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Unit or package limitation - Hague Visby Rules - Judgment clarified 92 years lacuna

On 14 October 2016, a doubt that was existing in the mind of legal fraternity for over 92 years was cleared by the judgment in the case The Aqasia [2016] EWHC 2514 (Comm), whereby it was made clear that the package limitation in Article IV, r. 5 of Hague (Hague-Visby Rules) Rules does not apply to bulk carrier's freight unit. In this case, the judge concluded that the word 'unit' in this rule Hague (Hague Visby Rules) means a physical unit for shipment, and not a unit of measurement or what they in US the customary freight unit that is used as the basis of calculation of freight rate that is charged by the Carrier.

In this case, the vessel carried a bulk cargo of fish oil from Iceland to Norway. The cargo was subject to a charter party providing for the carriage of 2,000 tons of fish oil in bulk, 5% more or less in the charterer's option. The freight for the cargo was payable on a lump sum basis. The bill of lading for the cargo recorded the shipper's description of the goods as "Icelandic Fish oil in bulk - 2,056.926 tons". At the discharge port, about 547 metric tons of the cargo was found to have sustained damage. The claim was brought under the charter party, which incorporated Article IV of the Hague Rules as appended to the Carriage of Goods by Sea Act 1924. Article IV, r. 5 of these Rules provides:

> … Neither the carrier nor the ship shall in any event be or become liable for loss or damage to or in connection with goods in an amount exceeding 100 [pounds sterling] per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading …

The Carrier accepted the responsibility for damage to the cargo, but based on the above Art IV, r. 5 asserted that they are entitled to limit their liability to - (547 MT*100 British pounds), that is, equal to GBP 547,00.00. Judge applied the rule of construction of the clause and since the word 'unit' was referred along with 'package', and therefore according to it, it could not only refer to the physical item. Similar results have been obtained in other common law jurisdictions such as Canada, Australia and New Zealand.

Andrew Liu's FDD team advice to its clients is as follows:

(A) After this judgment, the owners of bulk carriers will not be able limit the liability according to Article IV, r. 5 and therefore they must draft the Clause 8 of NYPE 93 carefully, so that they do not end up taking responsibility for loading/discharging/stowage of cargo.

(B) Any LOI issued, for issuing the clean bill is clearly the Owner's commercial decision, and in light of the fact they cannot also limit their liability further complicates and increases the risks in the bulk trade.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk