



(autonomous) interpretation of CMNI
exemplary cases

Markus Jaegers, NJP Grotstollen, Duisburg





The special Meaning of Freight Documents under CMNI

- BGH 1 June 2017 – I ZR 29/16
- OLG Düsseldorf 26 February 2014 –
18 U 27/12 GMS Margreta



BGH 01.06.2017 – I ZR 29/16

the case (simplified):

transport of hull alongside of TMS from RO-Orsava → NL

damage (€ 246.968,50) to hull during transport caused by actual carrier - wilful misconduct of crewmembers

contract on CMNI:

“Es gilt das niederländische Transportrecht nach CMNI. Der Frachtführer haftet nicht für nautisches Verschulden.”

freight document no weight indication

recourse of hull-insurer vs primary carrier



BGH 01.06.2017 – I ZR 29/16

procedural history:

LG Frankfurt rejected the claim

OLG Frankfurt sentenced in payment SDR 666,67

BGH confirmed OLG



BGH 01.06.2017 – I ZR 29/16

reasons:

CMNI aplicable – despite Art 1 no 7 CMNI – Dutch (transport) law subordinated

liability acc Art 16 (1) + Art 4 (2) CMNI

disclaimer for nautical error not relevant due to wilful misconduct of crew

compensation obligation value of the goods Art 19 (2) + (3) CMNI

limitation 20 (1) CMNI – no attributing



BGH 01.06.2017 – I ZR 29/16

a hull acc Art 20 (1) CMNI is a shipping unit

weight of hull = some 500t → limit some SDR 1 mio

compensation obligation is limited to SDR 666,67 per unit or SDR 2 per kg depending which amount is higher

weight limit only if weight in freight document stated



BGH 01.06.2017 – I ZR 29/16

freight document was issued

obligation of carrier acc Art 11 (1) CMNI

no weight was indicated; carrier was not informed about weight

→ weight limit not applicable → limitation = shipping unit SDR 666,67

BGH sticks to exact wording of Art 20 (1) S1 CMNI

argument Art 20 (1) S2 CMNI: if container and no shipping units or shipping packages are enumerated flat limitation on SDR 1.500 + 25.000

lawmakers didn't allow other calculation of limitation



BGH 01.06.2017 – I ZR 29/16

carrier is only obliged to state dimensions, number + weight of goods in freight document acc Art 11 CMNI if he received this information by carrier in writing Art 6 (2) CMNI

if carrier doesn't state dimensions, number + weight in freight document due to missing information carrier is not liable for damages arising from the missing data in the freight document

no obligation of carrier to warn (professional) shipper.
shipper is liable for false or missing information
acc Art 8 (1) lit a CMNI



BGH 01.06.2017 – I ZR 29/16

conclusions and issues raised

high importance of freight document for CMNI-transports

risk for shipper of ridiculous low limitation of compensation

was this the intention of lawmakers?

what is a shipping unit?

bulk-ware? sand, pebbles, timber, scrap metal
liquid cargo, gaseous cargo?

what if only information by shipper about volume (convertible
in weight)



OLG Düsseldorf 26.02.2014 – 18 U 27/12

the case (in part + simplified):

claimant instructed defendant as flat-rate forwarder about transport of 7 containers with machinery (total value US\$ 1.3 mio) from D-Emmerich via B-Antwerp to Puerto Rico.

defendant instructed primary carrier who instructed sub-carrier who instructed actual carrier about fluvial transport

primary carrier issued house-waybills stating packing units and gross-weight. a sea-waybill should have been issued after loading on sea-vessel.

transport-damage occurred on way to Antwerp. Content of 4 containers was total loss – not the containers.



OLG Düsseldorf 26.02.2014 – 18 U 27/12

Landgericht D'dorf sentenced defendant acc Art 20 (1) S1 CMNI in payment of SDR 74,665.37 on basis of the specifications in the house-waybills

OLG sentenced acc Art 20 (1) S2 in payment of SDR 100,000



OLG Düsseldorf 26.02.2014 – 18 U 27/12

reasons:

On the level of claimant and defendant no freight document was issued.

although the wording of Art 20 (1) CMNI includes any freight document and thus also such of subcarriers the autonomous interpretation demands to understand as freight document acc Art 20 (1) CMNI only the freight document issued by the carrier held liable.

the waybill is always determining only the relationship between the carrier issuing and his shipper



OLG Düsseldorf 26.02.2014 – 18 U 27/12

as a carrier can't be attributed data in freight documents issued by another carrier he can't rely on a waybill he didn't issue.

otherwise the prima facie evidence acc Art 11 (3) CMNI could be triggered by a freight document the carrier had no influence on.

as conclusion there was no waybill governing the relationship of claimant and defendant. in consequence the flat rate compensation per container of 25,000 acc Art 20 (1) S2 CMNI was triggered.



OLG Düsseldorf 26.02.2014 – 18 U 27/12

conclusion:

freight documents have to be issued on every level in the chain of carriers.

They are of decisive importance for the limitations of liability under CMNI.



I am sure we have some material for
discussions

**Thank you for
your
attention**