



Thorco limitation ruling leaves *Limnos* out

In *Trafigura Pte Ltd v TTK Shipping Ltd*, the High Court considered the calculation of the limitation sum under Hague Visby Rules when both physical damage and economic loss have been incurred to the cargo. The Court declined to follow the previous position as set out in *The Limnos* (2008). [Deven Choudhary](#), Legal Manager, summarises the case.

Trafigura Pte Ltd v TTK Shipping Ltd (the “Thorco Lineage”) – Limitation for physical damage and economic loss [2023] EWHC 26 (Comm), King’s Bench Division, Commercial Court, Sir Nigel Teare sitting as a High Court Judge, 13 January 2023

The facts

The Claimants were the owners of a bulk cargo of zinc calcine with a gross weight of 10,287.07 WMT, which was loaded on board the vessel, Thorco Lineage for carriage from Baltimore, USA to Hobart, Australia.

The vessel whilst en-route to the discharge port suffered engine failure and grounded in French Polynesia. The casualty was caused by a breach of the contract of carriage by the carrier.

Overall due to the incident, 764 WMT of the cargo was lost or physically damaged. Additionally, the following losses were suffered by the Claimant:

- a) Liability to salvors of US\$ 7,355,000.
- b) Physical loss and/or damage to the cargo US\$ 278,658.31.
- c) On-shipment costs in respect of the cargo to its destination port on board another vessel US\$ 723,831.85.
- d) Costs incurred in arranging for the salvage sale and/or disposal of the damaged cargo US\$ 58,934.74.

According to Article IV Rule 5(a) of the Hague-Visby Rules, a carrier’s responsibility for any “loss or damage to the goods” is restricted to 667.67 units of account per package or 2 units of account per kilogram of gross weight of the affected goods, where a unit of account is valued at a Special Drawing Right (SDR) to be US\$ 1.35. The Defendants were accordingly entitled to limit their liability to the Claimants. The question was by how much.

In the previous case of *The Limnos*, where Burton J held that “goods lost or damaged” in Article IV Rule 5(a), is restricted to the physical damaged cargo and does not take economic damage into contemplation. Therefore, if there was no physical damage to a cargo, then the economic loss claim could be unlimited. If on the other hand the physical loss was restricted to a small amount of cargo, then the claim would be limited by reference to that small volume of cargo. This decision had previously been considered controversial.

The Claimant argued that:

- i. the vessel-owners’ limit of liability should be calculated by reference to the weight of the whole salvaged cargo, and not merely the damaged cargo, since the whole cargo had suffered

- economic damage by reason of the claimant's liability to pay salvage and on-shipment costs; and
- ii. Alternatively, pursuant to *The Limnos (2008)*¹, the liability should not be subject to any limit pursuant to Article IV (5)(a).

Whereas, the Defendant argued that,

- i. Their liability was limited by the reference to the weight of the goods which were damaged physically only; and
- ii. Their liability was not unlimited.

If the Defendants were correct, they would be entitled to limit their liability to approximately USD 800,000 – a small proportion of the amount claimed. If the Claimants were correct, the limitation would exceed the value of the claim, and the claim could proceed in full.

Held

The Judge held that “goods lost or damaged” includes goods which are economically damaged and that under Article IV Rule 5(a), the liability of the Defendant in respect of the Claimant's liability to the salvors and for the on-shipment costs incurred was limited to 2 SDRs per kg of the whole cargo, and not merely the amount of cargo that suffered physical damage.

In alternative, Teare J, considered the position as per Burton J's decision in *The Limnos* for salvor's lien and on-shipment costs. He confirmed that the cargo in present case was physically damaged in that it was subject to the salvor's maritime lien, so that the claimant's proprietary or possessory title to the cargo was damaged. Therefore, the Defendant's liability for salvage would be limited to 2 SDRs per kg of the whole cargo but the maritime lien did not extend to the on-shipment costs incurred by the Claimant.

He therefore held that, the salvage liability and on-shipment costs incurred were in respect of the cargo as a whole and that the whole cargo was “damaged” for the purposes of the article. The limitation should therefore be calculated by reference to the weight of the full cargo.

Comment

This judgment cannot be appealed to the Court of Appeal, therefore, as matters stand there are two inconsistent decisions on HVR Article IV Rule 5(a). However, given the criticism that had previously been levelled at the decision in *The Limnos*, it is considered likely *The Thorco Lineage* will be followed in future.

In general, the decision will likely be welcomed by cargo owners. It will no longer be the case that a small amount of physical damage will have the effect of limiting a significant claim for economic loss. However, carriers can take comfort that a limitation of liability will still apply in such circumstances – albeit with reference to the entire cargo.

¹ *Serena Navigation v DERA Commercial Establishment, "The Limnos"* [2008] 2 Lloyd's Reports 166

For further information, please contact:



[Deven Choudhary](#)

Legal Manager

Deven@CJCLaw.com

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