



Maersk Chennai: know your (cocoa) beans

In this recent English High Court judgment *JB Cocoa Sdn Bhd and Others v Maersk Line AS - [2023] EWHC 2203 (Comm)* (<https://www.bailii.org/ew/cases/EWHC/Comm/2023/2203.html>), the Court held that the carrier's liability for damage to the cargo after discharge was excluded by the terms of its bill of lading. The cargo claim failed and the judgment has not been appealed. CJC acted for the successful defendant (represented by [Jacqueline Zalapa](#), [Richard Hickey](#) and [Debo Fletcher](#)).

Introduction

The High Court judgment in *Maersk Chennai* [2023] will be welcomed by the shipping community because it is a useful reminder that nothing in the Hague/Hague-Visby Rules prevents a carrier from limiting their liability to the period between loading and discharge. The carrier's standard bill of lading terms were deemed sufficiently clear to exclude their liability after discharge.

CJC has been involved with a number of other English High Court judgments that have usefully clarified various issues as to ocean carriers' period of responsibility. In *Alhani* [2018], it was held that Article 3 Rule 6 of the Hague Rules (i.e., the one year timebar provision) applied to misdelivery claims, at least within the Hague Rules period of responsibility. In a Hague-Visby Rules case, the Court of Appeal decision in *Giant Ace* [2023] determined that the one-year timebar does apply to claims in relation to misdelivery after discharge.

Facts

Briefly, a cargo of containerised cocoa beans shipped from Nigeria to Malaysia was delivered in a damaged state to the consignees. The cargo had sat at the discharge port for a considerable amount of time prior to collection, and the experts were broadly in agreement that the bulk of the damage occurred during this period.

Cargo interests pursued a claim against the carrier which was defended on various grounds, including on the basis of an argument that the damage had taken place after delivery so the carrier's liability was excluded by their standard terms as incorporated in to the bill of lading. The bill of lading was subject to the Hague Rules as a matter of contract.

Lord Hamblen, giving the leading judgment, stated that the exceptions in Article IV rule 2 cannot be relied

Judgment

Endorsing Males LJ's reasoning in *Alhani*, the judge noted that the Hague Rules only apply between loading and discharge. He further held that Clause 5 of the bill of lading limited the carrier's liability for loss or damage to the cargo to that same period, and the claim was dismissed accordingly.

There are two further interesting points to note arising out of the judgment. **First**, one of the claimants was held not to have proven their title to sue, in large part because they had “*adduced remarkably little evidence*” on the point. Whilst it ultimately did not matter in this case, it is an important reminder not to treat title to sue as a side issue.

Secondly, the judge suggested that, had he not held that the claim failed because the damage took place outside the contractual period of responsibility, he would have found the carrier liable for failing to open the container doors at the discharge port. The shipping community need not be alarmed at these remarks because they were made in obiter dictum so do not create binding precedent.

Conclusion

Whilst the *Maersk Chennai* judgment does not make new law, it serves as a useful reminder that the Hague/Hague-Visby Rules regime is only compulsorily applicable between the point of loading and the point of discharge. After discharge, but before delivery, it is perfectly open to a carrier to exclude or limit their liability.

For further information, please contact:



[Jacqueline Zalapa](#)

Director

jacqueline@cjclaw.com



[Richard Hickey](#)

Managing Associate

richardh@cjclaw.com

Campbell Johnston Clark Limited (CJC) is an international law firm specialising in shipping and international trade. With almost 70 staff worldwide, CJC has offices in London, Newcastle, Singapore and Miami. The firm has a strong presence in the London and overseas shipping markets with clients and fellow practitioners alike.

CJC advises on all aspects of shipping and international trade law, from ship finance to dry shipping and comprehensive casualty handling, and everything in between. Our clients are based around the globe and include leading operators, ship owners, Fortune 500 and FTSE listed companies, start-up ventures, investment banks, private equity houses, P&I clubs, hull & machinery, and liability insurers.

© 2023 Campbell Johnston Clark Limited. All rights reserved.