision, the Judge decided that although the parties had agreed to use the Paramount Clause wording – it did not operate as an agreement that the higher package limitation figure should be used. Unsurprisingly that decision was appealed. The Court of Appeal took a slightly more direct route by going back to the wording of the clause in the Bill. They came up with the same answer but via a different route. Their view was that the clause in the Bill of Lading actually meant the Clause Paramount as enacted in the country of shipment were incorporated. This meant that as Belgium was the country of shipment and they had adopted the Hague Visby Rules the reference to the Clause Paramount as enacted in Belgium, meant the Hague Visby Rules were incorporated and the lower limitation figures on some packages were to apply.