



**THE NINTH
NATIONAL LAW UNIVERSITY ODISHA
BOSE & MITRA & CO.
INTERNATIONAL MARITIME ARBITRATION
MOOT
2022**

CASE STUDY*

* The case study has been drafted by Prof. Andrew Tettenborn, Chair in Law, LLM Shipping & Trade; Prof. Simon Baughen, Professor (Maritime Law), LLM Shipping & Trade; & Prof. Dr. George Leloudas, Associate Professor, LLM Shipping & Trade; at The Institute of International Shipping and Trade Law, Swansea University, The United Kingdom. The participants or their affiliates are barred from approaching the drafters for any kind of assistance regarding this competition. Any contact shall lead to immediate disqualification of the concerned team.

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IN THE MATTER OF AN
ARBITRATION

Between

CASPIAN TRADERS LIMITED

Claimants

and

TAWE LIMITED

First Defendants

And

CRUZ SA (A Company incorporated
under the laws of the Republic of Colombia)
Second Defendants

STATEMENT OF FACTS

The following facts are admitted by all parties:

1. On 20 November 2020 Caspian Traders Ltd (Caspian) contracted with Tawe Ltd (Tawe), the owners of the MV *Odyssefs*, for the carriage of five hydrogen fuel cell converters, each weighing approximately one tonne, from Santos, Brazil to Chennai. Caspian had purchased the fuel cell converters from a BRAZILIAN company for \$100,000 a converter.
2. Neither Brazil nor Colombia is party to the Hague Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 or the Brussels Protocol to that Convention of 1968.

3. The cargo was shipped on 25 November 2020, and a bill of lading on the Combiconbill 2016 form was issued in Santos by Tawe. This named Caspian as shipper and consignee, Santos as the port of loading and Chennai as the port of discharge. It also contained an addendum with the following additional typed clauses:
 1. This bill of lading is subject to English law, and any disputes arising out of or in connection with it shall be settled by SCMA arbitration in Singapore.
 2. The Carrier has liberty to transship goods on any terms whatsoever, and any and all liability in the Carrier, whether in contract, tort, bailment or otherwise, shall cease once goods are discharged from the *Odyssefs*.
 3. In the case of loss or damage neither the Carrier nor the ship shall be liable in any circumstances for any sum in excess of \$500 per package or unit.
 4. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 shall be regarded as deleted.
4. On 1 December the *Odyssefs* arrived at Cartagena, Colombia, where Tawe discharged the cargo and transshipped it on to the *Hidalgo*, owned by Armadores Cruz SA. Tawe in turn received a bill of lading issued by Cruz in Bogotá, also on the Combiconbill 2016 form. This named Cartagena as the port of shipment and Chennai as the port of discharge, and on the front Tawe appeared as both shipper and consignee. It contained an addendum as follows:
 1. This bill of lading is subject to English law and any and all disputes arising thereunder in connection therewith shall be settled by SCMA arbitration in Singapore.
 2. Clause 11 is deleted.
 3. Clause Paramount. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, save that Clause IX shall not apply.
 4. The Carrier's liability for any loss or damage whatsoever is limited to a sum of £1000 Sterling per package or unit.
5. During the voyage between Cartagena and Chennai the vessel encountered a hurricane and the stow collapsed, which resulted in the cargo being lost. The loss was admitted to have been due to the failure by Cruz to show due diligence to render the *Hidalgo* seaworthy, the unseaworthiness being due to Cruz's failure to correct a fault in the vessel's weather radar before departure from Cartagena.

6. Caspian issued a claim for arbitration against Tawe on 25 August 2021, and against Cruz on 3 September 2021. In both proceedings Caspian claimed \$500,000 for the loss of the converters, a figure that was agreed to represent their market value. By agreement between all three parties, both arbitrations were consolidated before the present tribunal. The parties also disagree on the number of arbitrators.

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THE POSITION OF PARTIES

CASPIAN

Caspian claim that both Tawe and Cruz are liable to them for \$600,000, the full market value of the lost converters.

(1) Caspian allege that Tawe are liable on the basis of breach of the contractual duty to ensure the provision of a seaworthy vessel under Article III Rule I of the Hague Rules appended to the Carriage of Goods by Sea Act 1924 and/or Article III Rule I of the Hague-Visby Rules appended to the Carriage of Goods by Sea Act 1971. In so far as Clause 2 of the Appendix to the Odyssefs

bill of lading purports to relieve the carrier of liability in respect of loss or damage occurring after the cargo has been transshipped from the Odyssefs, it is rendered null and void by Article III Rule 8 of the Hague Rules.

(2) Caspian allege that Cruz are liable to them as sub-bailees who had agreed to carry the cargo on the terms of the Hague Rules, and that on that basis Cruz are also liable for failure to show due diligence to provide a seaworthy vessel.

(3) It is Caspian's case that both Tawe and Cruz are liable for the full value of the converters because

(a) the relevant limit of liability is the gold value £100 per package as provided in Article 4 Rule 5 of the Hague Rules appended to the Carriage of Goods by Sea Act 1924, which at the current rate of bullion values yields a figure of considerably over \$30,000 per converter, and

(b) any attempt by either Tawe or Cruz to limit liability to a lower figure is prohibited by Article III Rule 8 of those Rules.

(4) In the alternative, Caspian claim that the relevant liability is the limit of 2 SDRs per kg contained in Article 4 Rule 5 of the Hague-Visby Rules appended to the Carriage of Goods by Sea Act 1976, and that on that basis Tawe and/or Cruz are liable in the figure of approximately \$2,800 per converter, or \$56,000 in total.

(5) Caspian claims that the arbitral panel consists of 3 arbitrators as per Rule 8.2 of the SCMA Arbitration Rules

TAWA

Tawe deny that they are liable to Caspian for any sum.

(1) It is Tawe's case that the plain terms of Clause 2 of the Addendum to the Odyssefs bill of lading exonerated them from any liability whatever once the goods had been transshipped. They contend that Article III Rule 8 does not preclude reliance on this provision because the Hague

and/or Hague-Visby Rules were applicable to the carriage only by virtue of agreement between the parties.

(2) Alternatively, it is Tawe's case that they are entitled to limit their liability to Caspian to \$500 per package, making a total of \$10,000.

(3) Tawe claims that the arbitral panel consists of 1 arbitrator as per section 9 of the International Arbitration Act of Singapore.

CRUZ

Cruz equally deny any liability whatever to Caspian.

(1) It is Cruz's case that they are protected by Clause 15 of the Odyssefs bill of lading, providing that no liability shall attach to any servant, agent or independent contractor employed by Tawe to transport the goods.

(2) Alternatively, because of Clause 4 of the Appendix to the Hidalgo bill of lading, Cruz argues that it is entitled under the terms of its sub-bailment with Tawe to limit its liability to £1,000 per unit, making approximately \$27,600. Cruz argues that in this connection Art III Rule 8 of the Hague Rules does not preclude reliance on the said Clause 4 because the Rules applied only by virtue of agreement between the parties.

(3) Cruz claims that the arbitral panel consists of 1 arbitrator as per section 9 of the International Arbitration Act of Singapore.