

Application of the Three-Year Statute of Limitations to Recourse Claims Arising from Damage Payments by the Insurer under the Carrier’s Liability Insurance Policy

1. Introduction

In the final decision of the 14th Civil Chamber of Istanbul Regional Court of Appeals rendered on 16.11.2023 dated 16.11.2023 and numbered 2023/1821; it was held that in case the insurance company pays the damage amount to the cargo owner on behalf of the contractual carrier within the scope of the carrier’s liability policy, the 3-year statute of limitations shall be applied to the claim for recourse compensation against the actual carrier that caused the accident in accordance with paragraph 3 of Article 855 of the Turkish Commercial Code (TCC).

Therefore, instead of the one-year limitation period stipulated in paragraph 1 of Article 855 of the TCC, the insurance company will be able to benefit from the special provisions applicable to subrogation claims between carriers, in accordance with the principle of subrogation in Articles 1472 and 1481 of the TCC, including the limitation period in which the insured contractual carrier is legally required to file a lawsuit against the actual carrier.

2. Case

The contractual carrier subcontracted the transportation of a container from Izmit Evyap port to the recipient and cargo owner’s factory in Istanbul by road to a third carrier company. The container was loaded onto a vehicle belonging to the actual carrier at the port and during the transportation, the machinery and equipment inside the container was damaged as a consequence of an accident. Within the scope of the domestic carrier’s liability block insurance policy issued between the contractual carrier and the plaintiff insurance company, the insurance company compensated cargo owner for the damage. Despite the plaintiff insurance company’s warning, the defendant actual carrier did not make any payment regarding the damage claim, and an enforcement proceeding was initiated against the actual carrier. As a result of

the objection of the actual carrier to the execution proceedings, the insurance company filed a lawsuit for annulment of this objection.

3. The Decision of the Court of First Instance

The court ruled for the dismissal of the case on the grounds that the one-year statute of limitations has expired from the date of delivery of the cargo until the date of initiation of the enforcement proceedings, since the compensation claims arising from the carriage of goods are subject to a one-year statute of limitations pursuant to paragraphs 1 and 2 of Article 855 of the TCC.

4. The Decision of the Regional Court of Appeals

As a result of the appeal application, the Istanbul Regional Court of Appeals decided to annul the decision of the court of first instance in a final and binding manner. In its judgment, the court determined that since the plaintiff insurance company as the insurer of the contractual carrier claimed recourse from the actual carrier, Article 855 paragraph 3 of the TCC is to be applied. The aforementioned article stipulates that the statute of limitations for recourse claims shall commence to run from the day the court decision against the recourse claimant becomes final or from the date of performance by the recourse claimant in cases where there is no final court decision, provided that the recourse claimant has notified the recourse debtor of the damage within three months from the date the recourse claimant learns about the damage and the recourse debtor. For this reason, the plaintiff insurance company, having the right of legal succession pursuant to Article 1472 of the TCC, must file the lawsuit within the statute of limitations period in which the contractual carrier is required to.

Pursuant to paragraph 3 of Article 855 of the TCC, the three-year statute of limitations shall commence with the date of the payment made by the plaintiff

insurance company to its insured in accordance with the insurance policy. Since the insurance company's claim is a recourse claim and the enforcement proceedings were initiated before the statute of limitations expired, the judgment of the court of first instance dismissing the case on the grounds of statute of limitations was not deemed justified.

5. Analysis and Conclusion

In liability insurances, the insurance company is subrogated not to the right to claim compensation of the damaged cargo, but to the right to claim compensation of the insured carrier company based on the indemnified damage under the insurance. As per Article 1481 of the TCC, once the insurer pays the insurance indemnity, it legally succeeds the insured. In this case, the insurance company's claim for indemnification from the actual carrier is equivalent to the contractual carrier's claim for recourse from the actual carrier. As a result of the insurer replacing the insured contractual carrier by paying compensation to the damaged party, the claims of the insurance company against the actual carrier are to be subject to the paragraph 3 of Article 855 of the TCC as a special recourse provision. Accordingly, the three-year statute of limitations shall commence from the date of payment of the damage amount by the insurance company on behalf and account of the contractual carrier, provided that the actual carrier as the recourse debtor has been notified of the damage within three months.

The Regional Court of Appeal, taking into account the special provisions of the law applicable to the recourse claims of the carrier companies arising from the transportation against each other, has ruled a precedent decision for the insurance companies. The application of the three-year statute of limitations instead of the one-year statute of limitations as a general rule in transportation law, will prevent the potential loss of legal rights of the insurance company and any other successors of the contractual carriers, to whom the right to claim has been passed on as per the principle of subrogation, in terms of the time limit for filing a lawsuit.

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