

From the Benesch TRANSPORTATION ARCHIVES

A prior article from Benesch Friedlander Coplan & Aronoff LLP's Transportation & Logistics Group

Over the past couple decades, the lawyers in Benesch's Transportation & Logistics Practice Group have spoken at countless industry conferences and authored hundreds of substantive articles dealing with a host of business and legal issues important to both the providers of, and the commercial users of, transportation and logistics services. With this new publication, which will be issued every other month, we look back on some of these seminal articles that remain critically relevant to the industry to this day. In advance of each issue, we carefully comb through the archives of our prior published work in the transportation and logistics arena and select a relevant article that we trust will be of continuing interest to our readers. Please let us know how we are doing!

Rotterdam Rules—The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

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The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, otherwise known as the "Rotterdam Rules," was adopted by the United Nations General Assembly on

December 11, 2008. The stated purpose of the Rules is to bring international uniformity to the law of carriage of goods by sea, and to make the law of carriage of goods by sea appropriate and relevant to the modern age of international, containerized, intermodal transportation of goods.

The U.S. has signed the Rotterdam Rules, but the rules must be ratified by the U.S. Senate before they can be implemented. Currently, the rules are still being reviewed by the U.S. State Department before being presented in the Senate. When implemented, the Rotterdam

Rules will, in the U.S., eliminate the Carriage of Goods by Sea Act (COGSA), which is codified at 46 U.S.C. § 30701. This article highlights some of the major differences between COGSA and the Rotterdam Rules.

Scope of Application. The Rotterdam Rules apply to contracts of carriage for movements between countries, if part of the carriage is by water. The rules apply to "all maritime performing parties," including terminals and harbor-area truckers. The rules do not apply to charter parties or other contracts for the use of any space on a ship. COGSA applies to port-to-port shipments by ocean carriers, but may be extended to inland carriers and subcontractors by *Himalaya* clauses.

Period of Responsibility. Under COGSA, the carrier is responsible only during "the period from the time when the goods are loaded on to the time when they are discharged from the ship," or "tackle-to-tackle." Often, carriers have

contractually extended the period during which they are liable, resulting in carrier liability beyond the "tacklet-to-tackle" portion of carriage. The Rotterdam Rules apply door-to-door (Article 12(1)). By law, the carrier will be responsible for the entire contractual period of carriage, which often means from the carrier's receipt of the goods at an inland location until the goods are delivered to an inland location in another country.

Limitation of Liability. The limitation of liability for cargo loss or damage under COGSA was set in 1936 at \$500 per package, "or in case of goods not shipped in packages, per customary freight unit." Determining what constitutes a "package" under COGSA is confusing and can be controversial. For instance, courts have sometimes held that a large piece of machinery or even an entire shipment is one package or one customary freight unit. The limitation of liability under the Rotterdam Rules (Article 59) is 875 Special Drawing Rights (SDRs) per package or 3 SDRs per kilogram of gross weight, whichever is greater. The value of an SDR varies daily, but for example, an SDR value of \$1.56 would set the limitation of liability at \$1,363.37 per package or \$4.65 per kilogram, whichever is greater.

Basis of Liability. Under the Rotterdam Rules, the carrier is liable for loss or damage or delay, if the claimant proves the loss, damage or delay (or the event or circumstance that caused or contributed to it) took place during carriage of the goods, unless the carrier proves the cause of the loss, damage or delay was not its fault. The carrier is also relieved of liability if it proves that the loss, damage or delay was caused or contributed to by one of several exceptions to liability, which are similar, for the most part, to the exceptions under COGSA.

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COGSA does not explicitly address delays. Under the Rotterdam Rules, delay is defined in Article 21 as a situation when goods are not delivered “within the time agreed.” This implies that if the parties do not agree upon a specific delivery time, there can be no claim based on delay.

Under COGSA, a carrier was not liable for cargo loss or damage if such loss or damage was caused by an error of navigation. Under the Rotterdam Rules, there is no exception based on an error in navigation.

Under COGSA, if the carrier performed due diligence to make the vessel seaworthy prior to voyage, the carrier was considered free from negligence and exempt from liability. Under the Rotterdam Rules, the obligation to exercise due diligence in making the vessel seaworthy continues throughout the voyage.

Time for Suits. Under COGSA, the time period during which litigation can be commenced is one year from date of delivery or the date the goods should have been delivered. The Rotterdam Rules provide for a two-year time limit for commencement of proceedings.

The Rotterdam Rules contain many other items that will be of interest to both shippers and carriers. However, the foregoing summary provides an initial, meaningful, representative sampling of the changes contained in the Rotterdam Rules as they compare to the current U.S. laws under COGSA. Only time will tell when and if the U.S. Senate ratifies the new rules and they become the new law of the land.

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