Cargo Claims for Economic Loss

In the current shipping market disputes frequently arise between cargo owners and carriers concerning economic losses suffered by the cargo owners during or as a consequence of transportation, even though the cargo is not physically damaged.

A good example of this is the situation where cargo is delivered late and there has been a fall in the market value of the cargo between the date when it should have been delivered and the date of actual delivery.

In cases such as this, the cargo owner is, in principle, entitled to recover damages for economic loss under the Hague-Visby Rules (see GH Renton & Co Ltd v Palmyra Trading Corporation[2], Goulardis Brothers Ltd v B Goldman & Sons Ltd[3]). However, this is subject to questions of remoteness. In The "Heron II", which concended a claim for economic loss following the late delivery of cargo in a falling market, the House of Lords held that "the contract breaker will be liable to compensate for damage of a kind which the defaulting party should reasonably have contemplated would follow from the breach".[iii]

Two recent cases are relevant to claims for breach of contract causing economic loss. The first of these, The "Limnos" (QBQ), establishes new law on package limitation under the Hague-Visby Rules where cargo owners have suffered economic loss. In the second case, The "Achilleas", the House of Lords reviewed the general test for remoteness.

In this article both cases, and their impact on claims in contract for economic loss, are considered.

The "Limnos"

During a shipment of about 44,000 MT of corn from Louisiana/US to Aqaba/Jordan, the following damage was suffered by the cargo:

1. About 12 mt cargo was found to be wet during discharge and was therefore disposed of.
2. A further 250 mt cargo suffered physical damage when kernels within the cargo were broken by bulldozers during the discharge operation.
3. The Jordanian authorities required the cargo to be fumigated following discharge. As a consequence, the number of broken kernels increased and the whole cargo acquired a reputation as a damaged cargo which depreciated its value.

The dispute concerned the extent to which the carrier could limit its liability under Article IV Rule 5(a) of the Hague-Visby Rules.

The carrier argued that the words "goods lost or damaged" in Rule 5(a) meant only goods that were physically lost or physically damaged and that it was, therefore, entitled to limit its liability by reference to the gross weight of the physically damaged cargo in 1 and 2 above, i.e. about 262 MT.

The cargo owner said that the words "goods lost or damaged" included economic loss, and that consequently the Rule 5(a) limit was applicable by reference to the whole cargo of 44,000 MT because, for the reasons indicated in 3 above, the entire cargo had acquired a reputation in the market as a damaged cargo and had thus been diminished in value.

Burton J rejected the cargo owners' argument and held that under Article IV Rule 5(a) the carrier's liability for the losses in 1 – 3 above was limited by reference to the weight of the goods physically damaged.

Furthermore, Burton J held that Article IV Rule 5(a) should be construed so that the limit is by reference to the gross weight of the goods lost or damaged as at the date of discharge/delivery. For this reason, the limit of the carrier's liability was not affected by the further physical damage to the cargo that occurred during fumigation following discharge (see 3 above).

An issue that was not clearly addressed in the judgment is how package limitation would work when there is no physical damage to the goods (i.e. pure economic loss). Burton J accepted that were anomalies in such circumstances, not least because where there was substantial pure economic loss there would be no limit of liability and cargo owners would, in principle, be able to recover their loss in full but if there was a small element of physical damage and substantial pure economic loss package limitation would apply calculated by reference to that small amount of damaged cargo. However, he did not believe such a result flouted business common sense, or that claims for economic loss without physical damage would be frequent.

Cargo owners have requested permission to appeal and it remains to be seen whether permission will be granted.

The "Achilleas"

The facts of The "Achilleas" are well known. In summary, the vessel was due to be redeivered under a time charter on 2 May 2004, but due to delays on her final voyage she was in fact redeivered 9 days late, on 11 May 2004. As a result the owners lost their next fixture, which was for a duration of 4-6 months. The market fell quite dramatically in the period between 2 and 11 May and the owners therefore had to refix with the same charterers on the same terms but at a lower daily rate than that previously agreed.

The owners claimed damages on the basis of the difference between the earnings on the owners' lost follow-on fixture and the owners' earnings on the follow-on fixture actually performed, for about 6 months. The charterers contended that their liability was limited to the difference between that contract and the market rate in the 9 day period of overrun.

In its judgment the House of Lords reviewed the law in relation to remoteness. Lord Hoffman, who gave the leading speech, stated that the test for remoteness was not simply that the contract-breaker is liable only for those types of loss that he should, at the time the contract was agreed, reasonably have considered as likely to occur following the breach in question. Instead, he held that there is an initial question of what the parties are to be taken to have assumed liability for, having regard to the commercial background to the contract.

Applying this test, the House of Lords held that the charterers had only assumed responsibility for the difference between the contract and market rates in the 9 day period of overrun and that the lost earnings claimed by the owners were too remote to be recoverable.

The above test may be relevant in some circumstances to claims by cargo owners for economic loss following the late delivery of cargo. If the carrier can show that, objectively, it did not assume responsibility for such losses when the contract of carriage was agreed, it will not be liable for...
For further details on this case see website article "Recoverable Damages and The "Achilleas" - A New Approach?"

Conclusion

As the above analysis shows, the law regarding the recoverability of economic loss by cargo interests has been significantly affected by the decisions in The "Limnos" (QB) and The "Achilleas" (HL).

Following the decision in The "Limnos", the carrier's ability to limit his liability for cargo claims under Article IV Rule 5(a) of the Hague-Visby Rules appears likely to depend on whether the cargo has been physically damaged. At face value, and in the rare event there is no physical damage to the cargo, this may be to the advantage of a cargo claimant but, in light of the decision in The "Achilleas", it probably is now more difficult than before the decision of the House of Lords for cargo owners to show that economic losses caused by the carrier's breach of contract are not too remote to be recoverable.

[i] [1957] AC 149
[iii] [1969] 1 A.C. 460. For further discussion regarding the extent to which the event in question must be considered probable please refer to The Kitil Rex [1996] 2 Lloyd's Rep. 171, at 202-203

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