



**THE NINTH  
NATIONAL LAW UNIVERSITY ODISHA  
BOSE & MITRA & CO.  
INTERNATIONAL MARITIME ARBITRATION  
MOOT  
2022**

**CASE STUDY WITH CLARIFICATIONS\***

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IN THE MATTER OF AN  
ARBITRATION

Between

CASPIAN TRADERS LIMITED

Claimants

and

TAWE LIMITED

First Defendants

And

CRUZ SA (A Company incorporated  
under the laws of the Republic of Colombia)  
Second Defendants

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STATEMENT OF FACTS

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**The following facts are admitted by all parties:**

1. On 20 November 2020 Caspian Traders Ltd (Caspian) contracted with Tawe Ltd (Tawe), the owners of the MV Odyssefs, for the carriage of twenty hydrogen fuel cell converters, each weighing approximately one tonne, from Santos, Brazil to Chennai. Caspian had purchased the fuel cell converters from a Brazilian company for \$30,000 a converter.
2. Neither Brazil nor Colombia is party to the Hague Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 or the Brussels Protocol to that Convention of 1968.
3. The cargo was shipped on 25 November 2020, and a bill of lading on the Combiconbill 2016 form, which made no mention of the value of the goods, was issued in Santos by Tawe. This named Caspian as shipper and consignee, Santos as the port of loading and Chennai as

the port of discharge. It also contained an addendum with the following additional typed clauses:

1. This bill of lading is subject to English law, and any disputes arising out of or in connection with it shall be settled by SCMA arbitration in Singapore.
  2. The Carrier has liberty to transship goods on any terms whatsoever, and any and all liability in the Carrier, whether in contract, tort, bailment or otherwise, shall cease once goods are discharged from the Odyssefs.
  3. In the case of loss or damage neither the Carrier nor the ship shall be liable in any circumstances for any sum in excess of \$500 per package or unit.
  4. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 of Combiconbill 2016 shall be regarded as deleted.
4. On 1 December the Odyssefs arrived at Cartagena, Colombia, where Tawe discharged the cargo and transhipped it on to the Hidalgo, owned by Armadores Cruz SA. Tawe in turn received a bill of lading issued by Cruz in Bogotá, also on the Combiconbill 2016 form with no mention of the value of the goods.

This named Cartagena as the port of shipment and Chennai as the port of discharge, and on the front Tawe appeared as both shipper and consignee. It contained an addendum as follows:

1. This bill of lading is subject to English law and any and all disputes arising thereunder in connection therewith shall be settled by SCMA arbitration in Singapore.
  2. Clause 11 is deleted.
  3. Clause Paramount. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules 1924, save that Article IX of the said Rules shall not apply.
  4. The Carrier's liability for any loss or damage whatsoever is limited to a sum of £1,000 Sterling per package or unit.
5. During the voyage between Cartagena and Chennai the vessel encountered a hurricane and the stow collapsed, which resulted in the cargo being lost. The loss was admitted to have been due to the failure by Cruz to show due diligence to render the Hidalgo seaworthy, the unseaworthiness being due to Cruz's failure to correct a fault in the vessel's weather radar

before departure from Cartagena.

6. It is accepted on all sides that, in so far as this is relevant, each converter was a separate package or unit for the purposes of the Hague and/or Hague-Visby Rules.
7. Caspian issued a claim for arbitration against Tawe on 25 August 2021, and against Cruz on 3 September 2021. In both proceedings Caspian claimed \$600,000 for the loss of the converters, a figure that was agreed to represent their market value. By agreement between all three parties, both arbitrations were consolidated before the present tribunal. The parties, however, disagree on the composition of the tribunal.

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THE POSITION OF PARTIES

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## CASPIAN

Caspian claims that both Tawe and Cruz are liable to it for \$600,000, the full market value of the twenty lost converters (though it admits that it must give credit to either party for any sums recovered from the other). Alternatively, it claims that Tawe and Cruz are liable in a lesser sum as described below.

(1) Caspian alleges that Tawe are liable to it on the basis of Tawe's breach of their contractual duty to ensure the provision of a seaworthy vessel under Article III Rule I of the Hague Rules appended to the Carriage of Goods by Sea Act 1924 and/or Article III Rule I of the Hague-Visby Rules appended to the Carriage of Goods by Sea Act 1971. In so far as Clause 2 of the Addendum to the Odyssefs bill of lading purports to relieve the carrier of liability in respect of loss or damage occurring after the cargo has been transhipped from the Odyssefs, it is Caspian's case that this is rendered null and void by Article III Rule 8 of the Hague and/or Hague-Visby Rules as the case may be.

(2) Caspian alleges that Cruz are liable to it as sub-bailees who had agreed to carry the cargo on the terms of the Hague and/or Hague-Visby Rules, and that on that basis also Cruz are liable for failure to show due diligence to provide a seaworthy vessel.

(3) It is Caspian's case that both Tawe and Cruz are liable to it for the full value of the converters because

(a) the relevant limit of liability is the gold value £100 per package as provided in Article 4 Rule 5 of the Hague Rules appended to the Carriage of Goods by Sea Act 1924, which at the current rate of bullion values yields a figure of about \$40,000, considerably in excess of \$30,000, per converter, and

(b) any attempt by either Tawe or Cruz to limit liability to a lower figure is prohibited by Article III Rule 8 of those Rules.

(4) In the alternative, Caspian claims that the relevant liability is the limit of 2 SDRs per kg contained in Article 4 Rule 5 of the Hague-Visby Rules appended to the Carriage of Goods by Sea Act 1971. On that basis it contends that Tawe and/or Cruz are liable to them in the figure of the dollar equivalent of 2,000 SDRs per tonne, approximately \$2,800 per converter, or \$56,000 in total.

(5) Caspian claims that the arbitral panel should consist of 3 arbitrators as per Rule 8.2 of the SCMA Arbitration Rules.

## **TAWE**

Tawe deny that they are liable to Caspian for any sum, and/or that their liability is limited as described below.

(1) It is Tawe's case that the plain terms of Clause 2 of the Addendum to the Odyssefs bill of lading exonerated them from any liability whatever once the goods had been transshipped. They contend that Article III Rule 8 does not preclude reliance on this provision because the Hague and/or Hague-Visby Rules were applicable to the carriage not by operation of law but only by virtue of agreement between the parties.

(2) Alternatively, it is Tawe's case that under Clause 3 of the addendum to the Odyssefs bill of lading they are entitled to limit their liability to Caspian to \$500 per package, making a total of \$10,000.

(3) Tawe claims that the arbitral panel should consist of 1 arbitrator as per section 9 of the International Arbitration Act of Singapore.

## **CRUZ**

Cruz equally deny any liability to Caspian, or alternatively claim to limit their liability as described below.

(1) It is Cruz's case that they are protected as third parties by Clause 15 of the Odyssefs bill of lading, providing that no liability shall attach to any servant, agent or independent contractor employed by Tawe to transport the goods.

(2) Alternatively, because of Clause 4 of the addendum to the Hidalgo bill of lading, Cruz argue that they are entitled under the terms of their sub-bailment with Tawe to limit their liability to £1,000 per unit, making their liability £20,000 (approximately \$27,600). Cruz argue that in this connection Art III Rule 8 of the Hague and/or Hague-Visby Rules does not preclude reliance on the said Clause 4 because the Rules applied only by virtue of agreement between the parties.

(3) Cruz joins Tawe in claiming that the arbitral panel should consist of 1 arbitrator as per section 9 of the International Arbitration Act of Singapore.

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## CLARIFICATIONS TO THE CASE STUDY

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1. The case study mentions ‘Appendix’ specifying the clauses, however, upon a brief reading of the same, we couldn’t come across it. I request you to clarify the same.

**Dealt with in the text.**

2. There seems to be a discrepancy in the calculation of damages. The case study initially mentions 5 convertors priced at 100,000 USD per convertor i.e. 500,000 USD for 5 convertors (paragraph 1, page 2). Later, in the case study, the calculation of damages (pages 5 and 6) seem to account for 20 convertors instead of 5 convertors. According to our calculations, it appears that there were 20 convertors, each priced at 25,000 USD. Please clarify the same.

**Dealt with in the text.**

3. The problem mentions that the claimant seeks 500,000 USD as damages (paragraph 6, page 4), then subsequently goes on to mention 600,000 USD as damages (page 4). Please clarify which figure is correct.

**Dealt with in the text.**

4. Is Caspian claiming the figure of USD 500000/ 600000 from both Tawe and Cruz collectively or individually?

**Dealt with in the text.**

5. What information is reflected in the column titled “quantity and description of goods” in the both Bills of Lading based on the Combicon Bill, 2016 format? Is 1 convertor considered to be 1 package/ 1 unit?

**Dealt with in the text.**

6. What conversion rate (if any) are participants supposed to use?

**It is provided where necessary.**

7. The case study has mentioned Caspian as the shipper and consignee in the 1st bill of lading (i.e., the Odyssefs Bill of Lading) (paragraph 3, page 3). Is there an error in the bill of lading?

**No.**



8. The case study has mentioned Tawe as the shipper and consignee in the 2nd bill of lading (i.e., the Hidalgo Bill of Lading) (paragraph 4, page 3). Is there an error in the bill of lading?

**No.**

9. The case study contains the following clause in the addendum to the Odyssefs Bill of Lading: “The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 shall be regarded as deleted”. (paragraph 3(4), page 3) Please clarify clause XI of which document/ statute/ legislation is being referred to.

**Dealt with in the text.**

10. The case study contains the following clause in the addendum to the Hidalgo Bill of Lading: “Clause Paramount. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, save that Clause IX shall not apply”. (paragraph 4(3), page 3). Please clarify clause IX of which document/ statute/ legislation is being referred to.

**Dealt with in the text.**

11. The Clause 1 of the Addendum to the Odyssefs and Hidalgo Bills of Lading state that; “any disputes arising out of or in connection with it shall be settled by SCMA arbitration in Singapore”. However, Clause 5 of the Combiconbill 2016 is inconsistent with the aforementioned bills of lading. Kindly confirm, which clause holds precedence.

**This is for the teams to argue.**

12. Is Clause 5 of the Combiconbill 2016 format mentioned in the Odyssefs and Hidalgo Bills of Lading applicable? What is the principal place of business for Tawe and Cruz respectively?

**No clarification required.**

13. How many converters were shipped and how many were lost?

**Dealt with in the text.**

14. Why does Tawe agree for 10,000 damage when one converter damage cost is 500 and only 5 were sent?

**Dealt with in the text.**

15. Who proposed the addendum clause of the bill of lading? Caspian or Tawe?

**No clarification required.**

16. In para 6, Caspian claims \$500,000. Whereas in the position of parties Caspian claims \$600,000.

**Dealt with in the text.**

17. Was Caspian aware about involvement of Cruz during the signature of bill of lading?

**No clarification required.**

18. How did Tawe discharge goods at Columbia when discharged port was Chennai as per bill of lading?

**No clarification required.**

19. Why was Hague rules a preference for the parties when their countries are not signatories to it?

**No clarification required.**

20. Whether there is any possibility to provide the draft copies of Combicon Bill 2016, Carriage of Goods by Sea Act 1924, Carriage of Goods by Sea Act 1971, Carriage of Goods by Sea Act 1976 as Annexures to the given problem in order to circumvent our confusion arising due to the existence of multiple copies for the same? We could. Do you think we should?

**The teams are required to find copies.**

21. Whether the SCMA Rules of 2015 or the SCMA Rules of 2022 would be applicable to the given problem?

**The SCMA Rules of 2022 would be applicable.**

22. To which countries do the companies Tawe and Caspian belong to?

**No clarification required.**

23. Does “per package/unit” in the case study mean “one fuel cell converter”?

**Dealt with in the text.**

24. What was the date that was decided for the discharge of goods at the port of discharge?

**No clarification required.**

25. “The bill of lading is subject to English law”- Does this mean that it is subjected to COGSA 1971/1992?

**This is for the teams to argue.**

26. What is the current rate of Bullion value as mentioned in point 3 (a) on page no.5?

**Dealt with in the text.**

27. At various places in the case study, the calculation of the total value is given as 4 times of what it should be, any clarification with regard to that?

**Dealt with in the text.**

28. Page 5, Point 2 of the case study states, 'Article 4 Rule 5 of the Hague-Visby Rules appended to the Carriage of Goods by Sea Act 1976', with regard to this statement, any clarification in relation to the year of the legislation?

**Dealt with in the text.**

29. It is given on Page 3, point 5 that, "The loss was admitted..... from Cartagena'. By whom has the loss been admitted?

**Dealt with in the text.**

30. The clauses of which document/ rules/ statute are being referred to in the following sentences of the case study:

a. Paragraph 3: "4. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 shall be regarded as deleted."

b. Paragraph 4: "2. Clause 11 is deleted.

c. Clause Paramount. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, save that Clause IX shall not apply."

**Dealt with in the text.**

31. Can dollars be used for all calculations for the sake of uniformity?

**Not necessarily.**

32. In para 6, Caspian has claimed \$500,000, however, in the position parties, in Caspian's claims Caspian has claimed \$600,000. Which value is to be considered as the final value?

**Dealt with in the text.**

33. Is the reference to Carriage of Goods by Sea Act, 1976 in clause 4 in Caspian's position actually a reference to the Carriage of Goods by Sea Act, 1971?

**Dealt with in the text.**

34. On Page 2, it is written as “Claimants” below CASPIAN TRADERS LIMITED. Should it be written as “Claimant”?

**The plurals and singulars are now tidied up.**

35. As per the facts of the given case, there are two respondents namely: TAWE LIMITED and CRUZ SA. So, do we have to prepare two separate respondent side memorials for TAWE LIMITED and CRUZ SA, or need to combine both the issues and arguments of TAWE LIMITED and CRUZ SA in one respondent memorial itself?

**It is up to the teams. The obvious division of labour is Side A, arguing (i) liability and (ii) quantum for Caspian, Side B arguing the case in its entirety for (i) Tawe and (ii) Cruz.**

36. There are five hydrogen fuel cell converters. Is the cost of each hydrogen fuel cell converter \$100,000? Is the word “converter” referring to the same meaning as the word “package”?

**Dealt with in the text.**

37. The word Combiconbill 2016 is written together. What is Combiconbill 2016?

**We have now separated them for consistency.**

38. As per the given facts (Para 3, page 3), there are certain points mentioned in Tawe’s Addendum. Can those four points be assumed as the clauses of the Bill of Lading issued by TAWE LIMITED on CASPIAN TRADERS LIMITED?

**No clarification required.**

39. As per the given facts (Para 4, page 3), there are certain points mentioned in the TAWE LIMITED’s Addendum. Can those four points be assumed as the clauses of the Bill of Lading issues issued by TAWE LIMITED on CRUZ SA?

**No clarification required.**

40. If the answer to the above question is yes, then on the 6th page of the proposition, under the heading “CRUZ”, point 1 talk about Clause 15 of the Bill of Lading. Where can the clause be found as there are only four points mentioned?

**No clarification required.**

41. Was CASPIAN TRADERS LIMITED aware and had knowledge that TAWE LIMITED had discharged the cargo and transhipped it on to the Hidalgo, owned by Armadores CRUZ SA? Was there any kind of agreement or conveyance of the fact by the two respondents to the claimant?

**The same should be left for arguments.**

42. How many packages were to be transported by CASPIAN TRADERS LIMITED shipments?

**Dealt with in the text.**

43. Tawe responded that it will pay only 1000 dollars at the rate of \$500 per packages. However, there were only 5 packages so that amounts to  $500 \times 5 = \$2,500$ . Kindly clarify the complete concept of the amount and the weightage of the items.

**Dealt with in the text.**

44. How many arbitrators did all the three parties, namely: CASPIAN TRADERS LIMITED, TAWE LIMITED, and CRUZ SA have agree to?

**The number of arbitrators should be argued by the teams.**

45. What is the arbitration jurisdiction that all the three parties have decided?

**The answer to this question should be argued by the teams.**

46. In statement of facts (4) , it is mentioned that Caspian claimed \$500,000 . But in the position of parties \$600,000 is claimed by Caspian. So what is the actual amount that Caspian claims that Tawe and Cruz are liable to?

**Dealt with in the text.**

47. In the position of parties (4) Caspian, based on exactly what calculation , claims that Tawe and Cruz are liable in the figure approximately \$ 2800 / convertor to \$ 56,000 in total?

**Dealt with in the text.**

48. “The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 shall be regarded as deleted. The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, save that Clause IX shall not apply.” Which clauses are being referred to in the addendum of both the bills of lading?

**Dealt with in the text.**

49. According to the moot proposition, the position of Caspian is that “Caspian claims that both Tawe and Cruz are liable to them for \$600,000, the full market value of the lost converters.” Has the amount of \$600,000 been mentioned due to some error? If not, then please clarify how they are claiming this amount?

**Dealt with in the text.**

50. Which edition of SCMA rules is to be followed in the present case since the dates of issue of claims for arbitration against the defendants are 25 August 2021 and 3 September 2021?

**The SCMA 2022 edition would be followed.**

51. Is the seaworthiness of the ship contested between the parties or have the defendants admitted that Hidalgo was unseaworthy due to lack of due diligence shown by Cruz?

**Kindly refer to the facts.**

52. The addendum clauses of the bills of lading mention that the contract is subject to Hague rules. Are the rules mentioned here the Hague Rules of 1924?

**This is for the teams to decide.**

53. "The contract contained in or evidenced by this bill of lading is subject to Hague rules" Which set of Hague rules is being referred to in this statement?

**Dealt with in the text.**

54. Has it been admitted by Cruz that the ship was unseaworthy?

**Kindly refer to the facts.**

55. Whether Hidalgo was seaworthy or not? Are we expected to argue on this point?

**See above.**

56. In the bill of lading issued by tawe in Santos, Brazil, why is Caspian shipper as well as consignee? Was the Indian branch of Caspian supposed to receive the goods in Chennai?

**No clarification required.**

57. In the bill of lading issued by Cruz, why is tawe the shipper as well as consignee?

**See above.**

58. "The contract contained in or evidenced by this bill of lading is subject to the Hague Rules, and Clause 11 shall be regarded as deleted"- this is the clause mentioned in the bill of lading issued by Tawe in Santos, Brazil. Is it " clause paramount"?

**Dealt with in the text.**

59. Whether the COGSA 1924 and COGSA 1971 mentioned in the moot proposition are English Statutes?

**Yes.**

60. Whether Hague Rules 1924 or Hague Visby Rules 1976 apply to the bills of lading?

**This is for the teams to argue.**

61. Is Caspian claiming that Tawe and Cruz are liable for \$600,000 OR \$500,000?

**Dealt with in the text.**

62. Is Caspian claiming the amount from Tawe and Cruz individually or jointly?

**Dealt with in the text.**

63. Is Cruz's negligence in making sure whether the Hidalgo was seaworthy before voyage a settled matter of fact?

**Kindly refer to the facts.**

64. Whether the bill of lading issued by Cruz is negotiable?

**Dealt with in the text.**

65. Whether the value of goods have been declared in both bills of lading?

**There is no such evidence – it is dealt with it in the text.**

66. Which edition of SCMA rules is applicable to the moot, the 3rd or 4th (which will be effective from 1st January 2022)?

**The 4th one would be applicable.**

67. The market value of the fuel convertors in para 6 is \$500,000 but in 7 it says \$600,000. Which one should we consider as the market value of the fuel converters?

**Dealt with in the text.**

68. Did Caspian provide Tawe AND/OR Cruz a notice of loss or damage? If so, what was the exact date this notice was given and was it given in writing?

**No clarification required.**

69. Has Caspian informed Tawe of the value of the shipped goods?

**Dealt with in the text.**

70. What would have been the date of delivery of the goods were they not destroyed in transit?

**No clarification required.**

71. Can we raise arguments for each party that are different, and in addition, to the one's mentioned in the case record (page number 4-6 of the case record)?

**This is for the parties to argue.**

72. When was the Odyssefs scheduled to deliver Caspian's goods at Chennai?

**No clarification required.**