

### **Liability for cargo theft - in the judgment of the Munich Higher Regional Court, dated July 17 2014 Ref. 23 U 4545/13**

Overcrowded resting places - desperate truck drivers who have come to the end of their driving shifts, searching in vain for a safe place to halt in order to comply with the prescribed rest periods - these are the factors which form the backdrop for a theft scenario. In desperation the truck is parked in a dark place. Then, after the driver wakes up from his sleep, comes the unpleasant surprise: cargo has been stolen from the truck.

Then the question of liability arises. The carrier relies on the CMR limitation of liability of 8.33 SDRs per kilogram of gross weight of the cargo in accordance with Art. 17, para. 1, 23 of the CMR, while the principal insists on unlimited liability, as per Art. 29 of the CMR, due to damage having occurred recklessly and with knowledge that such damage would probably result. Argument: it was reckless to park the vehicle in such an insecure place. The shipper, who as part of his secondary burden of proof, will feel obliged to refute the objection that a secure parking place had not been available, can check via the search engine 'TransPARK', on the homepage of the International Road Transport Union, which secure alternatives had been available in the region and enquire there whether, in fact, all the parking places were occupied. The shipper in the case adjudicated by the Munich Higher Regional Court was successful in doing so.

In addition, as clarified by the Munich Higher Regional Court, the freight company must take into consideration in the course of its route planning, that the driver must as far as possible be in a position to reach secure parking spaces within the prescribed driving periods. Especially in case of goods which are easy to steal, and / or in case of high-value cargo, the fastest, shortest or cheapest route cannot always be selected.

The Munich judges have included yet another aspect in the discussion: false economy on the part of the clients themselves can significantly reduce their compensation claims. In the case under review, the freight forwarder had expressly proposed security transport in a van with a second driver (in order to avoid compliance with rest periods). The customer, however booked only a curtain-sided truck with a single driver. It was, therefore, particularly easy to steal two-thirds of the tobacco products being transported, by slashing open the tarpaulin. Transportation of goods that are particularly susceptible to theft because of their value and ease of being fenced on the market, in such a manner merely to save costs, was deemed to be contributory negligence by the Munich Higher Regional Court. The court therefore, admitted the unlimited liability of the freight forwarder, but reduced the compensation claim of the shipper by 50%.

The full text of the ruling can be accessed on the website of the Attorney Fredi Skwar and / or via the following link:

<http://www.ra-skwar.de/blog/olg-muenchen-urteil-vom-17-07-2014-23-u-454513/>

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