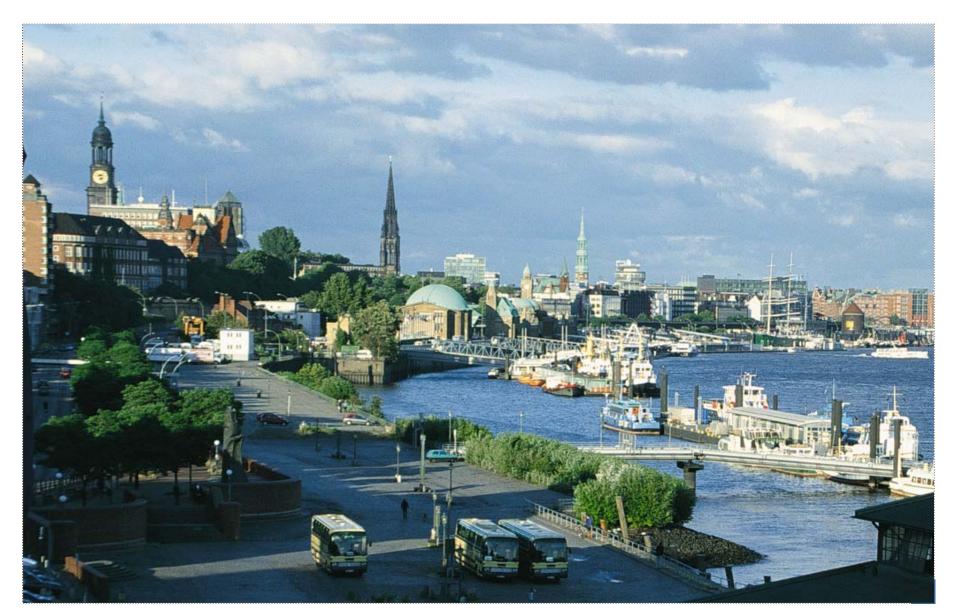
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Recent Developments in German Maritime Law

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?



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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



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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



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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



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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: ???



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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



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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



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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



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II. Recent Decisions

Decision

- freight forwarder agreeing fixed cost has obligations of carrier
- **b** Montreal Convention
- In principle, Art. 22 MC → unbreakable limitation of liability



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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



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II. Recent Decisions

Judgment final and binding

Forwarders Association recommends amendment of terms

Relevance for Shipping law cases



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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.