

***Volcafe Ltd & Or v Compania Sud
Americana de Vapores SA ("CSAV")***
[2016] EWCA Civ 1103

CASE NOTE – GABRIELLE SCOTT-JONES



Key facts

- 9 consignments of bagged coffee beans carried by CSAV from Colombia to Europe
- 20 unventilated containers lined with Kraft paper
- Containers stuffed by stevedores up to 11 days prior to shipping, transported to port, then loaded onto vessel
- Condensation damage to 2.6% of the cargo



Hague Rules

- **Article II:** Under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth
- **Article III, rule 2:** Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried
- **Article IV, rule 2:** Neither the carrier nor the ship shall be responsible for the loss or damage arising or resulting from: (m) wastage in bulk of weight or any loss or damage arising from inherent defect, quality or vice of the goods.

Claim

- CSAV breached duty to take reasonable care of cargoes and deliver them in same good order & condition
- Loss or damage caused by negligence of the carriers and/or failure to properly and carefully load, handle, stow, keep, care for and discharge the cargo: failure to properly line the containers

Defence

- Not in breach of Hague Rules: properly stowed the goods - lining the containers with sufficient Kraft paper to protect against damage sustained as a result of ordinary levels of condensation
- Inherent vice: deterioration of the coffee as a result of their natural behaviour in the ordinary course of the contemplated voyage (the ordinary levels of condensation forming in containers during passages from warm to cold climates)

Trial Judge found for the claimant cargo interests...

Court of Appeal - issues

- Burden of Proof:
 - Defendant to establish inherent vice + not negligent; or
 - Defendant to establish inherent vice, plaintiff to establish negligence of defendant
- Evidential threshold to establish a “sound system” for properly stowed goods: industry practice or empirical evidence
- Did the Hague Rules apply when the stevedores were packing the goods 11 days prior to shipment?

Burden of Proof

Claimant
burden to
establish
goods
delivered
damaged
(the
damage
speaks for
itself):
breach of
Hague
Rules Art
III, rule 2



Defendant
burden to
establish
**inherent
vice:**
exception in
Hague Rules
Art IV, rule
2(m)



Claimant
burden to
establish
negligence
of defendant
that negates
exception
Hague Rules,
Art IV

Court of Appeal found for the carrier

- Inherent vice defence established: common ground between experts at trial that the source of condensation was the coffee beans themselves
- That exception was not “negatived”:
 - The defendants provided a sound system by following the common industry practice of lining the containers with Kraft paper
 - The trial judge’s empirical evidence requirement overstated the law
- Hague Rules apply for the period agreed on by the parties, not limited to the “carriage of goods by sea”