



What's in the box? How packaging affects carrier liability

From container-packed tuna loins to bulk shipments of corn cobs, high-profile court rulings are influencing how liability limitations under the Hague and Hague-Visby Rules are applied. As disputes continue to arise, carriers and cargo interests are navigating a legal landscape marked by jurisdictional divergence and evolving case law.

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The principles under which a carrier can limit its liability pursuant to the Hague and Hague-Visby Rules continue to be a contentious issue in the maritime legal landscape. Notable cases such as *Kyokuyo Co. Ltd. v. AP Møller-Maersk A/S* (the "Maersk Tangier") and, more recently, *MMA Iard v. CMA CGM*, decided by the French Supreme Court on 23 March 2022, illustrate the complexities and ongoing litigation surrounding this topic.

General principles of liability limitation

The Hague Rules, established in 1924, and their subsequent amendment through the Hague-Visby Rules, provide a framework for carriers to limit their liability in cases of loss or damage to goods during marine transport. The key provision is Article IV, Rule 5, which stipulates that a carrier's liability shall not exceed **100 pounds sterling per package or unit**, or the equivalent in other currency. The Hague-Visby Rules, introduced in 1968, further refined these provisions, introducing **limits based on weight** and specifying the Special Drawing Right (SDR) as the unit of account.

Bulk cargoes

Bulk cargoes, whether solid or liquid, present unique challenges in the application of liability limitation principles. The Hague Rules did not originally contemplate bulk cargoes, leading to significant litigation on whether these rules apply.

The prevailing view in most jurisdictions is that bulk cargoes do not qualify as packages or units for the purposes of liability limitation, simply because bulk cargo is not a physical "package" or "unit." In England, this position was affirmed by the Court of Appeal in the *Aqasia* decision dated February 2018 concerning a cargo of fish oil.

The Hague-Visby Rules make the application of the "unit" concept more straightforward as these provide an alternative limitation based on weight — 2 SDRs per kilogram — applicable to bulk cargoes.

However, challenges remain. Determining the weight of bulk cargo that has been lost or damaged can be contentious, especially when partial losses occur. The interpretation of "gross weight" and the timing of the weight assessment (whether at shipment or discharge) are crucial factors in such cases.

Goods carried in containers

Containerised cargoes represent a significant portion of modern shipping, and the Hague-Visby Rules explicitly address the limitations applicable to this mode of carriage. Article IV, Rule 5(c) of the Hague-Visby Rules stipulates that when goods are consolidated in a container, the **number of packages or units enumerated in the bill of lading as packed in such a container shall be deemed the number of packages or units for limitation purposes**.

The "*Maersk Tangier*" case provides insight into the courts' interpretation of liability provisions. In this instance, the English Court of Appeal ruled that individual tuna loins packed in a container qualified as "units" pursuant to the Hague-Visby Rules thereby allowing the application of the unit limitation. Despite being consolidated within a single container, each tuna loin was recognised as a distinct unit based on the bill of lading and the way the cargo was documented.

The French Supreme Court's decision in *MMA Iard v. CMA CGM* addressed a similar issue in the context of the Hague Rules applying to containerised bulk cargo. Here, cargo interests argued that a container holding 56,000 corn cobs constituted 56,000 units under the Hague Rules. The French Supreme Court disagreed, ruling that these 56,000 corn cobs were not the "freight units" agreed between the parties. The second court of appeal in charge of reviewing the case confirmed that the shippers had opted to stuff the cobs of corn inside the container as one "batch", thus making that batch the "unit" which was consistent with the information provided in the bill of lading. The practical effect of the decision was that the carrier, CMA CGM, was able to limit its liability to 1 x 100 sterling pounds despite the number of cobs stuffed in the container as these were shipped in "one batch". The application of the package and unit limitation to containerised cargo is not yet uniform across jurisdictions. In England, the courts tend to adopt a more practical approach, focusing on the actual number of units or packages shipped. Conversely, French courts seem more inclined to adopt a "virtual" approach, allowing flexibility in the concept of a unit as long as it is properly documented. Carriers will have to give careful consideration to the jurisdiction where a cargo claim is brought, as interpretations and rulings can vary.

Conclusion

The principles of liability limitation under the Hague and Hague-Visby Rules are complex and subject to varying interpretations across jurisdictions. Bulk cargoes, and goods carried in containers each present unique challenges in their application. Notable cases like "*Maersk Tangier*" and *MMA Iard v. CMA CGM* illustrate these complexities and the importance of accurately defining units or packages in bills of lading.

As maritime transport continues to evolve, these principles will undoubtedly remain a focal point of litigation and legal discourse.

Gard is here to help their Members with any questions about cargo claims or liability limitations. They provide practical advice and solutions for all types of cargo issues.

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