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Recent Developments in German Maritime Law

by

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I. Introduction

Recent developments in two areas

1. German Multi-Modal Transport Law

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

2. Limitation of Liability

- waiver of limitation of liability provided by conventions





II. Recent Decisions

1. Hanseatic Court of Appeal, decision 19.08.2004,
confirmed by the German Federal Court on 18.10.2007

1.1 Facts

- printing machines from Bremerhaven, Germany to Durham, North Carolina, USA
- 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. Recent Decisions

- first instance regarded shifting as annex and applied sea transport law
- limitation of liability to 2 SDR per kg, leaving € 170,000

1.2 Decision

- Court of Appeal reversed decision
- German Federal Court affirmed judgement of the Court of Appeal
- German law to apply on all legs of multimodal transport
- hypothetically applicable law – not law of Virginia





II. Recent Decisions

1.3 Relevance of case

- receiver of damaged cargo seeks reimbursement primarily in his jurisdiction
- possibility of recovery claims with higher limits
- Germany still world champion in exports of goods
- sales contract with CIF-deliveries
- German Freight Forwarders – ADSp
- German law to apply





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

- Court of Appeals: no, for transportation of certain complexity and lengths
- Federal Court: yes, for cases where no special circumstances as long as the process of forwarding to the outbound truck has not begun





II. Recent Decisions

1.6 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!





Thank you for listening

