

LIABILITY OF THE CMR CARRIER FOR LOSS OR DAMAGE OUTSIDE THE SCOPE OF THE CMR

CMR COLLOQUIUM 2026, BUCHAREST | ULLA FABRICIUS AND LENE ISHØJ, NJORD LAW FIRM



PRESENTATION

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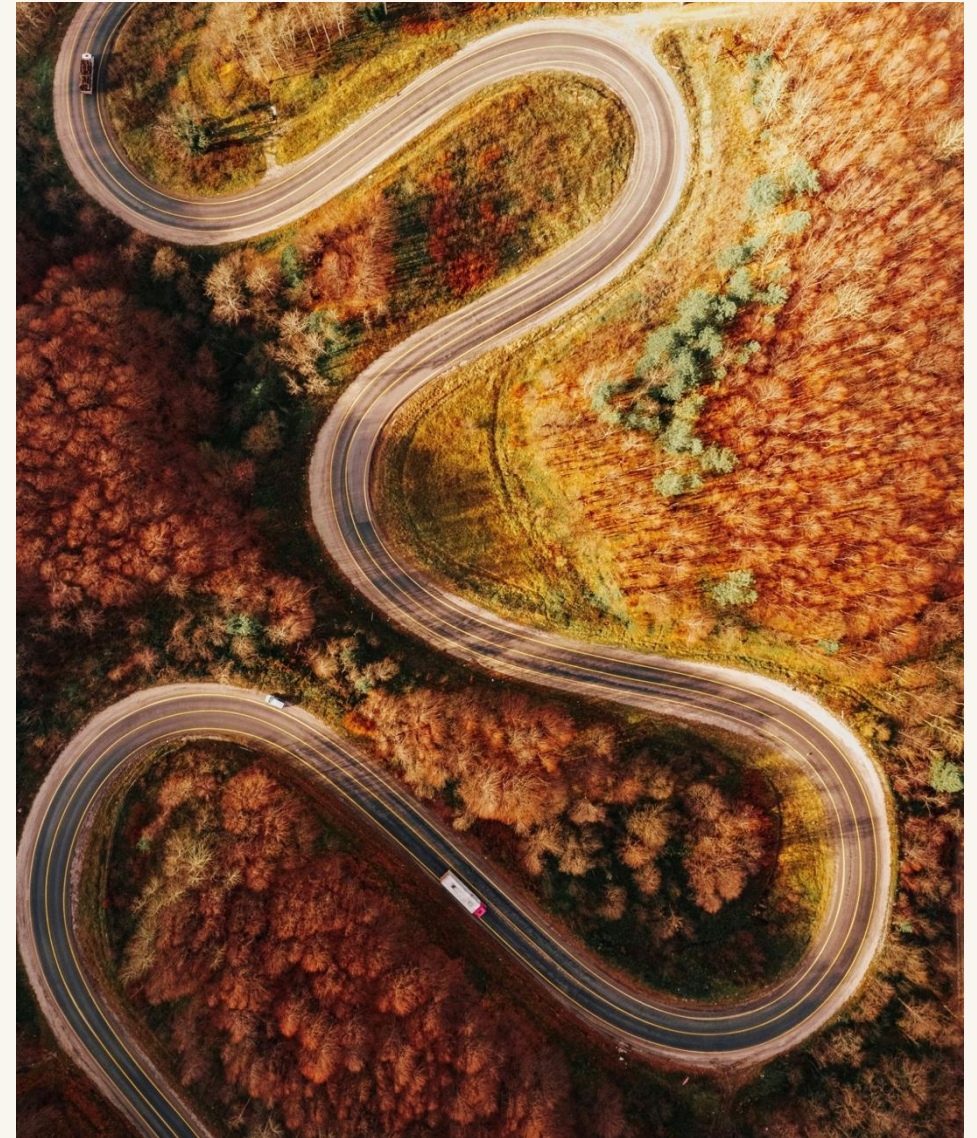
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SUBJECT OF DISCUSSION

“Liability of the CMR Carrier for Loss or Damage Outside the Scope of the CMR”



SUBJECT OF DISCUSSION

WHAT WE AGREE ON, AND WHAT WE DISAGREE ON

WHAT WE ARE CLEAR ON:

Within the scope	Loss of or damage to the goods carried, (and delay in delivery). (cf. article 17 cf. art. 23(1-3) (5) art. 25).
Outside the scope	Independent damage to other interests. (e.g.) Damage to third party car (e.g.) Damage to consignee's premises caused by collision. (e.g.) Damage due to ancillary services, such as customs clearance <i>etc.</i>

WHAT WE ARE LESS CLEAR ON:

Add. losses	Consequential losses cf. art. 23(4). [...] <i>the carriage charges, Customs duties and...</i> [...] <i>other charges incurred in respect of the carriage of the goods</i> [...] <i>but no further damage shall be payable (we are here)</i>
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THERE ARE TWO APPROACHES TO THIS ISSUE



The Dutch view

*BV Transport- en Expeditiebedrijf “Cargofoor” v Rotterdams
Tank Transport BV, Hoge Raad, 15 April 1994*



The Danish view

*Systembetong, Danish Supreme Court, 29 March 1995
U. 1995.502 H*

THE DUTCH VIEW

CARGOFOOR

BV Transport - en Expeditiebedrijf “Cargofoor” v Rotterdams Tank Transport BV Hoge Raad, 15 April 1994,

Rotterdam, Holland → Tubize, Belgium

Residues in Cargofoor’s unloading system contaminated the cargo.

The cargo then contaminated sound acetic acid already in the consignee’s shore tank.

Hoge Raad:

“Where Article 23 refers to total or partial loss of “the goods”, it sets out a regime for liability for damage resulting from the total or partial loss of the goods carried as referred to in Article 17. The provision at the end of Article 23(4), “no further damages shall be payable”, elaborates on the provisions of Article 23 as a whole and therefore concerns only damage resulting from total or partial loss or, pursuant to Article 25, damage to goods carried. The same applies to Article 28 ... Neither Article 23 nor Article 28 provides for liability for damage to or loss of goods other than those being carried”

“The CMR does not provide an exhaustive regulation of the carrier’s liability. Article 17 only concerns loss of or damage to the goods carried, and delay in delivery. Liability for goods other than the goods carried must be assessed under the applicable national law”

THE DUTCH VIEW

CARGOFOOR AND OTHERS

Tiense Suiker Hof van Cassatie van België, 16 January 2009

Sugar transported in a tanker contaminated by fertilizer residues was discharged into a silo, contaminating sound sugar already stored there.

“By thus ruling that damage to goods other than those being transported is excluded from compensation, they have failed to provide a legally sound justification for their decision”.

Derivatives ...

KKO 2021:85, Finnish Supreme Court, 3 December 2021

Heating oil escaped during delivery to a greenhouse, polluting the consignee’s land. The cargo itself was undamaged.

“As the damage in this case did not affect the cargo that was the subject of the carriage, but rather consignee’s property, the provisions on the carrier’s liability in sec. 27 to 38 of the Road Transport Contracts Act do not apply.”

THE DUTCH VIEW

CARGOFOOR AND OTHERS

Derivatives ...

Brenntag/Hartmann, Maritime and Commercial Court of Denmark, U.2023.1805 S

During unloading, a 1,000-litre IBC tank containing dye fell and was punctured by forklift forks. The dye leaked, causing pollution, clean-up costs and damage to two forklifts (consignee's property).

*“The claim concerned consequential loss and response costs, not the cargo itself.
The CMR liability rules therefore did not apply. Any liability was governed by general Danish tort law.”*

Shell Chemicals UK Ltd and Shell UK Ltd v P & O Roadways Ltd. High Court, 29 Oct. 1992

P & O was contracted to carry ADIP from France to Shell's refinery in England. The driver delivered the wrong tank, containing detergent. Shell pumped it into the refinery, causing contamination and production loss.

J. Saville: “Thus the exclusion of ‘further damages’ in Article 23(4) is, in my view, exclusively referable to further damages in respect of loss of or (by virtue of Article 25) damage to the consigned goods”

THE DANISH VIEW

(U.1995.502H)

Systembetong, Danish Supreme Court, 29 March 1995 U.1995.502 H

Aalborg, Denmark → Sweden

Residues of slate flour in the tanker contaminated the white cement during transport.

The contaminated cement was then used in concrete façade elements, which became discolored.

The Danish Supreme Court:

“In determining the claims before it, the Court must proceed on the basis that the cement was damaged during carriage by contamination with slate flour, and that this caused damage to the façade elements manufactured by Systembetong, of which the cement formed an inseparable component.

This consequential loss cannot be regarded as damage to another object and, accordingly, cannot be considered to fall within the rules on product liability. The Supreme Court finds that, at least in these circumstances, and consistently with the underlying principle of the CMR Act, the consequential loss must be regarded as falling within the scope of the Act. As stated above, this means that the consequential loss cannot be recovered from the carrier.”

THE DANISH VIEW

THE CASES WHICH FOLLOWS FROM U.1995.502H

BGH, Germany, 5 October 2006

Apple juice concentrate was contaminated with coconut fat during carriage. The consignee processed it into bottled apple spritzer before the contamination was discovered.

The loss resulting from further processing was consequential loss. The carrier was liable only for the reduction in value of the cargo itself, not for wasted ingredients, packaging, machinery or staff costs.

Iso-Tank, Borgarting Court of Appeal, Norway, 2 July 2009

Polyester was contaminated with phosphoric acid during transport. It was used in the production of wind turbine blades, causing failed production, cleaning costs and production stoppage

The production loss and cleaning costs were consequential loss resulting from damage to the cargo. They fell within the road-carriage liability regime and could not be recovered outside that regime under general tort law.

THE ESSENCE OF THE TWO VIEWS



THE DUTCH APPROACH

- Article 17 and Article 23 concern only the goods carried. Damage to other property is not brought within the CMR merely because it was caused by damaged cargo.
- Article 23(4) limits compensation for cargo damage but does not extend the CMR to damage to other goods.
- Consequence: the claim is governed by applicable national law.



THE DANISH APPROACH

- Where the cargo is damaged during carriage, loss resulting from that damage remains within the CMR system.
- The fact that the loss materializes in another product or a production process does not necessarily make it independent external damage.
- Article 23(4) excludes recovery for such consequential loss.
- Consequence: the claim is governed, but not compensated, by the CMR cf. art. 23(4) “but no further damages shall be payable”.

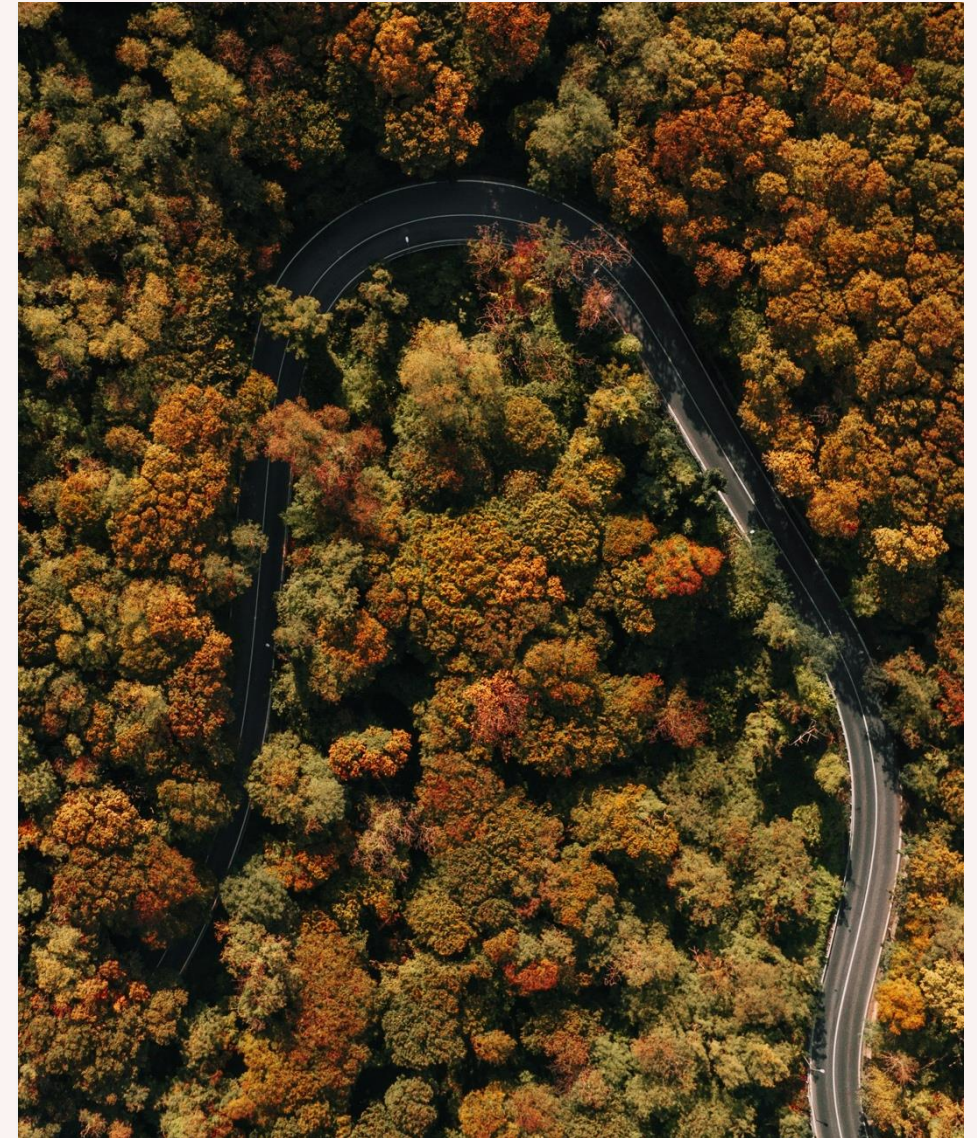
IT'S COMPLICATED

Direct cargo loss	Costs to prevent or limit cargo loss	Loss following cargo damage	Independent external damage
The goods carried are lost, damaged.	Cost incurred to avoid, reduce or remedy loss of the goods carried	Damaged/contaminated cargo subsequently causes loss to other goods	The carrier or vehicle directly damages another interest, independently of cargo damage
Article 23(1-3)(5) Article 25	May fall within Article 23(4)	May fall within Article 23(4)	Outside CMR Chapter IV liability regime
		DK: U.1995.502H DE: BGH.2006 NO. Iso-tank 2009 NL: Cargofoor 1994 BL: Tiense Suiker 2009	FIN: KKO.2021:85 DK: U.2023.1850.SH ← X ← X SE: NJA.2007. s.879* EN: Shell Chemicals

*Göta hovrätt, outside the VTL Högsta domstolen, left the question unanswered.

WE MIGHT BE PARTIAL, BUT...

- We support the Danish approach
- *Within the CMR*
Loss resulting from prior loss of or damage to the goods carried
- *Outside the CMR*
Truly independent damage to another interest
- *Preserving the CMR's balance of risk*



PRESENTATION



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