

# Court rules that parking of goods trailer on lit roadside constitutes gross negligence

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## Facts

## Decision

## Comment

### Facts

A Danish toy manufacturer (L) entered into a transport agreement with a Danish carrier (T) for the distribution of toys to L's customers in various markets. The transport agreement stated that L's products were to be considered vulnerable to theft and that safety measures had to be taken when carrying out the transport:

*[L's] consignments and goods are highly exposed to theft and preventive measures should always be adhered when organizing and effectuating the transports in order to minimize the risk of loss due to theft or other criminal offences.*

The transport agreement also contained a number of specific instructions and precautions that T had to follow in view of the risk of theft, the neglect of which was to be regarded as gross negligence in accordance with the Convention on the Contract for the International Carriage of Goods by Road. Among other things, the instructions stated as follows:

- *Only park at Petrol stations 24 hours open well lit, and frequent traffic preferable a Petrol station with CCTV. ([T] will not be able to get access to any film record. The recommendation is made due to prevention causes)*
- *Park in well lit places as preferable close to CCTV cameras.*
- *[T's] terminals can be used if pre booked. Please make contact to [T] if you plan to park your vehicle*
- *In case it is not possible to park on a place with CCTV, or your driving hours forces you to rest, you may use a parking place without CCTV, but parking must be done safest place available*
- *Always park in an area with light*
- *Always park an area with regular traffic and activity. Park close to other drivers and vehicles*
- *Never park on a dark lay bay, industrial area or remote areas*

L booked the transport of the products to various customers in the United Kingdom through T. T subcontracted the transport to a Czech subcarrier, which performed the transport. The subcarrier's driver arrived at the first destination in Ridgemont, United Kingdom, on the evening of 28 March 2016 and parked with the trailer on the side of a public road (Station Road), near a roundabout. That night, while the driver was sleeping in the driver's cabin, €172,000 worth of products was stolen from the trailer. L's cargo insurer raised a claim for compensation for this loss with T, arguing that T had caused the damage through gross negligence. T rejected this claim and argued that parking had been necessary for the sake of the driving and rest time rules and had been carried out in accordance with the agreed instructions, as there was street lighting on the parking spot, which meant that it could not be considered a "dark lay bay" or "dark industrial area".

On this basis, L brought an action against T before the Maritime and Commercial Court.

### Decision

The court concluded that T was liable for the damage without the possibility of limitation of liability. The court determined that:

*The framework agreement... contained instructions to the driver's handling of the goods, including parking, just as it was agreed in the framework agreement itself that failure to comply with this is to be regarded as gross negligence on the part of the carrier. The Court assumes that parking for the night of 28 – 29 March 2016 happened on the side of the road on an industrial road called 'Station RD by the*

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roundabout', Rural Public Highway. After the presentation of evidence, the Court assumes that this was an unguarded industrial road without any form of security other than street lighting. Parking for the night took place in violation of the agreement basis as it in Annex 8 to the framework agreement states that: 'Never park on a dark lay bay, industrial or remote areas'. The Court finds it unproven that employees of the [Recipient] had referred the driver to park for the night at the above location. [T] has not proved or made probable that it was not possible to park for the night in a way that was safer and in accordance with the agreement of the parties.

## Comment

It appears from the ruling that the Maritime and Commercial Court assumed, in accordance with the transport agreement, that the transport was to be carried out in accordance with the agreed safety instructions and that a failure to do so was to be regarded as gross negligence. The court ruled that the trailer had been parked on an "unguarded industrial road", which was contrary to the transport agreement. It may also have been of importance that T had not organised and planned the transport in a way which provided certainty that the agreed conditions could be met. One of T's own spaces had not been used for the night parking. Rather, it had been left to the subcarrier to find a parking space in the United Kingdom, even though T was aware that this created significant difficulties for the subcarrier.

*For further information on this topic please contact [Jesper Windahl](#) at WSCO Advokatpartnerselskab by telephone (+45 3525 3800) or email ([jw@wsco.dk](mailto:jw@wsco.dk)). The WSCO Advokatpartnerselskab website can be accessed at [www.wsco.dk](http://www.wsco.dk).*

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