

Montreal Convention Statute of Limitations Does Not Apply to Contributions Claims, S.D.N.Y. Holds

JANUARY 19, 2018

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In *AGCS Marine Ins. Co. v. Geodis Calberson Hungaria Logisztikai KFT*, No. 16-CV-9710 (S.D. N.Y. 2017), the Southern District of New York recently held that a contracting carrier's claims for contribution and indemnification against actual carriers were not subject to the two year statute of limitations established by Article 35 of the Montreal Convention.

In the underlying facts, Geodis Calberson Hungaria Logisztikai KFT ("Geodis") contracted with AGCS Marine Ins. Co. ("AGCS") to ship computer equipment from Hungary to Pennsylvania. Geodis enlisted El Al Israel Airlines Ltd. ("El Al") to fly the equipment from Europe to the United States. Alliance Ground International, LLC ("Alliance") acted as El Al's ground handling agent upon the equipment's arrival in the United States in New York, and PAI Trucking Corp. ("PAI") ultimately transported the equipment by motor carrier from New York to the destination in Pennsylvania.

Just over two years later, AGCS sued Geodis as the "contracting carrier," alleging that the equipment had arrived in a damaged condition. Several months later, Geodis filed a third-party complaint against El Al, Alliance, and PAI (collectively the "third-party defendants"), on the grounds that the third-party defendants were liable as the "actual carriers," and sought damages for contribution and indemnification. (Geodis originally included a claim for negligence, but abandoned the claim.)

Article 35 of the Montreal Convention provides that "[t]he right to damages shall be extinguished if an action is not brought within a period of two years." The third-party defendants moved to dismiss the claims against them, arguing that Geodis's claims were filed more than two years later, and therefore barred by Article 35. The district court rejected this argument. The court concluded that the "right to damages" under Article 35 related to a claims by which a passenger or consignor sought to hold a carrier liable for damages. But, the court reasoned that Geodis was not seeking damages for the computer equipment itself. Instead, as the contracting carrier, Geodis was seeking contribution from the actual carriers for any compensation for which it may ultimately be held liable to AGCS, and thus was not a standalone claim for damages.

In making this determination, the court looked to Article 37 of the Montreal Convention, which provides that "[n]othing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person." The court concluded that applying a two year statute of limitations to contribution and indemnification claims by a contracting carrier against an actual carrier would create a conflict between Articles by limiting Geodis's "right of recourse" against the third-party defendants, which is prohibited by Article 37. Instead, the court held that whether Geodis could pursue its claims against the third-party

defendant was governed by state law as provided by Article 45 of the Montreal Convention, which applies to claims by carriers against other carriers. As Geodis's claims against the third-party defendants were timely under state law, the court denied the motion to dismiss the contribution and indemnifications claims.

As such, when faced with claims under the Montreal Convention, carriers should not be dissuaded in pursuing claims for contribution and indemnification from other carriers that may ultimately be liable simply because of the two-year limitations period provided by the Montreal Convention. Instead, carriers should look to the applicable state law in determining whether they may pursue such claims against third-parties that may be ultimately liable to a passenger or consignor.

For more information on this topic, contact a member of our [Transportation & Logistics Practice Group](#).

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