

Ocean-Carrier's Liability For Delay?



**The 15th
shiparrested.com
Members' Meeting
Malaga, 24th – 26th May 2018
Thomas Wanckel, Partner,
Segelken & Suchopar**



**What to
look at?**

Carrier's Liability for Delay

- under the „new“ German Marine Act?**
- and the *Hanjin-Desaster***

The „new“ German Maritime Code „Seehandelsrecht“, as of April 25th 2013

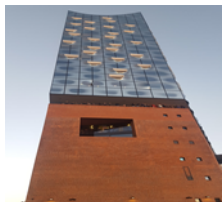
- Germany is still a „Hague-State“, only the Hague-Rules are ratified!
- But the Visby-Rules are incorporated in the „Seehandelsrecht“

- **And what is new?**

1. Defence for fire and error in navigation deleted!

but may be (re)included
by standard business terms
(b/l-terms)





The „new“ German Maritime Code „Seehandelsrecht“, as of April 25th 2013

- Germany is still a „Hague-State“, only the Hague-Rules are ratified ✓
- But the Visby-Rules are incorporated in the „Seehandelsrecht“ ✓
- **And what is new?**
 1. Fire & error in navigation excuse deleted! ✓
 2. **Time-bar suspended by claim-letter til a written rejection!**
(Mail & Fax sufficient!)
and – in general - suspension by “settlement-negotiations”!



The „new“ German Maritime Code „Seehandelsrecht“, as of April 25th 2013

- Germany is still a Hague-State, only the Hague-Rules are ratified ✓
 - But the Visby-Rules are incorporated in the „Seehandelsrecht“ ✓
 - **And what is new?**
 1. Fire & error in navigation excuse deleted! ✓
 2. Time-bar suspended by claim-letter til a written rejection! ✓
 3. **No „special reason“ for an arrest anymore.**
- ➡ **Arrest into vessels easy, conservatoy arrests still much restricted**



The „new“ German Maritime Code „Seehandelsrecht“, as of April 25th 2013

And what about the liability for delay?

Please recall!

Germany is still a Hague-State!

- **Like in the HVR delay is not specifically regulated!**
- **What to do in case of delayed delivery?**
- ***(think of the Hanjin-Desaster?)***

The Hanjin-Desaster ... and recovery for delay?

Go after

1. ... Hanjin?
2. ... the Terminals?





The Hanjin-Desaster ... and recovery for delay?

1. ... vs. Hanjin ✓
 2. ... vs. the Terminals ✓
 3. ... vs. the Freight-Forwarder
- The „Fixkostenspediteur“ (acting on a fixed freight rate!)
 - Freight-Forwarder as contracting or performing Carrier, i.e. NVOCC

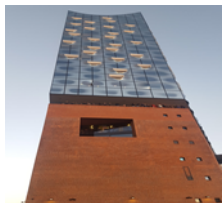


The Hanjin-Desaster ... and recovery for delay?

1. ... vs. Hanjin ✓
 2. ... vs. the Terminals ✓
 3. ... vs. the Freight-Forwarder
- The „Fixkostenspediteur“ (acting on a fixed freight rate!)
 - Freight-Forwarder as contracting or performing Carrier, i.e. NVOCC

Both are liable like a Carrier

- for loss and/or damage, and also for delay!
- delay neither regulated in the German Maritime Law nor in the H/V,
- but the German Civil Code („BGB“) applies!



The Hanjin-Desaster ... and recovery for delay?

- **And what does the German Civil Code („BGB“) require?**
 - 1. The obligation must be due! (eta vs. fixed date of arrival)!**
 - 2. The shipper/consignee must have sent a reminder/warning!**
 - 3. The shipper/consignee must prove his damage/financial loss!**
 - 4. Exclusion of financial losses by b/l terms? (UK/Germany)**
- **Lesson to learn?**
 - **Tough to prove, but worth a try!**

**.... any
questions?**

wanckel@sesu.de

www.sesu.de



**No questions
anymore!**

wanckel@sesu.de

www.sesu.de



Two lucky human idiots!