



CASE ALERT NOTE
***VOLCAFE v CSAV* [2018] UKSC 61**

The U.K Supreme Court's judgment in *Volcafe Ltd v CSAV* [2018] UKSC 61 is an important development under English law. It may have practical consequences for everyone handling cargo claims.

This *Case Alert Note* serves two purposes:-

1. First, a brief case summary of this recent judgment; and
2. Second, and more relevantly, practical considerations for carriers handling cargo claims governed by English law after *Volcafe*.

CASE SUMMARY¹

Volcafe is a case about a carrier's burden of proof in claims for loss or damage to cargo.

Cargo interests successfully claimed against the carrier ship owner for damage to coffee beans stowed in unventilated containers shipped during Winter 2012 from Colombia to Bremen. Each bill of lading was governed by English law, subject to English jurisdiction and incorporated the Hague Rules. Cargo interests pleaded their case in standard form: carriers breached their duties as bailees to deliver the cargoes in the condition recorded on the bill of lading and in the alternative, for breach of Article III Rule 2 of the Hague Rules for failure to "...properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried."

While the carrier was responsible for the stevedores' preparation and stuffing of the containers, they failed to ensure that their stevedores maintained adequate evidence of what had been done and if it had been done properly. The evidence did not establish whether sufficient layers of paper had been used to line the containers' roof and walls to protect the cargoes from condensation.

The U.K. Supreme Court unanimously ruled against the carrier by holding that the carrier had the legal burden to prove it took good care to protect the cargo from damage and was not negligent, even if relying on an exception set out in Article IV Rule 2 of the Hague Rules. This does not change cargo interests continuing to bear the burden of proving that the cargo was shipped in good condition but discharged damaged.

PRACTICAL CONSIDERATIONS

Why is *Volcafe* an important decision for carriers, shipowners and their claim handlers? Carriers' legal burden – to prove it took care to protect the cargo from damage and wasn't negligent – increases the carrier's evidential burden to detail precisely what they did to take care to protect the cargo, why it was sufficient and how the damage or loss occurred despite them taking proper care.

¹ The *Volcafe* judgment can be found here <https://www.supremecourt.uk/cases/uksc-2016-0219.html>

What does this mean for practical purposes? This means it will difficult for carriers to successfully defend cargo claims if they cannot prove the cargo was cared for properly. Diligent carriers will need to sharpen their focus on evidential issues – before the beginning of the contract of carriage – to ensure they are in a position to gather evidence – after the contract of carriage has ended.

Ensuring evidence is maintained and available for carriers to get their hands on quickly may influence carriers’ ability to defend and settle cargo claims at a sensible level.

Here is some practical guidance for carriers, ship owners and their claim handlers dealing with cargo claims in the aftermath of *Volcafe*:-

PRACTICAL GUIDANCE For Carriers, Ship Owners and their Claim Handlers after <i>Volcafe v CSAV</i>	
Issue	CJC Suggestion
[1] Stevedoring and Terminal Services Agreements	<p>To assess if sufficient evidence will be available if needed, carriers would be wise to review their stevedoring and terminal services arrangements given their important role in handling and preparing cargo for carriage:-²</p> <ul style="list-style-type: none"> • Evidence of compliance with good industry practice and relevant industry standards when storing, planning, packaging, transporting and handling cargo. • Evidence of compliance with relevant shipper’s instructions, carrier’s instructions and loss prevention guidelines for the kind, size or weight of the cargo. • Evidence of record keeping, checking the internal and external container condition before loading. • Evidence of what was done and what was used to prepare the container/hold for the cargo, i.e. packaging, lining, supervision/monitoring containers. • Evidence of loading reports and photographs. • Evidence in the possession of the terminal, stevedores, its employees, agents or sub-contractors is maintained for a reasonable period of time and to produce it within a specified period of time at the carrier’s request.
[2] Loading surveys	<ul style="list-style-type: none"> • Quality control spot checks without notice via, for example, a cargo loading survey may help ensure compliance by stevedores and the terminal with the issues listed under [1].
[3] Cargo damage surveys	<ul style="list-style-type: none"> • Assessing the nature, extent, cause and financial impact of alleged damage to cargo may become more critical in the aftermath of <i>Volcafe</i>. Carriers would be wise to review their policy thresholds as to when they decide to independently conduct cargo damage surveys or not.
[4] Ship’s records	<ul style="list-style-type: none"> • Unqualified right to access the ship’s records and where necessary, the ship’s crew within a reasonable specified period of time at the carrier’s request to help defend cargo claims, particularly when chartering in tonnage that they do not own and operate.
[5] Physical evidence	<ul style="list-style-type: none"> • In appropriate cases, crew, surveyors, correspondents and others to be specifically instructed to retain physical evidence concerning damaged cargoes, i.e. samples of packaging materials.

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² Theoretically, stevedores should already be carrying out the kinds of activities listed at [1]. In practice, as was the case in *Volcafe*, the evidence may be insufficient and fail to adequately protect the carrier against a cargo claim.