

French Supreme Court upholds jurisdiction clause



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- The French Supreme Court has upheld the validity of a bill of lading jurisdiction clause
- The French courts have traditionally been hostile to such clauses
- Will the approach of the French courts change as a result of this decision?

Is it the end of the challenge to jurisdiction clauses in bills of lading by French courts or do old habits die hard?

Most bill of lading terms contain a jurisdiction clause referring all disputes to the place where the carrier has its place of business. This is an important legal question on which the English and French courts have, in the past, taken fundamentally different positions. Traditionally, French law has shown great hostility to the validity of such clauses, particularly when they require French cargo interests to sue a foreign carrier elsewhere than France.

A recent change in position?

In its decision of 12 March 2013 in a case involving CMA CGM and BNP, the Cour de Cassation – France’s Supreme Court – concluded in clear terms that it is customary for bill of lading terms to include a clause stating that disputes be referred to the court of the place of business of the carrier. Maritime law is a branch of international trade. This practice is an established custom in that trade. Therefore, the clause in the bill of lading in question is perfectly valid.

By its judgment, the French Cour de Cassation was giving effect to the established principle of European Law (set out in article 23 of the EU Regulation 44/2001) that in international commerce, an agreement on jurisdiction which is in conformity with the custom of the branch of trade in question will be valid without requiring proof that the parties have actually approved the clause in question.

Reaction

It would be tempting to conclude that the matter is now settled in France, but the recent decision has been far from popular in the French legal community and in particular with French cargo interests. They would much prefer that the French courts continue to contest the validity of bill of lading jurisdiction clauses as in the past. The traditional approach of the French courts required evidence that the clause had actually been accepted by the shipper in order to be valid. This would normally involve a signature on the bill of lading from the shipper, which is difficult because shippers rarely sign bills of lading in modern times.

Conclusion

So what is the position today? Is it now accepted that, following the latest decision of the French Supreme Court, a foreign jurisdiction clause in a bill of lading will be effective? The answer is that it is still far from clear that challenges to jurisdiction clauses appearing in standard bill of lading terms have ended as old habits die hard, but the task of persuading the French courts that the jurisdiction clause should not be upheld is becoming increasingly difficult.