

## ***THE AQASIA* [2018] EWCA Civ 276**

The Court of Appeal, upholding the first instance decision, has decided unanimously that bulk or liquid cargoes are not within the purview of the package limitation provisions of the Hague Rules. This is a significant development as the position under English law was uncertain, as no English case law "directly on the point" existed until the first instance decision.

The Court of Appeal had to consider whether "unit" in Article IV rule 5 of the Hague Rules refers to a physical item of cargo/shipping unit or a unit of measurement (as used by the parties to denominate or quantify the cargo). In the latter scenario bulk cargoes would be covered by the Rules, but not so in the former.

### **Facts**

A cargo of 2,000 tons of fish oil in bulk was shipped on board *The Aqasia* from Iceland to Norway, pursuant to a voyage charterparty incorporating the Hague Rules. On arrival at the discharge port(s), part of the cargo was found damaged. Owners (appellants) accepted liability for the damage but contended that they were entitled to limit liability under Article IV rule 5 of the Hague Rules, which prescribes limits of liability by reference to the 'package or unit' of the goods shipped.

Owners argued that "unit" in the Hague Rules was capable of applying not only to unpackaged physical items, but also to units of measurements, i.e. "tons" in this scenario, and therefore they ought to be entitled to limit liability accordingly. Charterers argued that the Hague Rules limitation provisions were not applicable.

### **First Instance decision**

The Commercial Court at first instance found that the Hague Rules package limitation provisions did not apply to the cargo, as "unit" could only mean a physical unit for shipment, and not a unit of measurement, taking into account academic commentary and Commonwealth authorities.

Owners appealed against this decision on the basis that the judge had erred in his conclusions and placed too much emphasis on Commonwealth authorities. Owners argued that the word "unit" had duality of meaning, without leading to any ambiguity, and that market expectation in the bulk shipping market is that limitation of liability under the Hague Rules is possible.

### **Court of Appeal decision**

Although the Court accepted that by ordinary usage the word "unit" can mean both a physical item of cargo and a unit of measurement, it reached the "firm conclusion" that "unit" only meant a physical item of cargo in the context of Article IV Rule 5 of the Hague Rules. In the context of the Rules, "unit" was synonymous with "pieces" and was not sufficient to cover bulk cargoes. Owners' argument for duality of meaning would lead to different limitation amounts in situations where there is a single package, but a weight of the package is also given.

The Court relied on the discussions leading up to the adoption of the Hague Rules (the *travaux préparatoires*), which evince that the word "unit" was added to cover "items shipped as single units and not packaged in any way. At that time, the assumption seemed to be that bulk cargoes were not covered

by the limitation provisions, as it was unnecessary due to their low value. The Court was also swayed by English case law and the fact that this approach is what is adopted by the courts in common law jurisdictions, i.e. Canada and New Zealand. This decision therefore ensures uniformity.

### **Comment**

Owners had argued that the expectations of those engaged in the bulk shipping market is that limitation of liability is possible in respect of bulk cargoes. The Court however was not convinced such market expectation existed and was loathe to make Article IV Rule 5 applicable to bulk cargoes, even if it was desirable to do so, as on its true construction the provision did not so apply. This decision makes it absolutely clear that the Hague Rules package limitation provisions do not apply to bulk cargoes. Therefore any bulk cargo carriers wanting to limit their liability in accordance with the Hague Rules will need to insert clear wording to that effect. Mere incorporation of the Hague Rules into a charterparty will not suffice.

It remains to be seen whether Owners will appeal this decision to the Supreme Court, but it should now be taken as settled that as a matter of English law, unless clear wording to that effect has been included, the Hague Rules package limitation provision does not apply to bulk cargoes.

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