

Clarification of sea carrier's liability for container-caused damages: introduction

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Introduction

This article elaborates on the liability of sea carriers for damage to goods that occurs due to defects in the container used for transport – with a focus on sections 256, 262 and 275 of the Danish Merchant Shipping Act.⁽¹⁾

This article is the first part of a series of four articles that describes some of the issues that the Act's various liability regimes raise in practice, including issues in relation to the extent of liability for subcontractors and product liability for these types of damages. In particular, this first article focuses on the regulation of sea carriers' duty of care.

Background

It is not uncommon for damage to goods to occur during sea transport due to defects in the container used.

These types of damages can occur due to water and moisture penetration, temperature fluctuations or as a result of an incorrect composition of oxygen and carbon dioxide in the container. Such damage to goods can also occur due to the container being leaky or because the container's cooling system or atmosphere control system is defective. Furthermore, goods can be damaged if the container is not properly cleaned or emits an odour.

If it can be established that the goods are damaged and that the damage is because the container was not suitable for transport, the question is: who is responsible for the damages?

The following sections of this article review the relevant sections of the Act to clarify sea carriers' liability for damage caused by defects in the container in which the goods have been transported. In this article, the collective term "container damage" is used for this type of damage to goods.

Applicability

If container transport is carried out in accordance with an agreement on sea transport in Denmark or in inter-Nordic carriage, the responsibility of the sea carrier will be regulated by the provisions in chapter 13 of the Act, which relate to general cargo transport. The same applies if the agreement on sea transport indicates a place of delivery located in a convention state (ie, a Hague-Visby state) or if the place of delivery is in Denmark, Sweden, Norway or Finland.⁽²⁾

The above scope of application follows from section 252 of the Act and means, in practice, that the sea carrier's liability for container damage, for most transported containers, is regulated by the provisions in chapter 13 of the Act.

Carrier's liability standard

Pursuant to section 275 of the Act, a sea carrier is liable for losses as a result of goods being damaged or lost while they are in the sea carrier's custody or in the custody of a party for which the carrier is responsible. However, the sea carrier is free from liability if it proves that error or negligence by itself or those for whom it is responsible did not cause or contribute to the loss.

Section 275 of the Act thus establishes a presumptive liability, under which it is the responsibility of the sea carrier to prove that a given damage is not due to errors or negligence.

Carrier's duty of care

It follows from section 262(1) of the Act that a sea carrier must take care of the goods and look after the interests of the owner from receipt of the goods until the goods are delivered.

This provision lays out the duty of the carrier to take care of the cargo owner's interests (ie, duty of care).⁽³⁾ Breach of duty of care is sanctioned by the liability to which the carrier is subject pursuant to section 274 of the Act. The burden of proof that the sea carrier has shown due care for the goods rests with the sea carrier (see section 276)(2).

Carrier's responsibility for ship's seaworthiness

From section 262(2) of the Act, it follows that the carrier must ensure that the ship used for transport is seaworthy. It is assumed in the legal literature that the carrier's duty of seaworthiness in relation to the cargo, under section 262(2), also applies to the condition of the container when the transport is carried out with a container that has been delivered by the sea carrier and stowed by the consignor.⁽⁴⁾ It is also assumed that disregarding the duty to make a seaworthy ship available must be considered a material breach of contract, and it is

thus a duty that entails a heightened responsibility or liability for the sea carrier.

Thus, the carrier's containers can be considered to be part of the ship. Consequently, defects in the sea carrier's containers will mean that the sea carrier is liable more strictly for damages that occur as a result of defects in the container as this constitutes unseaworthiness (see section 262(2)).

In the legal literature, it is thus assumed:⁽⁵⁾

The provision clarifies that the seaworthiness obligation entails that the ship must be adequately manned, equipped and supplied before and during the entire voyage, that the hold and all other parts of the ship used for loading the goods, and all containers delivered by the carrier to the goods transport, is in good condition with a view to receiving, transporting and preserving the goods.

Comment

This liability regime applies to the containers that the sea carrier itself delivers for use in the transport and states that the sea carrier is subject to an investigation obligation prior to the performance of the transport in these cases. In other words, the sea carrier must carry out due diligence on the container and assess whether the container is suitable for carrying out the intended sea transport in a responsible manner.

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Endnotes

(1) Act No. 1505 of 17 December 2018.

(2) The Danish Merchant Shipping Act chapter 13 also applies if the transport document is issued in a convention state or if the transport document stipulates that the provisions of the Danish Merchant Shipping Act shall apply.

(3) Bredholt, Jørgensen and others, Comments on the Danish Merchant Shipping Act, 4th edition (2012), page 392.

(4) Bredholt, Jørgensen and others, Comments on the Danish Merchant Shipping Act, 4th edition (2012), page 393.

(5) 4th report submitted by the Danish Maritime Law Committee No. 1536, 1st edition (2013).