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Date: 30 May 2018

## The “Maersk Tangier” - The Court of Appeal Rules on Package Limitation under the Hague-Visby Rules

### Background

The English Court of Appeal last week handed down a significant judgement in relation to package limitation and what constitutes a “unit” for the purpose of limitation under the Hague-Visby Rules in containerised cargoes. The Court’s decision also clarifies the law in the application of the Hague-Visby Rules in circumstances where a Waybill is issued under a contract of carriage that contemplates shipper’s express or implied right to demand the issue of a bill of lading but where such right is not exercised.

### Facts

Claimants (Cargo Receivers) brought a claim against Defendants (Carrier) for damage to a cargo of unpacked/unwrapped pieces of tuna loins stuffed in three containers. The loss was due to raised temperature during transit caused by an alleged reefer container malfunctioning. The contract of carriage initially provided for the issue of bills of lading but the parties eventually agreed to use (three) Waybills to avoid delays at destination. Each Waybill described the cargo as “*1 Container Said to contain 206 PCS Frozen Bluefin Tuna Loins*”.

The Carrier argued that because Waybills had been issued, the Hague-Visby Rules limitation did not apply but rather the Hague Rules (which produced a less advantageous limitation figure). The Carrier referred to Article 1 (b) of the Hague-Visby Rules which provides that the Hague-Visby Rules ONLY apply to contracts of carriage that are covered by a bill of lading.

The Carrier argued that each refrigerated container was a unit (which would have allowed them to limit their responsibility to GBP 100 per container in a claim of GBP 858,000). The Carrier pleaded that the individual tuna pieces could not be treated as “units” because they could not have been shipped in breakbulk (pallets) without further packing. On their part, the Cargo Receivers argued that each tuna loin was a relevant package or unit for the purposes of the Hague and Hague Visby Rules.

There were two questions for the Court:

1. were the Hague-Visby Rules Applicable? And
2. what is a “unit” for the purpose of the Hague Rules and Hague/Visby Rules?

### The High Court Decision

In relation to (i) above, the judge ruled that the question to ask was not whether a bill of lading was

actually issued but whether the issue of a bill of lading was contemplated under the terms of the contract. In this case, the contract contemplated the issue of a bill of lading with the result that, barring any contract variation or waiver or estoppel, the Hague-Visby Rules will continue to apply even if some other carriage document (in this case a Waybill) is subsequently issued.

As regards (ii), the emphasis was whether the cargo was in fact “packaged” for shipment. The Court held that if the cargo is unpacked but it is made up of identifiable separate items of transportable cargo, those items are treated as “units”. Commenting on Article IV (c) of the Hague-Visby rules that states “*where a container... is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed... shall be deemed the number of packages or units*”, the judge held that this article does not require enumeration “as packed”. It only requires that the number of packages or units inside the container is accurately stated in the bill of lading. Since the Waybills stated that the containers contained a certain number of pieces of tuna and each piece of tuna was a unit, they accurately enumerated the number of units in the container.

### **The Court of Appeal decision**

The Court of Appeal upheld the decision of the High Court in full.

It was held that where bills of lading are contemplated but not issued the Hague Visby Rules will apply. Rejecting the Carrier’s argument that the pieces of tuna could not constitute units as they could not have been shipped without further packing, the Court of Appeal held the individual tuna pieces were units whether or not they could have been shipped breakbulk (as opposed to containerised) without any further packing. Thus, on the facts of this case, the individual pieces of frozen tuna were therefore units.

### **Conclusion**

The Court of Appeal decision will be welcomed by the shipping community as it offers useful guidance in an area of the law deficient of English authorities.

Click [here](#) to read the full judgement.

Source of Information: The Charterers P&I Club