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THE LEGAL AND BUSINESS  
ASPECTS OF HANDLING CARGO  
CLAIMS IN FRANCE

NOTE: ©2008 Information herein is simplified and provided for discussion purposes only – not to be construed or utilized as legal advice. Counsel should be consulted for specific claims.

## AGENDA

1- Overview of the French legal System

2- French Particularities

3- Practical issues

1- Overview of the French legal System

## The French Legal System

## The French Legal System

### 3 Main Categories of Courts in France:

1. Administrative courts : claims against Public entities such as ports authorities
2. Civil Courts : Claims brought by individuals or claims arising out of personal injury
3. **Commercial courts** : claims arising out of commercial matters such as cargo claims

## **The French Legal System**

Cargo Claims are brought before :

- Commercial courts (Paris, Marseille, Le Havre)
- Chambre Arbitrale Maritime de Paris (CAMP) = French Maritime Arbitration Organisation
- NB. Law & Procedure are the same before all courts of France incl. Overseas territories

## **The French Legal System**

Three Levels of Jurisdiction:

- Commercial courts
- Courts of appeal
- Court of cassation

## **Where to bring your cargo claim against the Ocean Carrier ?**

OPTION between :

1. Carrier's domicile
2. Port of loading
3. Port of discharge
4. Place of delivery
5. Place of issuance B/L (Hamburg Rules)
6. Jurisdiction provided on B/L

## **Where to bring your cargo claim against the Road Carrier ?**

OPTION between (CMR and domestic) :

1. Carrier's domicile
2. One defendant's domicile
3. Place of delivery
4. Place of collection
5. Jurisdiction clause

## **Where to bring your cargo claim against the Air Carrier ?**

OPTION between :

1. Air carrier's domicile
2. Where carrier has an office involved
3. City of destination provided on AWB
4. Where one defendant is domiciled

## **What about B/L jurisdiction clauses ?**

Ex : CMA CGM (3rd container carrier)  
B/L = Marseille jurisdiction

## **What about B/L jurisdiction clauses ?**

### **To be binding and enforceable :**

The clause must have been accepted by:

- shippers
- or
- consignee

## **What about B/L jurisdiction clauses ?**

- The acceptance must be « special » (M/V « Nagasaki » decision 29/11/1994)
- Consent clear and without ambiguity (M/V « Apt Mariner » decision 25/06/2002)
- Acceptance proven by all means such as long relationships between parties (cf. European Court of Justice)
- Burden of proof of acceptance on Owners

## Applicable time Limits

### 1 – Action against ocean carriers

One year from the date of delivery of the cargo or (if no delivery occurred) from the date at which the goods should have been delivered

## Applicable time limits

### 2 – Action against road carriers

**Domestic carriage** (ex : Marseille – Paris) : 1 year

**CMR (international)** (ex : Antwerp – Paris) :

-1 year from date of delivery

-If total loss the 1 year period starts to run from 30th day of the agreed date of delivery, from the 60th if no date was agreed

- 3 year time limit if gross negligence is proven

## **Applicable time limits**

### 3 – Action against the air carrier :

Two years from the date of delivery  
(provided that damage notified within 14  
days following delivery)

French courts very strict on the necessity  
to notify damage within 14 days

## **Practical information:**

- Time extensions are valid
  
- Time limit may be interrupted by :
  - Issuance of proceedings
  - Carrier's acknowledgment of liability
  - Notification of a figured claim in CMR

## **Carrier's Limitations of Liability : Carriage of goods by sea**

### **Limitations that apply in most cases :**

Hague Visby : 666,67 SDR per package or 2 SDR per kilo of damaged or lost cargo (higher figure applies)

Hamburg Rules : 835 SDR per package or 2,5 SDR per kilo of damaged or lost cargo

## **Carrier's Limitations of Liability : Carriage of goods by sea**

### **How to break them ?**

- By proving recklessness of the carrier
- Very deliberate negligence – awareness of the carrier that a damage or loss would probably result from the negligence

## **Carrier's Limitations of Liability : Carriage of goods by sea**

### **How to break them ?**

- Test easier than in Northern Europe (where similar to 1976 London Convention i.e. personal negligence)
- Ex : loading cargo on deck whilst forbidden, leaving a container without care, lack of maintenance of the ship's equipments (breach of cables/ropes)

## **Carrier's Limitations of Liability : Carriage of goods by road**

- Domestic :

Shipment of less than 3 tons : 23 EUR per kilo with a max of EUR 750 per package

Shipment of more than 3 T : EUR 2300 /T

- CMR (international) :

8,33 SDR per kilo of damaged or lost cargo

## **Carrier's Limitations of Liability : Carriage of goods by road**

### **How to break them ?**

- By proving gross negligence
- Test less difficult than in marine

## **Carrier's Limitations of Liability : Carriage of goods by road**

### **How to break them ?**

Gross negligence = negligence of a particular gravity which proved that the carrier was unable to perform properly his contractual obligations

## **Carrier's Limitations of Liability : Carriage of goods by road**

### **How to break them ?**

Ex. : theft of valuables

- Parking in unsafe place during transit
- Carrier aware of nature of the cargo
- Alternative was available but not used
- Truck not protected by alarm or anti-theft system
- Cargo unattended for a long time

## **Carrier's Limitations of Liability : Carriage of goods by road**

### **Force Majeure exception**

- Force majeure usually accepted when theft is the result of an armed attack
- Except when facilitated by carrier's behaviour (such as parking in a dangerous area at night whilst alternative was available)

## **Carrier's Limitations of Liability : Carriage of goods by air**

- Warsaw : 16,5837 SDR per kilo
- Montreal : 17 SDR

## **Carrier's Limitations of Liability : Carriage of goods by air**

### **How to break them ?**

- Warsaw : by proving recklessness (same test as in carriage of goods by sea)
- Montreal : Limitations cannot be avoided

## **Subrogation - Insurance**

- Most cargo claims brought by subrogated cargo underwriters
- Action brought in Underwriters name or Underwriters' agents'

## **Subrogation - Insurance**

### **How to prove valid subrogation ?**

Need to provide :

1. Policy
2. Subrogation
3. Proof of payment

## 2- French Particularities

### **PARTICULARITY : FREIGHT FORWARDERS LIABILITY**

- Freight forwarders = intermediaries
- Called « all risks » insurers
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## **PARTICULARITY : FREIGHT FORWARDERS LIABILITY**

### Freight Forwarders' liability

Liable for both :

- Their sub-contractors acts and omissions (up to their applicable limits)
- Their own liability/negligence (no limits)

## **PARTICULARITY : FREIGHT FORWARDERS LIABILITY**

- Two « deep » pockets instead of one
- Solvent and insured
- Gives an opportunity to found jurisdiction
- No limitations in case personal negligence of freight forwarder is involved

**PARTICULARITY :**  
**CLASSIFICATION SOCIETIES**  
**LIABILITY**

- In most countries, it is impossible for third parties to involve the liability of classification societies (re. UK « Nicholas H ») because no duty of care towards third parties

**PARTICULARITY : CLASSIFICATION**  
**SOCIETIES LIABILITY**

« WELL BORN » decision (2007)

Possible for third parties to seek liability if they prove that :

1. Vessel certified in good condition

**PARTICULARITY : CLASSIFICATION**  
**SOCIETIES LIABILITY**

« WELL BORN » decision (2007)

Possible for third parties to seek liability if they prove that :

2. Whilst the vessel was not in such a good condition

**PARTICULARITY : CLASSIFICATION**  
**SOCIETIES LIABILITY**

« WELL BORN » decision (2007)

- Possible for third parties to seek liability if they prove that :

3. A damage / loss occurred as a consequence

## **PARTICULARITY : CLASSIFICATION** **SOCIETIES LIABILITY**

- Claimants to prove that the cargo would have not been shipped on the vessel concerned should they had known that the vessel was in such a poor condition
- Liability in torts (non reliable info)
- Proving negligence suffices (gross negligence or recklessness not required)

## **PARTICULARITY : DIRECT** **ACTION AGAINST LIABILITY** **INSURERS**

- Direct action possible : further « deep » pocket
- 2 year time limit (from date of main)
- Still possible if insured/carrier in liquidation

## **PARTICULARITY : COURT SURVEY**

### Useful when :

- Matter complex / important
- Lack of evidence
- Need Secure evidence
- ascertain facts
- Obstruction
- Assess quantum
- Need for a salvage

## **PARTICULARITY : COURT SURVEY**

### Court survey is :

- ordered quickly (few days or less)
- contradictory
- influential – strong impact on the court
- NB. Costs are advanced by the applicant party but 100% recoverable

### 3- Practical issues

#### **PRACTICAL ISSUE :** **WHAT FORMALITIES ?**

- Power of attorney not required
- Apostille not required
- Security to the court not required

## **PRACTICAL ISSUE :** **HOW LONG?**

- Substantive proceedings (cargo recovery action) : between 12 and 24 months before settlement or trial
- Appeal proceedings would last the same time
- Law suits may be brought within 24 hours (from instructions to interruption of time limit) – slightly more when need to make translations

## **PRACTICAL ISSUE :** **HOW LONG?**

- Summary / urgent proceedings :  
  
to obtain the appointment of a court surveyor or to be authorised to arrest a ship  
or  
to attach assets to obtain security : between a few hours and a few days

## **PRACTICAL ISSUE :** **HOW MUCH?**

- Lawyers fees (time spent basis or contingency)
- Bailiffs charges (less than €200)
- Translators' charges : approx. €400
- Court and local clerk charges (€600)

## **PRACTICAL ISSUE :** **HOW MUCH?**

- No need for claimant to put up security
- Minimum exposure towards opponents costs in case the action fails

**PRACTICAL ISSUE :**  
**WHAT LANGUAGE IS USED ?**

- **Before commercial courts :**
- French language = obligation
- Translations required
- In house translations suffice

**PRACTICAL ISSUE :**  
**WHAT LANGUAGE IS USED ?**

- **Arbitration (Paris) :**  
French and English used

**PRACTICAL ISSUE :**  
**WHAT ABOUT RECOVERY OF**  
**LEGAL COSTS**

- Court survey costs : 100% recoverable
- Lawyers fees : partly recoverable
- Bailiffs/court charges : 100%

**PRACTICAL ISSUE :**  
**WHAT ABOUT RECOVERY OF**  
**LEGAL COSTS**

- The fact that part of lawyers fees only is recoverable makes French jurisdiction attractive when the merits of the case are 50/50, as there is fairly little exposure / risk trying the action
- In practice, the action will make the carrier offering settlement

## **LAWYERS AND FEES**

- Lawyers handle cases from A to Z = solicitors and barristers
  
- Paris lawyers appear before all courts of France + overseas territories

## **PRACTICAL ISSUE :** **LAWYERS FEES**

- In most cases, lawyers charge on a time spent basis (between €250 / €400)

**PRACTICAL ISSUE :**  
**LAWYERS FEES**

- Contingency scheme possible
- before and after law suits are brought