

Delivery damaged – only damaged pallets and packaging are liable for reimbursement

11 December 2019 | Contributed by [Arnecke Sibeth Dabelstein](#)

Introduction Possible scenario

Introduction

No matter how well goods are packaged and how great the effort of a carrier to consign a delivery in perfect condition to the customer, damage to goods, pallets and packaging cannot always be avoided. If damage occurs, the carrier will quickly be faced with a claim for damages, either from the shipper, the recipient or their insurer. The Federal Court of Justice (BGH) redefined the calculation of damages in a ruling at the end of 2018.

Possible scenario

A recipient complains about damage to goods and demands 23,750 special drawing rights (SDRs) in compensation. This sum corresponds to 19 SDRs per kg of the consignment weighing a total of 1,250kg. The 19 SDRs per kg result from the basic liability stipulated in Article 22(3) of the Montreal Convention. The consignment consisted of 1,000kg of goods and 250kg of pallets. However, the pallets were undamaged. The question arises of whether their weight must be taken into account when determining the amount of damages.

The BGH said no in its ruling of 11 October 2018 (I ZR 18/18) in which it found that if pallets are undamaged, only the net weight of the goods counts when calculating damages.

Article 22(4)(1) of the Montreal Convention stipulates that compensation may not exceed the amount payable in the event of loss of the devalued part of a consignment. A partial devaluation occurs when individual pieces of a consignment have lost their value but the remaining pieces retain theirs.

It is therefore important to check exactly what has been damaged. Goods and pallets are independent economic goods, each of which has its own value. Only the damaged goods form the basis of the calculation of damages claims.

However, the BGH's judgment is not only relevant for the transport of palletised goods. It can also be applied to other recyclable packaging such as crates or racks whose weight must be deducted when calculating compensation.

In the case described above, this specifically means that the claimant would have a maximum damages claim of 19,000 SDRs (1,000kg by 19 SDRs).

For further information on this topic please contact [Carsten Vyvers](#) at Arnecke Sibeth Dabelstein by telephone (+49 69 97 98 85 0) or email (c.vyvers@asd-law.com). The Arnecke Sibeth Dabelstein website can be accessed at www.asd-law.com.

AUTHOR

[Carsten Vyvers](#)

