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Strict German law to apply on foreign terminal or road transport losses?

Rights of recourse against German Freight Forwarders

by

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I. Introduction

Recent decision in German Multi-Modal Transport Law

- nearly all sea transport contracts become multi-modal
- German law to apply on all legs of multi-modal transport





II. Relevant Decisions

1. German Federal Court decision on 18.10.2007, based upon Hanseatic Court of Appeal, decision 19.08.2004,

1.1 Facts

- printing machines from Bremerhaven, Germany to Durham, North Carolina, USA D
- 11 containers on Mafi-trailer
- weight each 25000 kg; damages on terminal in USA
- damage occurred when Mafi-trailer was towed by tractor from warehouse to truck
- damages amount to € 240,000





II. Relevant Decisions

- first instance regarded shifting as annex and applied sea transport law
- limitation of liability to 2 SDR per kg, leaving Claimants with € 170,000 damages
- Second instance applied land transport law allowing full recovery





II. Relevant Decisions

1.2 Decisions

- German Federal Court affirmed the judgment of the Court of Appeal, applying land transport law
- German law to apply on all legs of multimodal transport
- hypothetically applicable law – not law of Virginia





II. Relevant Decisions

1.3 Remarkable aspects

- Applicable law: German law
- Clear line between sea transport and land transport leg: Shifting point is the forwarding process to the truck in cases with no special circumstances
- Impact of German law after the completion of the sea leg
- receiver of damaged cargo seeks reimbursement primarily in his jurisdiction





II. Relevant Decisions

1.3 Relevance of case

- possibility of recovery claims with higher limits
- Germany one of major export nations of goods
- sales contract with CIF-deliveries
- German Freight Forwarders – ADSp
- German law to apply





II. Relevant Decisions

1.4 Recourse claim against German freight forwarder

- receiver of cargo = third party beneficiary
- direct claim
- higher limitations = 8,33 SDR per kg





II. Relevant Decisions

1.5 Result:

- US cargo receiver has claim under German law against German forwarder regardless of what limits US law or contract with local haulier provides for
- breaking of limitation possibly easier under German transport law





II. Recent Decisions

2. Local Court of Hamburg, 04.04.2007

2.1 Facts

- multimodal transport ex works Germany to affiliate company USA
- including air transport of gauging equipment
- German law and ADSp to apply
- delivery to third party
- replacement delivery





II. Recent Decisions

2.1 Facts

- cargo found, but lost again and finally during shipment back to Germany
- transport insurers paid loss, sought recovery





II. Recent Decisions

2.2 Decisions

- freight forwarder agreeing fixed cost has obligations of carrier
- air transport → air carrier's obligations
↳ Montreal Convention
- in principle, Art. 22 MC → unbreakable limitation of liability





II. Recent Decisions

- in this case no limitation of liability to 918 SDR
- General Freightforwarders Terms (ADSp) prevailed
- no. 27 ADSp waives limitation rights where damage is due to
 - intent
 - gross negligence
 - breach of main contractual obligations
- art. 25 MC allows to waive all rights to limit
- Aviation law, but certain risk to qualify No. 27 ADSp as waiver also re. Hague-Visby-Rules or equivalent





II. Recent Decisions

2.3 Consequence:

- recommendation by German Freight Forwarders Association to amend wording of ADSp
↳ effects only on future contracts





III. Summary

- multimodal transport contracts under German law might provide higher limits of liability than other jurisdiction appearing to be applicable at first sight
- look for recovery possibilities where a German party is involved!





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Thank you for listening

