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Recent Developments in German Maritime Law

by

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I. Introduction

Recent developments in the Law of Limitation of Liability:

1. German Multi-Modal Law on foreign terminals?
2. Waiver of Limitation of Liability?



II. Recent Decisions on foreign Terminals

1. Court of Appeal Celle 2003
2. Hanseatic Court of Appeal Hamburg 2004
3. Federal Supreme Court 2005
4. Awaited: Federal Supreme Court 2007





II. Recent Decisions on foreign Terminals

Court of Appeal Celle 2003:

Carriage of a container by sea from Tunis via Genoa and by truck from Genoa to Germany

Cargo damage established prior to loading on truck





II. Recent Decisions on foreign Terminals

Hanseatic Court of Appeal Hamburg 2004:

Carriage of a a 11 parcels of printing machine, each 25 mt, on Mafi trailers, from Bremerhaven/Germany to Portsmouth/USA by sea and from Portsmouth to Durham by truck

Cargo damage occurred in terminal at Portsmouth





II. Recent Decisions on foreign Terminals

Celle: Terminal handling is ancillary part of sea transport, not an independent transport leg:

Limit: 2 SDR

Hamburg: Terminal handling is independent transport at least, if unusual and of some significance

Limit: 8,33 SDR





II. Recent Decisions on foreign Terminals

BGH 2005: Celle ist right, if there are no unusual circumstances during terminal handling:

Limit: 2 SDR

BGH 2007: ???





II. Recent Decisions

Relevance of aspect

- Germany still major export country
- Majority of sales under CIF terms
- Involvement of German Freight Forwarders
- German law applies to forwarding contract
- (foreign) consignee has own rights under such contract



II. Recent Decisions on foreign Terminals

Consequence: Even if there is no claim against
(foreign ocean carrier under his B/L
(Himalaya/ exclusion clauses),

there may be claims under German
law against German forwarder

with a limit of liability of not only 2
SDR/kg but 8,33 SDR/kg



II. Recent Decisions

1.4 Recourse claim against German freight forwarder

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

1.5 Extension of maritime law onto shore

- no, for transportation of certain complexity and lengths
- yes, for cases where no special circumstances
- undecided for other cases



II. Recent Decisions – Waiver of Limitation

Local Court of Hamburg 2007

- multimodal transport ex works Germany to affiliate company USA
- including air transport of gauging equipment
- German law and ADSp to apply
- Wrong delivery to third party
- replacement from Germany
- cargo found, but lost again finally during shipment back to Germany
- transport insurers paid loss, sought recovery



II. Recent Decisions

Decision

- 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

BUT:

- art. 25 MC allows to waive all rights to limit
- no. 27 ADSp contains waiver of limitation rights where damage is due to
 - intent
 - gross negligence
 - breach of main contractual obligations



II. Recent Decisions

Judgment final and binding

Forwarders Association recommends amendment of terms

Relevance for Shipping law cases





III. Summary

- Multimodal transport contracts under German law may provide higher limits of liability than other jurisdictions appearing to be the “natural” forum at first sight
- Look for recovery possibilities for “German cargo”: there may be a German freight forwarder involved.

