CMNI JUDGEMENTS

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CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
LG Aschaffenburg 14.05.2009	1 HK O 137/08, 1 HKO 137/08 ZfB 2011, Nr. 6, page 2133 ff	Art. 5	Liability of carrier for loss caused by delay or lateness

Even where the parties to the contract are assuming a given transport time, the agreement does not stipulate a delivery time, in the sense of CMNI Art. 5 or Para. 423 of the German Commercial Code, unless a fixed handover point, to be stated at the beginning of any such delivery time, has been agreed. In transport law, as well as in CMNI Art. 5 or Art. 423 of the German Commercial Code, delays are also addressed in the liability system of the German general law of obligation in Art. 280 et seq., in particular Arts. 286, 311 et seq. and 320 et seq. of the German Civil Code. However, even under this liability system, the liability of a carrier for a loss caused by delay or lateness is dependent on a clear handover point having been contractually agreed or substantiated following a subsequent justification of the delay.

LG Stade 25.05.2009	8 O 129/08 ZfB 2009, Nr. 10, page 2045 ff	Art. 16, para. 1, Art. 21	Contamination of the goods by cargo residue; contributory negligence by the shipper

With the entry into force of the law of approval of 17 March 2007, on 23 March 2007 the CMNI entered into national legislation. Under CMNI Art. 16, para. 1, the carrier is liable where goods are contaminated through mixing with cargo residue. The provisions of CMNI Art. 21 make no reference to the contributory liability of the shipper where the damage is caused by circumstances in his area. Under German law, the significance of a contributory involvement in the damage according to Art. 425, para. 2 of the German Commercial Code, is also taken into consideration when qualified negligence in the sense of Art. 425, of the German Commercial Code can be attributed to the carrier. In assessing the loss sustained, Art. 254 of the German Civil Code can therefore be consulted as additional national legislation supplementing the CMNI.

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COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
OLG Stuttgart 01.07.2009	**openJur 2012/61731**	**Arts. 2, para 1; 34, para 2**	**Inapplicability of CMNI to damage sustained prior to international legislation entering into force**

The CMNI does not apply to this case as at the time the damage occurred on 25.03.2007, it did not constitute applicable German law. However, the German ratification law for the CMNI, of 17.03 2007, had already entered into force prior to the damage being sustained, on 23.03.2007. Nevertheless, the decisive factor for the present inapplicability is that, following the deposit on 10.07.2007 in accordance with CMNI Art. 34, para. 2, the CMNI only took effect for Germany on 01.11.2007 (according to both completion and transformation theory). Also under CMNI Art. 2, para. 1 German ratification is deemed an essential requirement for applicability. The prerequisite for the applicability of the CMNI as a whole is that the CMNI must be incorporated into the legislation applicable to the case under consideration.

RB Rotterdam 30.09.2009	**ECLI:NL:RBROT:2009:9227**	**Arts. 3, para.2; 10, para. 2; 16, para. 1**	**The term 'delivery'**

The term delivery ("Ablieferung", "aflevering", "livraison") is not defined in the CMNI. In the light of the CNMI as a whole, and of Art. 10, para. 2 in particular, the term delivery as used in Art. 3, para. 2 or Art 16, para. 1 of the CNMI is understood to mean the moment at which the carrier gives the consignee (or any other person entitled to receive them) the opportunity to take charge of the goods on board the ship.The damage caused to the goods transported from Germany to the Netherlands by rain during unloading occurred after the ship had been prepared for unloading and is therefore not the liability of the carrier.

RB Rotterdam 11.11.2009	**ECLI:NL:RBROT:2009: 2525S&S 2011,6**	**Art. 2, para. 1**	**Applicability of the CMNI**

In accordance with CMNI Art. 2, para. 1, the Convention is applicable to any contract of carriage for which the port of loading or the place of taking over the goods and the port of discharge or the place of delivery are located in two different States, at least one of which is a State Party to this Convention. Given that the contract of carriage of goods from the Netherlands (where the CMNI entered into force on 1 October 2006) to Belgium (which is not a State party to the Convention), as well as the loading and unloading of these goods, date from before 1 October 2006, the Convention is not applicable.

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LG Hamburg 28.10.2010	**413 HKO 71/10, 413 HK O 71/10**	**Art. 34, para. 2**	**Applicability of the CMNI**

In the case of a contract of carriage concluded no later than 25 September 2006, the regulations set out in the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) do not apply, since the Federal Republic of Germany deposited the instrument of ratification with the depositary on 10 July 2007, whereby in accordance with CMNI Art. 34, para.2, the Convention did not become part of German legislation until 1 November 2007.

RB Rotterdam 01.12.2010	**ECLI:NL:RBROT:1191 S&S 2012,89**	**Arts. 6, para. 2; 8**	**Duty of information shipper**

During the loading of goods for transport from the Netherlands to Germany, the hull was damaged. In accordance with CMNI, Art. 6, para. 8 and Art. 8, the shipper has a duty to provide correct information relating to the weight, centre of gravity and load of the goods. The onus of proving that the stowage plan submitted by the shipper prior to loading contained incorrect information regarding the maximum load lies with the carrier. If the carrier is able to prove this, the liability of the shipper is clear. However, where it can be shown that the vessel would have been unable to carry the cargo even if it were within the maximum weight limits, the vessel is deemed unsuitable to transport the cargo and the shipper is absolved of liability.

OLG Hamburg 05.01.2011	**6 U 32/08**	**Art. 34, para. 2**	**Applicability of the CMNI**

In the case of damage caused on 25 March 2007, the CMNI which entered into force in Germany on 1 November 2007 did not yet apply. The fact that the law of approval entered into force earlier is not relevant. In the case of damage sustained on the inland waterway section to Rotterdam, liability is determined according to the law hypothetically applicable to this section. In accordance with Art. 16 of the German BinSchPRG, Arts. 407 et seq. of the German Commercial Code will apply, and accordingly the CMNI once successfully incorporated in Germany.

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COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
OLG Karlsruhe 19.05.2011	22 U 3/10 BSch ZfB 9/2011, page 2143 ff	Arts. 16, para.1; 25,. para. 2 a	Liability for contaminated goods due to average Exclusion of liability in the event of navigational error

Art. 16, para. 1 deals with losses which occur as a result of physical or chemical changes to the goods carried. Emergency lighterage following average invokes the exclusion of liability as a result of navigational error. The contract of carriage is not terminated early by the recovery of the goods following average. The exclusion of liability in the event of a navigational error during international transport is effectively agreed in pre-formulated general transport conditions (Art. 25, para.2.a)

Rheinschifffahrtsobergericht 10.07.2012 Köln	3 U 133/09 BSchRh ZfB 2012, Nr. 10, page 2201	Art. 34, para. 2	Applicability of the CMNI

On the day the accident (containers lost overboard during a turning manoeuvre by a Rhine vessel) occurred, 25 March 2007, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) was not yet applicable in Germany, as in accordance with the provisions relating to the entry into force of the Convention contained in CMNI Art. 34, para. 2, the CMNI did not enter into force in Germany until 1 November 2007, and not on the day the ratification was announced, on 23 March 2007.

Kh. Antwerp 20.12.2012	Not published	Art. 16	Burden of proof – liability of carrier

On arrival in Antwerp a consignment of benzene was found to be contaminated. The victims' claim was rejected by the court as they were unable to prove that the damage to the product was caused during the river transport. The burden of proof that the product loaded complied with the specification and that the damage was caused during transport, lies with the cargo, in accordance with CMNI Art. 16, para.1.

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RB Rotterdam 27.02.2013	**ECLI:NL:RBROT:2013:8426 S&S 2014,4**	**Arts. 1; 2; 3, para. 2; 6, para. 4; 8; 29; 31**	**Liability for damage to the vessel during unloading**

The CMNI is not directly applicable to domestic transport in the Netherlands. In accordance with the declaration on the basis of Art. 31 made by the Netherlands upon accession to the CMNI, and Art. 8:889 of the Dutch Civil Code based on the said declaration, parties may agree that, as a departure from Dutch inland waterway law, the CMNI will apply to the agreement. In that case Dutch law shall apply additionally (CMNI Art. 29). Goods are taken over or delivered on board the vessel (Art. 3, para. 2), whereby the loading is the responsibility of the shipper (Art. 6, para. 4). Delivery simply means that the carrier shall offer the consignee the opportunity to unload the goods from the vessel. The CMNI contains no provision whereby the shipper is obliged to unload; nor does the CMNI contain any provision which stipulates that the shipper is not liable for damage caused during delivery or unloading of the goods (in this case, damage caused by a grab). Arts. 6 and 7 contain no obligations on the part of the shipper with regard to delivery or unloading of goods, so that the shipper is also not liable under Art.8. According to supplementary Dutch law, the shipper is also not obliged to unload, however, unless in a case of force majeure, he is liable for damage to the hull caused by the handling of the goods during unloading (Art. 8:913 of the Dutch Civil Code).

Kh. Antwerpen 27.01.2013	**Not published**	**Art. 14**	**Change to contract of carriage**

In accordance with CMNI Art. 14, the shipper can alter the contract of carriage.

RB Rotterdam 03.07.2013	**ECLI:NL:RBROT:2013:6177**	**Arts. 2; 3, para. 2; 8, para. 2; 29**	**Liability for damage to the vessel during unloading**

The CMNI does not answer the question which party is liable for damage to a vessel sustained when unloading the goods on board the vessel. This question should be answered on the basis of supplementary Dutch law. As the shipper was in no way involved in the unloading, he cannot be held liable. Under Dutch law, the consignee is responsible for unloading the goods from the vessel. If the vessel is damaged during this process, liability lies with the consignee, other than in a case of force majeure (Art. 8:929 para. 2, in conjunction with Art. 8:913 of the Dutch Civil Code).

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COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
Kh. Antwerpen 05.12.2013	**Not published**	**Art. 18**	**Liability of carrier – loss caused by voyage**

The carrier is absolved of his liability if the loss or damage may be due to, for example, loading and unloading by the shipper or the consignee, or the nature of the goods which renders them subject to full or partial loss or damage, such as loss of volume or weight. As a result of engine problems, a consignment of diesel had to be transhipped from one vessel to another. Losses of 0.24 %M and 0.165% were deemed by the court to be normal, resulting from fluctuations in temperature, error margins in measurements, fuel remaining in pipes, etc. No liability on behalf of the carrier.

OLG Hamburg 05.12.2013	**Justiz –Portal Hamburg 6 U 194/10 ZfB 2014, Nr. 3, page 2263 ff**	**Arts. 16, para. 1; 19; 21**	**Standard of liability and proof of exoneration on behalf of the chief carrier. Trade practices relating to exclusion of liability for navigational error**

Damage to the cargo resulting from a collision. Exclusion of liability for reasons of navigational error was not agreed by the parties. The shipper, who is taking action against the chief carrier under the contract, need only respond to the objections arising from the contract agreed with the chief carrier, and not to those arising out of the contractual relationship between the chief carrier and the sub-carrier. “Passing on” the limitation of liability in respect of the shipper in this way would also be considered to be failing to act in good faith, as the parties should be expected to be acquainted with the unfavourable rights of recourse at the time of agreeing a contract with the shipper.

For a possibility of exclusion in accordance with CMNI Art. 16, due diligence in line with Dutch law is sufficient. This makes it easier for the carrier to obtain proof of exoneration than would be the case under German general transport legislation.

OLG Düsseldorf 26.02.2014	**18 U 27/12-dejure.org TranspR 6-2014 ZfB 2014, Nr. 6, page 2278 f and 2285 ff**	**Arts. 11; 19; 20, para. 1**	**Maximum limit of liability for damage to cargo in a container**

Owing to data missing from a transport document relating to the packages or shipping units as packed in a container (CMNI Art. 20, para. 1, clause 2), when determining the maximum limits of liability for each package or shipping unit (CMNI Art. 20, para. 1. 1), the number of units of account used in the calculation should be 25,000 rather than only 666.67. A transport document as understood in the CMNI refers only to the transport document prepared by the carrier

who may be held liable for any loss. This carrier is not obliged to take account of information contained in other documents, as the transport document relates only to the relationship between the carrier and the shipper. Failing this, the presumptions of conformity set out in CMNI Art. 11, para. 3 with regard to aspects such as the volume and number of the goods accepted would apply at the expense of the carrier. Where no such transport document is available, the intention of the principle requires acceptance that in individual cases inequitable results may occur. Where a carrier abstains from issuing a transport document when the goods are handed over, he must be prepared to accept the consequences of any resulting problems, particularly with regard to proof of evidence. Payment obligations relating to general average are considered loss or damage to goods as described in Art. 19, para. 2.

RB Rotterdam **ECLI:NL:RBROT:5252** **Arts. 9; 29** **Termination of contract of carriage**
27.06. 2014 **S&S 2014,112**

While the CMNI determines the ability of the carrier to terminate the contract of carriage if the shipper fails to perform certain obligations (Art. 9), it contains no regulation covering the termination by the shipper in the event of damage to the vessel, as a result of which the planned voyage from the Netherlands to Germany cannot take place. According to supplementary Dutch law, the carrier, depending on the circumstances of the case, is entitled to terminate the contract of carriage (Art. 8:935 of the Dutch Civil Code). In view of the relationships which exist within inland navigation, it is left to the carrier to judge whether the vessel should be considered so badly damaged that termination is justified.

RB Rotterdam **ECLI:NL:RBROT:2014:6975** **Arts. 2; 3, paras. 3 and 5; 6, paras. 2 and 4; 8; 18, para. 1** **Responsibility of shipper and carrier for loading the vessel** **20.08.2014**
S&S 2014, 88

As a result of the cargo to be transported from the Netherlands to Germany being incorrectly stowed, the vessel crumpled and sank. The CMNI should be interpreted in conjunction with Arts. 31 and 32 of the Vienna Convention on the Law of Treaties, whereby the *Travaux Préparatoires* should also be taken into consideration. The CMNI generally contains regulatory law, with the exception of the matter of the liability of the carrier. It follows from CMNI Arts. 3 and 6 that when taking over the goods on board the vessel, the shipper and the carrier both bear responsibility. The shipper is responsible for loading and stowing, as is customary in inland navigation. If he engages the services of a third party to perform this task, then the third party also falls under his responsibility (Art. 8, para.2). The shipper should furnish the carrier with full and accurate information about the goods. The carrier is responsible for the safety of the vessel and may issue instructions regarding the loading of the vessel. Since the responsibilities and liabilities of the shipper are adequately

covered in the CMNI, supplementary national law (in this case German law) does not come into play. In the case of incorrect loading by the shipper, the carrier can invoke the exceptions set out in Art. 18, paras. 1. a and b.

Hof Den Haag 30.12.2014	**ECLI:GHDHA:2014:4309 S&S 2016,52 Interim decision (Appeal re RB Rotterdam, 03.07.2013 S&S 2016,51 ECLI:NL:RBROT:2013:6177)**	**Arts. 2; 3, para. 2; 6, para.4; 8, para. 2; 10, para. 2; 16, para. 2; 29, paras. 1-3**	**Liability for damage to the vessel during unloading; an omission in the Convention?**

The legal relationship between parties (carriage from the Netherlands to France) is governed by the CMNI, with additional national law applying where a given point of contention is not regulated by the Convention. In the absence of a choice of law by the parties, the national legislation of the State with which the contract of carriage has the closest connections will apply. In this case that is Dutch law, given that the carrier is registered in the Netherlands, and the port of loading is also in the Netherlands. Under the terms of the CMNI the shipper is obliged to load, stow and secure the goods on board the vessel, but no mention is made of unloading. The explanatory memorandum on the Dutch legislation ratifying the CMNI assumes that the shipper and the consignee bear responsibility for the loading and the unloading respectively. On the basis of CMNI Art. 3 para. 2, which stipulates that the taking over and delivery take place on board the vessel, it can be argued that unloading the goods falls outside the contract of carriage. In that case there exists only a tortious liability for damage sustained during unloading. Seen from this point of view, there is no omission in the Convention, which means that a solution is not necessarily to be found in recourse to the applicable national (in this case Dutch) law.

AG Mannheim	**30C1/14 BSch**	**Art. 6, para. 4**	**Liability for damage to the vessel during unloading 17.04.2015**

The shipper has a duty to the carrier to unload the cargo. This obligation derives from the charter agreement in conjunction with CNMI Art. 6, para. 4. The agreement concluded between the parties, referred to as the “charter agreement”, is subject to the provisions of the CMNI with regard to the obligation to load and unload. As the Convention contains no special regulations relating to the loading and unloading of the vessel, notwithstanding the fact that also when accepting a (time or other) rental agreement there is clearly a need for regulation in this area, in such a case German transport law is applicable. In this case, the regulation contained in Art. 412 of the German Commercial Code would apply, were it not – as in this case – that CMNI Art. 6, para 4 is considered to override German transport law in view of the cross-border aspect of the transport. According to this provision, the defendant as a party to the contract has

the duty to unload the cargo. Although there is no reference to the unloading of the cargo, the Court nevertheless agrees with the predominant view expressed in literature, that this is an editorial error (von Waldstein/Holland, German inland navigation law, 5th edition, CMNI Art. 6, side note 28). Ultimately, however, this question can remain open, as the freight law contained in Art. 412, para. 1 of the German Commercial Code that would otherwise be applied clearly specifies the defendant's obligation to unload the cargo.

Kh. Antwerp	**Not published**	**Art. 6, para. 4**	**Loading obligation for the shipper – damage to the vessel 05.05.2015**

CMNI Art. 6, para. 4 stipulates that the shipper has a duty to load, stow and secure the goods. The shipper bears the responsibility for damage to the vessel sustained during loading, provided this does not result from any concrete lack of supervision by the skipper during the loading operations (c.f. additional Belgian legislation: Art 8 of the law on river transport).

Antwerp 18.05.2015	**IHT 2015, afl. 4, 457**	**Arts. 1; 29**	**Loading obligation for the shipper – damage to the vessel**

In the CMNI, a shipper is anyone by whom or in whose name or on whose behalf a contract of carriage has been concluded with a carrier (Art. 1.4.). According to the CMNI, the consignee is the person entitled to take delivery of the goods (Art. 1. Para.5). The mere fact that a party is purchasing the transported goods F.O.B. (Free on Board) does not imply that this party is by definition the shipper or consignee under the contract of carriage, in the event that no documentation is available indicating who concluded the carriage of contract, who has been invoiced for the cargo, who has paid for the cargo, etc. Where goods are carried across international inland waterways, the contract of carriage is governed by the provisions of the CMNI and, in addition, as set out in CMNI Art. 29, also by the national law with which the connections are the closest. It may be assumed that if the port of unloading or the place of delivery are in the same State as that in which the vessel is registered, the contract will be most closely connected with that legal system.

Kh. Antwerp 21.05.2015	**Not published**	**Arts. 19, paras. 2 and 5; 22; 25**	**Limitation of liability (sub-) carrier**

Under the terms of the Convention, the payment of consequential damage (costs resulting from the refusal of the consignee to accept the goods) is not eligible for reimbursement.

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The cost of the cargo is still owed, c.f. CMNI Art. 19, para. 5. The parties interested in the goods are also responsible for cleaning the vessel, so where this has been carried out by the carrier, the carrier must be recompensed.

RB Rotterdam **10.06.2015**	**ECLI:NL:RBROT:2015:4078**	**Arts. 6, para. 4; 29**	**Consignee – duty to unload**

Under the terms of CMNI Art. 6, para. 4, the shipper is responsible for loading. Although the CMNI does not stipulate who is responsible for unloading, in this case the duty also lies with the parties interested in the cargo. According to supplementary Dutch law, that duty lies with the consignee (Dutch Civil Code Art. 8:929, para. 2).

Hof Den Bosch **04.08.2015**	**ECLI:NL:GHSHE:2015:2992**	**Art. 29**	**Distribution of the burden of proof**

The CMNI contains no provisions relating to the distribution of the burden of proof; this is subject to the applicable supplementary national legislation. The CMNI Convention contains uniform law and is to be interpreted on the basis of Arts. 31 and 32 of the Vienna Convention on the Law of Treaties.

Schiffahrtsobergericht Karslruhe **30.11.2015**	**File ref: 2/15 BSch** **ZfB 2010, No. 2, 30.11.2015** **volume page 2408 et seq.**	**Art. 6 CMNI**	**Consignor's obligation to unload**

Article 6 IV CMNI obliges the consignor of the contract of affreightment not just to load but, beyond the wording, to unload the vessel as well. The failure to mention the unloading of the cargo in Article 6 IV CMNI is an editorial oversight, meaning that the express obligation on the consignor to unload does not rely on article 412 I HGB (Commercial Code) when applying German law in addition to the CMNI.

CMNI JUDGMENTS

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OLG Frankfurt/Main 26.1.2016	File ref: 5 U 17/13 ZfB 2016, no. 3, volume page 2412 et seq. TranspR 10-216 page 399 et seq.	Article 20 CMNI	Towing contract, limitation of liability (package), custodial liability, freight document and qualified culpability

A towing contract for a new construction hull is a contract of affreightment. A new construction hull that is carried alongside is a package as construed by Article 20 I 1st sentence CMNI, subject to a maximum liability of 666.67 UA if the freight document contains no written details concerning the weight or value of the new construction hull. This limitation of liability shall also apply to tortious claims under Article 22 CMNI. Failure on the carrier's part to include weight or value information in the freight document shall not constitute a breach of a secondary contractual duty in the relationship with the client (consignor), because the provision in writing of weight or value information is part of the client's sphere of obligation.

The CMNI is German domestic, but not directly national, law as construed by Article 3 I ROME 1 VO (traffic regulations), and takes precedence over national law where the provisions of the latter are not mandatory. Under Article 10 and 12 ROM I VO, the agreed national law also applies to subrogation of the compensation claim to a third party and beyond purely transport law, for example to property law.

Qualified culpability under Article 21 I CMNI, resulting in the breaching of liability limits and exemptions from liability, is not tantamount to gross negligence, because the inland navigation law criteria are traditionally more stringent, but presupposes an especially serious breach of obligations in which the boat master or his employees crassly disregard the contracting parties' safety interests. Where the sequence of events of the accident is unclear, it shall be sufficient to assume that the damage has been caused negligence if there are serious grounds for considering the conduct to have caused the damage. This results in a reversal of the burden of proof for the sequence of events of the average in favour of the infringing party, who shall be required to exonerate himself as regards the absence of causality of the damage.

Unlike under German law (Article 426 HGB), for example, custodial liability under Article 16 CMNI shall cease to apply, by analogy with Dutch law (Article 8:901 I first sentence BW), if in the event of general (not utmost) diligence on the carrier's part, the damage was unavoidable; the standard of care in Article 16 I HS 2 CMNI corresponds to that of Article 276 BGB (German Civil Code), Article 437 I HGB and Article 606 2nd sentence HGB.

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Court of The Hague 23.2.2016	**ECLI:NL:GHDHA:2016:439 S&S 2016,52 (final decision) ECLI:NL:GHDHA:2014:4309)**	**Art. 2, 3 para. 2, 6 para. 4, 8 para. 2 10 para. 2, 16 para. 2, 29 para. 1-3**	**Liability for damage to the vessel when unloading; Loophole in the Convention?**

The consignor shall not *always* be liable, whether under the CMNI or under complementary Dutch law, for damage caused to a vessel during unloading. There is no prevailing opinion in the case law or literature whereby the CMNI holds the consignor to be liable for the damage in question. Under Dutch law, the consignor's liability is not strict liability but fault-based liability, albeit with a possibility of force majeure. The consignor shall not be co-liable with the consignee for damage during unloading.
Consistent with the CMNI, the Dutch law on implementation of the CMNI also refers to the consignee when it comes to the receipt and unloading of the goods.
In the matter currently under consideration, the consignee shall be liable for damage occurring to the vessel during unloading. Followed by the verdict of the Court of First Instance being upheld

RB. Rotterdam 09.03.2016	**ECLI:NL:RBROT:2016:1837 S&S 2016/89**	**Art. 2, 6, 8, 24, 29 CMNI**	**Time-barring and suspension of claims**

The claims brought in a counterclaim shall lapse upon expiry of the one-year limitation period, subject to a suspension of the claims of the Dutch law applicable in the matter currently under consideration (Art. 3:317 BW).
In principle, miscalculations by the draught measurer employed by the consignor shall be for the consignor's account (Art. 6 para. 2, art. 8 para. 1a and 2 CMNI).

RB Rotterdam 15.04.2016	**ECLI:NL:2016:RBROT:2016:7328 S&S 2016/107**	**Art. 2, 29 CMNI**	**Demurrage while unloading**

As the CMNI contains no provision concerning demurrage, the national law chosen by the parties (Belgian, in the matter currently under consideration) shall apply.

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RB Rotterdam 20.05.2016	**ECLI:NL:RBROT:2016:3656**	**Art. 2, 24, 29 CMNI**	**Time-barring, suspension and interruption of claims**

As the CMNI contains no provision for mandating the payment of interest on the outstanding freight and other costs, national law (Belgian, in the matter currently under consideration) shall apply. The counterclaim in respect of damage while loading shall lapse upon expiry of the one-year period after delivery (Art. 24 para 2 CMNI) subject to suspension or interruption based on national law (Art.24 para. 3 CMNI).
Time-expired claims cannot be asserted by counterclaim or plea (Art. 24 para. 5 CMNI).

LG Hamburg 15.06.2016	**File ref.: 417 HK O 105/15 ZfB 4/2017, volume page 2469 et seq.**	**Art. 16, 17 CMNI**	**No liability on the part of the carrier and his agents in the event of contamination of the cargo in the waterway vessel**

Not legally binding. Process termination due to second instance.

Contamination of the cargo in the inland waterway vessel. No claim for compensation based on Articles 16 and 17 CMNI as the carrier has proved that the damage was caused by circumstances that could not have been avoided by a diligent carrier and the consequences of which he was unable to avert. Cleaning of the vessel by an approved specialist firm prior to acceptance of the cargo and subsequent release of the vessel.

Hof Den Haag 23.02.2016	**Continuation of interim judgement 30.12.2014**	**Arts. 2; 3, para. 2; 6, para.4; 8, para. 2; 10, para. 2; 16, para. 2; 29, paras. 1-3**	**Liability for damage to the vessel during unloading; an omission in the Convention?**

Under neither the CMNI nor supplementary Dutch law is the shipper *at any time* considered liable for damage caused to the vessel during unloading. There is no prevailing view in case law or literature for the view that the liability of the shipper for such damage is implicit in the CMNI. In agreement with the CMNI, the Dutch Act of Approval also stipulates the consignee with regard to the acceptance and unloading of the cargo. The shipper is not jointly liable with the

consignee for damage sustained during unloading. Under Dutch legislation, the shipper's liability is not strict liability but fault-based liability, whereby the possibility of force majeure remains.

RB Rotterdam **ECLI:NL:RBROT:2017:1280** **Art. 2, 29 CMNI** **demurrage in case of discharging; partial choice of law**
03.03.2017 **S&S 2017/74**

In absence of a choice of law governing all aspects of the contract of carriage the choice of a regulation of demurrage is considered a so called “partial choice of law” (art. 3 par 1 Rome I-Regulation), which is allowed under art. 29 CMNI

BGH **Az: 1 ZK 29/16** **Artikel 20, 21 CMNI** **Towing contract is contract of carriage, limitation of liability (hull is package), custodial liability, freight document and qualified culpability**
01.06.2017 **AfB 2017, Nr. 1, S. 2493**
Appeal OLG
Frankfurt am Main, **Az.: 5 U 17/13**
26.1.2016 **ZfB 2016, Nr. 3, Sammlung Seite 2412 ff**
TranspR 10-216 Seite 399 ff

A towing contract of a hull is qualified as contract of carriage. In absence of a written declaration of the weight of the alongside towed hull it is qualified as package according to art. 20 par 1. first sentence of CMNI, on which a limitation of liability of 666,67 SDR applies. No loss of the right of limitation of liability due to a lack of a qualified culpability.

OLG Nürnberg **12 U 1435/17** **Art. 4, 8, 15c CMNI** **Actual carrier liable in the same way as carrier. Liability for costs and demurrage incurred as a result of instructions from the shipper/carrier.**
14.2.2018 **TranspR 11/12-2018, S 443 ff**

Recourse in the carrier chain. Damage to goods resulting from postponement of discharge on the instructions of the shipper/carrier. Under Art. 15(c), the actual carrier must be reimbursed for expenses and costs, such as demurrage, as well as for any material damage incurred. Joint liability on the part of the actual carrier as a result of own contributory behaviour.

CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
Schifffahrtsober-gericht Köln 26.06.2018	**3 U 134/17 BSch TranspR 1-2019, S 24 ff**	**Art. 24 CMNI**	**Limitation of actions. Deferral of repair by 15 months to reduce damage not acceptable in this case.**

In accordance with Art. 24.1, a limitation period of one year also applies in the absence of any objection in a case where the declarant is entitled to claim with retroactive effect to an earlier date. A shipowner may be required to postpone a non-urgent repair until a scheduled shipyard stay in order to mitigate damage, which was not reasonable in this case.

RB Rotterdam 15.08.2018	**C/10/504537 S&S 2019/3**	**Arts. 6, 8, 18,22 CMNI**	**Liability of the shipper for damage caused by inaccurate information.**

The carrier is not liable for a.o. damage as a result of an act or omission of the shipper, in casu inaccurate information regarding the cargo. According to art. 8 CMNI the shipper is liable for all damage and costs resulting from this act or omission even if no fault can be attributed to him. The actual carrier can invoke the special exonerations and limitations of liability under the CMNI for damages, irrespective of the legal ground.

RB Rotterdam 05.09.2018	**ECLI:NL:RBROT:2018:7350 S&S 2018/130**	**Art. 4, 10, 16, 18 CMNI**	**Liability of the carrier and actual carrier for damage of the goods caused at the delivery; exculpation for damage caused by a hidden defect of the vessel possible in case of appropriate inspection and maintenance of the vessel**

Delivery of goods and moment of “handing over of goods to the consignee” at the discharge of cement out of a vessel by means of pumping and blowing with the support of the vessel happens at the moment of the passing of the flange of the vessel. Liability of the actual carrier towards the consignee/shipper based on tort is decided according to national law, in casu Dutch law. The actual carrier in principle is liable for damage caused by a leak of the vessel unless he was not aware of it nore should have been aware of it which he needs to prove. Calculation of damage based on article 19 CMNI does not include lost profit.

CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
Oberlandesgericht Köln 11.10.2018	**22 U 3/18 BSch ZfB 3/2019, Sammlung Seite 2575 ff**	**Art. 16, 19, 25 Abs.2 CMNI**	**The mandatory contribution for the load according to general average represents damage to the load in the sense of Art. 16 and 19, even when the load has sustained no damage. The legal pledge on the goods to be transported has the effect of reducing the value, which can be considered as damage to the load, as set out in transport legislation. Where an exemption is granted to the carrier in accordance with Art. 25, 2, the carrier is relieved of the burden of liability for presumed fault.**

Under the provisions of CMNI Art. 16, the carrier shall be liable for loss resulting from loss or damage to the goods caused between the time when he took them over for carriage and the time of their delivery. In that case, the reimbursement the general average contribution paid for the load will be enforced as a claim and recognised as such by a court. The costs incurred for the lighterage and the crane ship served the purpose of preventing damage to the cargo. Whether the goods were (also) physically damaged is not relevant here. It would be unfair if someone whose goods had suffered slight damage, and who would thus be entitled to claim back the costs for damage reduction, were to be placed in a more favourable position than someone whose goods were undamaged thanks to the efforts made to avoid damage. A further reason for this argument is the legal pledge intended to secure the general average contribution. It is directly applicable to the goods and leads to a reduction in value. For this reason, the mandatory general average contribution can be considered as an asset loss.
The carrier can be absolved of liability in the sense of Art.16, 1 if he can show that the loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted. Under Art. 25, 2, an exemption may be granted in the case of navigation error, provided that the carrier complied with the obligations set out for the crew in Art. 3, 3.

Hof van Beroep Antwerpen 10.12.2018	**2013/AR/988**	**Art. 29 CMNI**	**Right of claim holder of bill of lading**

This case concerned an international transport of goods by inland waterways, as a result of which the transport was governed by the CMNI convention. However, the CMNI convention does not determine who is entitled to claim in the event of cargo damage. Following art. 29 CMNI to answer this question, you must be reverted to applicable national law. Belgian law is therefore applied in the present case. Art. 89 Zeewet on account of art. 274 Zeewet is also

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE

applicable to inland navigation. In the case of transport by inland waterway and an inland navigation bill of lading, the right of action therefore belongs exclusively to the holder of the bill of lading.

Schifffahrts-obergericht 11.2.2019	**22 U 3/18 BSch ZfB 4/2019, Sammlung Seite 2586 ff**	**Art. 32 Abs.1 CMNI**	**The CMNI takes precedence over national legislation. Even with the additional validity of Dutch legislation, the exclusion of liability in the event of a navigation error only applies if this has been contractually agreed. In accordance with Art. 32, 1, the exclusion in the case of a navigation error applies only between 2 States which have both made the same declaration, as set out in Art. 32, 2.**

The claim for exclusion from liability on the basis of a navigation error by the owner of the vessel following a grounding, on the basis of national legislation in accordance with Art. 29 is rejected, as the option to choose a legislation only applies where the Convention itself contains no relevant provisions. The application of the Convention cannot be waived.

The Netherlands has made no declaration under Art. 32 paragraph 1 CMNI whereby liability for navigation error would be excluded.

Ondernemingsgs rechtbank Antwerpen 30.04.2019	**A/16/4369**	**Liability owner/charterer for contamination damage**

In contrast to, for example Germany, where courts often demand that tankers should be absolutely clean and suitable (even for sensitive products) even if the sender does not specifically request, the “ondernemingsrechtbank Antwerpen” (business court Antwerp) takes a different view. The court ruled that the owner/charterer was not contractually obliged to offer the ship in such a state that it could transport the cargo without any risk of contamination. The owner/charterer was only obliged to check by using the UM Material Safety Data Sheet (MSDS) if the ship in general could transport such cargo. Owner/charterer had correctly carried out the cleaning instruction received and can therefore not be responsible (or liable) for the occurrence of contamination of the cargo.

CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
RB Rotterdam 26.06.2019	**ECLI:NL:RBROT:2019:5079**	**Art. 6 lid 4 CMNI Art. 8 lid 2 CMNI**	**Damage to hatches of inland navigation vessel during the loading of sand via a „Kiepsteiger". Send liable for the acts of auxiliary person and her driver in accordance with CMNI.**

During the loading of a vessel using tippers by an assisting servant the loading of sand did not end up in the hold, but on the aluminium ship hatches. As a result the hatches were severely damaged. The question to be answered was if the sender is liable for this damage according to the CMNI rules although the driver of the tipper was not employed by the sender and the sender did not recruit the driver and/or his employer as an assisting servant. The court ruled that pursuant to art. 8 paragraph 2 CMNI the shipper is liable in his relation to the ship for the acts of the assisting servant and his driver.

RB Rotterdam 24.07.2019	**ECLI:NL:RBROT:2019:6449**	**Art. 16 paragraph 1 CMNI Art. 3 paragraph 3 CMNI**	**Contamination damage**

It is the duty of the carrier to ensure that the ship, taking into account the goods to be carried, is suitable for the transport in question (art. 3 paragraph 3 CMNI). As the carrier knew the type of cargo (methanol) and the cargo of previous shipments (including styrol), the carrier could not claim that additional instructions were missing and that the industry standard of the „clean tank" was met. The carrier cannot rely on force majeure. After all, it was the duty of the carrier to take all measures that can be reasonably expected of a diligent carrier to prevent any loss or damage.

RB Rotterdam 25.09.2019	**ECLI:NL:RBROT:2019:7562**	**Art. 6 paragraph 2 CMNI Art. 3 paragraph 3 CMNI Art. 8 paragraph 2 CMNI**	**Damage caused by incorrect stowage on account of carrier Old German law applicable.**

See interim judgment 20.08.2014

The Old German legislation has in principle become applicable as a set of general conditions on the legal relationship between the parties. Pursuant to the old German law, the shipper is responsible for the loading of bulk goods on board of of the vessel whereas the carrier is responsible for the stowage thereof. Application of old German law (BinSchG) entails a deviation from the legislation that would have been applied without the general conditions. Only those provisions of the old BinSchG are applicable that deviate from or supplement the legally applicable CMNI. The consequences of giving instructions by the crew, or of the incorrect stowage of the cargo fluorspar on board of the vessel, in principle falls under the responsibility of the carrier.

CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
Landgerichts Würzburg 13.12.2019	1 HK O 2185/16	Art. 4 CMNI Art. 16 CMNI	Liability carrier contaminated tanks. Duty of care.

Contrary to § 426 HGB, Art. 16 CMNI does not rely on a particularly conscientious carrier who has exercised the utmost care, but it is often sufficient that the general care has been taken. The carrier would only be liable according to art. 16 CMNI if the damage arises from circumstances that a careful carrier could have avoided and the consequences could be prevented. This makes it easier for the carrier to release from liability under the CMNI than under the German Commercial Code. A carrier who offers a tanker for loading whose tank spaces are not suitable for undamaged loading and careful transport of the cargo does not meet the legal standard. In order to release himself from liability, the carrier must state and prove that he has taken all possible care (including the appointment of a recognized specialist company to clean the tanks, an independent inspection that inspects and releases the ship after cleaning, etc.). If the load is still contaminated, the carrier is not liable.

Besides it concerns a claim by an actual carrier against an intermediate carrier. The intermediate carrier cannot avert claims from or payment to the actual carrier. He has no interest in it and there is no room for Drittschadens liquidation.

RB Rotterdam 08.04.2020	ECLI:NL:RBROT:2020:3267	Art. 16 paragraph 1 CMNI Art. 23 paragraph 1 CMNI Art. 18 paragraph 1b CMNI Art. 10 paragraph 2 CMNI	Odor damage to the cargo. Carrier not liable.

Following article 16 paragraph 1 CMNI the carrier shall be liable for loss resulting for loss or damage to the goods caused between the time when he took them over for carriage and the time of their delivery, apart from his reliance on carrier force majeure. The obligation to state and - in case of sufficient dispute - the burden of proof of facts and circumstances from which it follows that the damage occurred during the liability period of the carrier rests with the cargo interest.

In this case, the cargo interest has accepted the cargo without any comments or reservations. On the basis of article 23, paragraph 1, CMNI, this acceptance gives rise to the presumption that the carrier has delivered the cargo in the same condition as in which it was handed over for transport.

CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
RB Rotterdam 22.04.2020	ECLI:NL:RBROT:2020:4219	Art. 3 CMNI Art. 6 CMNI Art. 16 CMNI Art. 18 CMNI	Liability carrier contaminated tanks.

The central question is whether the carrier is liable for the damage on the basis of Article 16 CMNI. According to the carrier, if no additional requirements, such as washing or degassing, are imposed on the ship, it will suffice with the industry standard of the „clean tank“ was met. This may leave residues and vapours from previous cargo behind. If the damage was then caused by the vapours still present in the ship, a careful carrier could not avoid the consequences, so that he could claim force majeure. The judge dismisses this appeal. Pursuant to art. 3 paragraph 3 CMNI, the carrier is obliged to provide a ship that is suitable for the transport in question. The carrier is obliged to take all reasonable measures in the given circumstances from a careful carrier to prevent loss or damage to the cargo. The carrier must take into account the nature of the cargo to be transported.