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9 JANUARY 2018

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Does Package Limitation Under the Hague Rules Apply to Bulk Cargo?

The Aqasia^[1]

The issue whether the package limitation provision in Article IV rule 5 of the 1924 Hague Rules^[2] applies to bulk cargo was determined by the English courts for the first time in this case.

The action was initiated by the owners and insurers of a cargo of 2,000 tons of fish oil that was carried in bulk on board the vessel, *The Aqasia*, for a lump sum freight. The contract of carriage incorporated a charterparty that was subjected to the Hague Rules.

On arrival, 547.309mt of the cargo was found to have suffered damage. As a result, the cargo owners claimed damages in the sum of USD367,836.

The shipowner accepted liability over the damaged cargo, but argued that it was entitled to limit its liability to £54,730.90 based on the package limitation of £100 “per package or unit” of cargo damaged pursuant to Article IV rule 5 of the Hague Rules. It was contended by the shipowner that Article IV rule 5 could apply to bulk or liquid cargo by reading the word “unit” as reference to the unit used by parties to quantify the cargo in the contract of carriage, which was “per metric ton” in this case. The cargo owners, on the other hand, argued that the words “package” or “unit” did not apply to bulk cargo.

The English High Court held that the word “package” only applies to cargo that is packed. The determinative issue was therefore whether or not the word “unit” in the Article extended to cover bulk cargo.

The court contemplated whether the word “unit” was meant to be:

- (a) “physical shipping unit” in the sense of an unpacked item, such as cars shipped without packaging; or
- (b) “unit of measurement”, such as the weight of the car in kilogram or metric ton.

The judge adopted the construction of “physical shipment unit” instead of “unit of measurement” on the following grounds.

(i) *The language of Article IV rule 5 of the Hague Rules*

The shipowner drew attention to other provisions of Article IV and other articles in the Hague Rules in support of the submission that the word “unit” was meant to be a *unit of measurement* and referred to the phrase used in the later 1936 US Carriage of Goods by Sea Act which, in its parallel provision, referred to a limit *per customary freight unit*.

Based on the principle of *noscitur a sociis*,^[3] the court found that the use of the word “unit” and “package” are concerned with physical items rather than abstract units of measurement. In coming to his decision, the judge affirmed the interpretation favoured by the majority of the commentaries and authorities from other common law jurisdictions.

With reference to the *travaux préparatoires*, the judge found that the intention underlying the inclusion of the words “or unit” was to widen the notion of *package* to refer to articles of cargo shipped as if they were individual packages. There was nothing in the words to suggest that units of measurement were intended.

The judge found that the term “unit” in the Hague Rules could only mean a physical unit for shipment under English law. In so finding, the judge distinguished the wording under the Hague Rules adopted in the UK from the version adopted in the US.

(ii) *Comparison with the Hague Visby Rules*

The weight limitation multiplier was introduced in the 1968 Hague Visby Rules. It provides for an alternative weight limitation that would apply to goods if the weight was higher than the package or unit limitation.

The inclusion of the “per kilogramme” provision in the Hague Visby Rules plainly gives effect to bulk cargo, which suggest that *per unit* under Article IV rule 5 of the Hague Rules did not carry the same meaning.

... the purpose of the Hague Rules was that of creating a standard form of bill of lading for the liner trade, it was most unlikely that those who drafted the Hague Rules had in mind bulk cargoes when discussing the limit of a carrier's liability.^[4]

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Published by the Shipping Practice Group

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[1] *Vinnlustodin Hf v Sea Tank Shipping AS (The "Aqasia")* [2016] 1 Lloyd's Law Reports Plus 75

[2] The Hague Rules is incorporated into Malaysian law by virtue of the Carriage of Goods by Sea Act 1950

[3] The rule of *noscitur a sociis* means that the meaning of a word is to be found from the context. The rule therefore involves looking at other words in the same section as the word in dispute or other parts of the Act.

[4] Paragraph 55 of *The Aqasia* judgment