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## The “MSC Nerissa” – The Maritime Court of Appeals of Panama issues ruling with great significant on limitation of liability for containerized cargoes.

For the first time in Panamanian maritime jurisprudence, the Maritime Court of Appeals of Panama, the highest appellate court in maritime cases, handed down a significant ruling analyzing package or unit limitation under English law, its Carriage of Goods by Sea Act 1971 and the Hague-Visby Rules. The decision was issued in the case *ASSA Compañía de Seguros, S.A. v MSC Mediterranean Shipping Company, S.A.* on 29 September 2022.

### The Facts and First Instance Judgment

The underlying claim was in respect of the combined carriage of 875 cartons on 12 pallets inside 1 container carrying perfume goods from Lodi, Italy, as the Place of Receipt, through the port of La Spezia, Italy, as the Port of Loading, to the port of Cristobal, as the Port of Discharge, on board the M/V “MSC NERISSA” pursuant to a bill of lading issued by MSC as Carrier subject to English law. Upon delivery in Panama, the Consignee discovered that 371 of 875 cartons and 6 of 12 pallets were missing. ASSA, a local Panamanian Insurer, paid the Consignee’s insurance claim and legal proceedings were subsequently filed against MSC before the Second Maritime Court of Panama seeking the value of the missing cargo paid by ASSA to the Consignee. As per article 566(10) of Panama’s Code of Maritime Procedure and MSC’s general Terms & Conditions, English law governed the claim.

The description of packages and goods declared in the MSC bill of lading was as follows: “1x20’ CNTR(S) S.T.C. SHIPPER’S LOAD STOW COUNT 875 CT (ON 12 PALLETS).”

On 13 August 2021, the Second Maritime Court issued Judgment in favor of ASSA but found that MSC was

entitled to limit its liability under Article IV, Rule 5(a) of the Hague-Visby Rules as applied under English law to the higher amount between 666.67 SDR x 6 pallets or 2 SDR per kilogram of the missing cargo. In other words, to the lower court the pallets were the COGSA package. Based on this limitation of liability calculation, the first instance judgment in favor of ASSA was less than 5 percent of the quantum claimed against MSC in the proceedings.

Both ASSA and MSC appealed.

### The Maritime Court of Appeals Decision

The main issue on appeal was whether, under English law and Article IV, Rule 5 of the Hague-Visby Rules, the container, the pallets or the cartons were the packages or units for limitation purposes. MSC argued that because of the description contained the description S.T.C. or “said to contain,” the container was the package, while ASSA argued that the description of package and goods declared by cargo interests in the bill of lading was specific enough to make the cartons the COGSA package instead of the pallets or the container itself.

The Maritime Court of Appeals (“MCA”), analyzing the language of Article, Rules 5(a) and 5(c) and relying heavily on the English Court of Appeal decisions issued within the “*Maersk Tangier*” and the “*River Gurara*” cases, reversed the lower court and found that the cartons were the package or unit for limitation of liability purposes.

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The MCA considered that the cargo information declared in the description of package and goods of the bill of lading need only specify the number of packages or units in words or numbers to hold that the container or the pallets would not be considered the packages for limitation purposes when the packages or units within those artifacts of transport (i.e., the container or pallets) are enumerated on the front of the bill of lading. As a result, the MAC held that the correct limitation calculation was 666.67 SDR x 371 cartons, the number of cartons established as missing when the container was opened by the Consignee. Because the limitation amount based on the lost cartons exceeded the quantum claimed by ASSA, the MAC found the limitation of liability defense as irrelevant for the purposes of the claim, thus, granting judgment to ASSA for the full quantum claimed.

### Final Comments

The MAC ruling issued within the “MSC Nerissa” places Panamanian jurisprudence under English law and the Hague-Visby Rules on the issue of Carriage of Goods by Sea limitation of liability in line with English court decisions and could be a forecast for a future ruling under the substantive law of Panama because Panama’s COGSA rules on package limitation, as contained in article 63 of Law 55 of 2008 of Maritime Commerce, have a similar language to Article IV, Rules 5(a) and (c) of the Hague-Visby Rules.



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