Neutral Citation Number: [2022] EWHC 1437 (Comm)

Case No: CL-2020-000189

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 June 2022

Before :

CHARLES HOLLANDER QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

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Between :

MR PAUL KNAPFIELD	**Claimant**
- and -	
(1) C.A.R.S HOLDINGS LIMITED (Company No. 05481676)	
(2) CARS MOTORSPORT LIMITED (Company No. 05491206)	
(3) C.A.R.S UK SHIPPING LIMITED (Company No. 02674329)	
(4) C.A.R.S UNITED KINGDOM LIMITED (Company No. 05491176)	**Defendants**

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Jessica Sutherland and Julia Gibbon (instructed by **KLS Law**) for the **Claimant**
Peter MacDonald Eggers QC (instructed by **DAC Beachcroft**) for the **Defendants**

Hearing dates: 3-5, 9-10 May 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHARLES HOLLANDER QC

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Monday 13 June 2022 at 10:00am.

Charles Hollander QC :

A. Introduction

1. By this claim Mr Paul Knapfield claims damages for the damage and diminution in value of two valuable cars damaged whilst in the possession of the Defendants in July 2019.

2. The central issue between the parties is whether Mr Knapfield's damages are limited by the Carriage of Goods by Road Act 1965 which incorporates the CMR Convention ("CMR"). If so, it is common ground that CARS' liability is limited to SDR 23,490.60, which amounts to about $20,000. A variety of different routes are put forward by the Claimant as to why CMR should not apply and they will need to be considered individually.

3. There was very little agreement between the parties, although a certain amount was agreed between the experts. It follows that over the five day trial (with both sides keeping to time estimates with remarkable accuracy) there were not only many witnesses who gave oral evidence in relation to what may be described as issues of liability but also evidence on a large number of issues as to quantum even on occasion where the sums in dispute were very small.

B. The vehicles

4. The Mercedes Benz CLK GTR 97 Chassis 000004 ("the CLK 97") is a sports car produced by Mercedes Benz and AMG (then motorsports partner of Mercedes Benz). It was built in 1997 for the purposes of competing in the new FIA GT Championship of the same year. The CLK 97 took some of the design elements from the Mercedes Benz CLK but underneath had all the features and cutting edge technology of a racing car. The CLK won the inaugural 1997 FIA GT Championship. The FIA subsequently created different GT categories and changed the manufacturing regulations. The FIA Championship ended in 2009. Only five Mercedes Benz CLK GTR chassis had any significant race history but as the winner of the inaugural championship makes the CLK 97 the best and most coveted of all the CLK GTR chassis and has been described as a landmark car in GT motorsport history. The experts agree its current value is between 9 and 9.5 million euro, so I will take the figure as €9.25m.

5. The Talbot-Lago T26 GS Franay Cabriolet, Chassis 110121 ("the Talbot") was built in 1948, one of approximately 32 hand-built T26 G5s. All chassis parts were proprietary, made in house by Automobiles Talbot and coachbuilt by hand to the customer's order from a coachbuilder. Chassis 110121 was fitted with a one-off cabriolet body by the Parisian coachbuilder Carrosserie Franay. It is said that such cars are treated by their owners and prospective purchasers as works of art.

6. Mr Knapfield collects classic cars. He purchased the CLK 97 directly from Mercedes Museum in Stuttgart in 2015 for €1.8m. He purchased the Talbot at an auction in 2017 for €1.146m.

C. Ownership of the Vehicles

7. There is no dispute that Mr Knapfield is the owner of the CLK 97.

8. In cross-examination Mr Knapfield was asked about the ownership of the Talbot and said he understood it was owned by Dane Resources, a family trust of which Mr Knapfield is the sole beneficiary. In closing submissions, the Defendants submitted that in consequence, whilst Mr Knapfield is entitled to claim for the cost of repairs to the extent that he has expended money on the Talbot, he cannot claim for diminution in value on a car he does not own. The Defendants say they had put ownership in issue on the pleadings and the position had never been satisfactorily resolved.

9. This plainly took the Claimant somewhat by surprise and I was asked to admit fresh evidence to show that the Talbot was in fact owned by Mr Knapfield and that his answer given in cross-examination was a simple error. It seemed to me that if Mr Knapfield had indeed made an error, it would be very unsatisfactory to reject an important part of his claim on such a basis, and indicated that I was willing in principle to consider admitting further evidence on the point after the end of the oral hearing subject to the Defendants reserving their position and having an opportunity to object.

10. In the event, I was provided with a further witness statement from Mr Knapfield confirming that he was indeed the owner of the Talbot and his evidence in relation to Dane Resources (which had title to other vehicles in his possession) was erroneous. Whilst the Defendants in post-hearing correspondence submitted that the position remained unsatisfactory and insufficient documentary material had been disclosed to make the position clear, they did not object to the admission of Mr Knapfield's further witness statement. Having considered the additional material and the further statement I am satisfied that Mr Knapfield is the owner of the Talbot as well as the CLK 97.

D. Brief factual summary

11. In June 2019, the Second Defendant CARS was engaged through Peter Auto, a French events management company, to transport the CLK 97 and the Talbot from the premises of Mr Knapfield, at Old Jordans, Beaconsfield, Buckinghamshire ("Old Jordans"), to the Chantilly Arts & Elegance Richard Mille Concours d'Etat ("Chantilly"), north of Paris.

12. Chantilly is a two-day event (Concours) at which a large number of classic cars are exhibited and compete for prizes awarded by judges. Chantilly is organised by Peter Auto.

13. On 27th June 2019, the Vehicles were collected by CARS' driver, Mr Anton Constantinou, at Old Jordans and transported to Chantilly. The Vehicles were loaded on to and carried by vehicle transporter registration no. HX15 OMV ("the Transporter").

14. On 29th June 2019, the Transporter carrying the Vehicles as well as three Aston Martins and a Porsche arrived at Chantilly for the event. Two of the Aston Martins were carried for Mr Dylan Miles.

15. On 30th June 2019, after the conclusion of the event, the Vehicles were collected by Mr Constantinou at Chantilly and loaded on to the Transporter, but the Transporter did not depart from Chantilly until 3rd July 2019. Mr Miles's Aston Martins were also on board.

16. During the journey back, after arriving in England, Mr Constantinou redelivered the Aston Martins to Mr Miles' place near Lewes, East Sussex during the late afternoon. Mr Constantinou said at this stage no damage had occurred in relation to the CLK 97 or the Talbot. That evening, Mr Constantinou stopped at Cobham Services on the M25 for the purposes of refuelling and again inspected the Vehicles and observed that the Talbot - which had been stowed forward of the CLK 97 - had slipped backwards into the CLK 97.

17. On 4th July 2019, Mr Constantinou delivered the Vehicles to Old Jordans.

18. There was no observed damage to the Transporter.

19. By reason of the damage, Mr Knapfield claims damages from the Defendants as owner of the Vehicles.

20. CARS - the Second Defendant - accepts that it is legally liable for the damage sustained to the Vehicles by reason of the front wheel straps attached to the Talbot becoming free during the return journey. The other Defendants do not accept liability, because they had no involvement with the carriage. There was no argument as to the liability of the other Defendants and I proceed on the basis that liability lies merely with the Second Defendant.

E. The witnesses

21. The factual witnesses who gave evidence before me were as follows:

    a. Paul Knapfield, owner of the Vehicles

    b. Geoffroy Peter, Managing Director of Peter Classic Racing Cars

    c. Chris Jenkins, Estate Manager of Jordans Village Ltd

    d. Dylan Miles, responsible for two of the Aston Martins transported at the same time

    e. Andrew Charters who organised the repairs for Mr Knapfield

    f. Patrick Peter, Managing Director of Peter Auto

    g. Chris Dale, CARS' Group transport manager

    h. Darren DuRose, employed by CARS at the time of the damage

    i. Keith Winter, employed by CARS

    j. Anton Constantinou, the driver employed by CARS

22. Mr Constantinou was very nervous giving evidence, and his evidence was in a number of respects at odds with that of other witnesses. Most strikingly, he claimed to have spoken to Mr Knapfield in detail when he collected the Vehicles from Old Jordans on 27 June, evidence which was contradicted both by Mr Knapfield and Mr Jenkins, each of whom made clear that Mr Knapfield was not there at the time. Indeed, it was because

Mr Knapfield was not there that Mr Jenkins was asked to assist in arranging the loading of the Vehicles on the Transporter by Mr Knapfield as both Mr Knapfield and Mr Jenkins made clear. Mr Constantinou described in detail the conversation he said he had with Mr Knapfield on arrival at Old Jordans. Not only was this a conversation which plainly never occurred, it is very hard to see how Mr Constantinou could have confused it with any other conversation. I did not find Mr Constantinou's evidence reliable, he was unwilling to concede points, and he appeared at times to say the first thing that came into his head.

23. Otherwise, there were limited conflicts between the witnesses which I will need to resolve in the course of this judgment but in general all the other witnesses were honest witnesses who did their best to assist me in giving evidence.

F. The contract of carriage

24. In October 2018, Mr Knapfield accepted an invitation from Mr Patrick Peter of Peter Auto to attend Chantilly 2019. In May 2019, Mr Peter enquired with Mr Dylan Miles about his attending Chantilly with his (Mr Miles's) own cars and about arranging transport for Mr Miles's cars, as well as Mr Knapfield's, and other vehicles owned by a Mr Hamilton and a Mr Sumpter.

25. On 4th June 2019, in response to an enquiry by Mr Miles, Ms Samantha Green of CARS provided a quote for a round trip event price of Chantilly (£1,950 plus VAT per vehicle). This was forwarded by Mr Miles to Mr Peter.

26. Ms Green's emails stated that:

> *"CARS trade under BIFA standard terms and conditions (copy available upon request). As such, our insurance policy is based upon these terms and conditions and the liability contained therein. We recommend that All Risk Cargo Insurance cover is arranged prior to the shipment of your vehicle(s). CARS are able to quote for and arrange such insurance on your behalf".*

27. On 17th June 2019, Mr Peter emailed Mr Knapfield to welcome him to Chantilly and to inform him that he would be finalising the transport of the Vehicles by CARS. Mr Knapfield responded by providing the collection address for the Vehicles at Old Jordans. Mr Peter informed Mr Knapfield that Peter Auto would pay for the transport.

28. On 17th June 2019, Mr Aimery Dutheil of Peter Auto sent an email to Mr Miles stating that six cars would be transported to Chantilly and asking Mr Miles to confirm with CARS and to communicate the pick-up addresses for Mr Knapfield's Vehicles and the other vehicles.

29. On 18th June 2019, Mr Miles wrote to CARS (Ms Green), with a copy to Peter Auto (including Mr Patrick Peter), confirming the transport arrangements for Chantilly and providing details of the collection addresses for the six vehicles, including Mr Miles' Aston Martins and Mr Knapfield's Talbot and the CLK 97.

30. On 21st June 2019, Mr Miles informed Mr Dutheil that CARS had confirmed that they would collect all cars on 28th June 2019.

31. On 24th June 2019, Ms Green of CARS wrote to Mr Miles to state that she would confirm prices shortly and enquiring to whom the invoice should be addressed.

32. On 25th June 2019, Mr Miles referred Ms Green to Mr Dutheil of Peter Auto as to the contact details of the clients and how the invoices should be done. Mr Miles asked Ms Green to invoice him for his two Aston Martins. Soon afterwards, Mr Dutheil asked Ms Green by email to invoice Peter Auto for the other vehicles, including Mr Knapfield's Vehicles.

33. On 26th June 2019, Ms Green sent CARS' invoice to Peter Auto for the attention of Mr Dutheil and Mr Peter. The invoice referred to each of Mr Knapfield's Vehicles (and the other vehicles to be transported) and stated that the price for carriage was €505 plus VAT (which was to be reverse charged) for each vehicle each trip. The invoice stated that "*All transport orders are undertaken subject to our standard conditions of carriage and these will prevail over other conditions. A copy is available on request*".

34. No CMR consignment note was issued for these journeys, although CARS has internal drafts of CMR notes for the return journey from Chantilly to Old Jordans. They were not issued to Peter Auto or anyone else and have no significance.

35. Mr Knapfield's original primary case was that the contract of carriage was concluded between Peter Auto and CARS. He also put forward an alternative case that the contract was between himself and CARS. In their written opening CARS made clear that they agreed with that primary case. However, in oral opening it was made clear on behalf of Mr Knapfield that it was in fact the alternative case that Mr Knapfield was pursuing. The reason for this appears to have been tactical, namely because the primary case would have made it impossible for Mr Knapfield to make a claim under the Misrepresentation Act because the alleged misrepresentation would not have been made to a contracting party or their agent. As the alternative case had been pleaded, pursuing it rather than the primary case was legally unobjectionable.

36. The Claimant submits that Peter Auto acted with the actual authority of Mr Knapfield as his agent in arranging the transport to and from Chantilly. He submits that the Defendants were aware that Peter Auto were transporting the Vehicles for Mr Knapfield as owner and thus both parties were aware that Peter Auto were acting as agent. It is said this is supported by the reference to Mr Knapfield as owner on the invoice of 26th June 2019.

37. Given that the case put forward by Mr Knapfield was never his primary case until the oral hearing, and the witness evidence was served principally in support of a different case, and the alternative case relied upon for separate tactical reasons, it is not surprising that none of the evidence supported that case.

38. Neither Mr Knapfield nor Mr Peter suggested that Peter Auto contracted as agent for Mr Knapfield. CARS were well aware that Mr Knapfield was the owner of the Vehicles but it does not follow that Peter Auto contracted as agent and the invoice, whilst referring to Mr Knapfield's ownership evidences an agreement between Peter Auto and CARS. Peter Auto were paying for the transportation and together with Mr Miles made all the arrangements and entered into the contract of carriage.

39. I accept the Defendants' case that the contract of carriage in respect of the Vehicles was concluded between Peter Auto and CARS (the Second Defendant) by no later than 21st June 2019, when CARS had confirmed the collection arrangements for the Vehicles. As Mr Dale said in evidence:

> "*Q. What I was suggesting to you was that when you took the call from Paul Knapfield on the 24th, you knew that he was the actual customer behind the Peter Auto booking, consistent with this invoice?*
>
> *A. I would disagree in -- with that statement in the fact that our ultimate customer is Peter Auto. Whilst Mr Knapfield, I agree, is the owner of the cars, ultimately, Peter Auto were paying the bill, therefore the direct customer of CARS …*
>
> *MS SUTHERLAND: The actual -- the party who was actually sending the vehicles from Old Jordans to Chantilly and back again was Mr Knapfield, wasn't it?*
>
> *A. He was the owner of the vehicles. He was the sender of the vehicles. However, ultimately, our client was Peter Auto.*"

G. The manner of carriage

40. Mr Knapfield's case on wilful misconduct was based on what was said to be his "instructions" to Mr Dale as to how the Vehicles were to be secured. It is thus relevant to consider what was said or agreed about the manner of carriage.

41. The evidence in this regard was somewhat curious. As explained above, it was Mr Constantinou's evidence that he received his instructions from Mr Knapfield directly and in person when he collected the vehicles from Old Jordans, I have already concluded that, contrary to this, Mr Knapfield was not present when Mr Constantinou arrived at Old Jordans and there is no suggestion Mr Constantinou had any other conversation with Mr Knapfield prior to reaching Chantilly.

42. Mr Knapfield said that he gave instructions to Mr Dale during a telephone conversation on 24 June. Mr Dale agreed that a telephone conversation took place on that day with Mr Knapfield and it is agreed they discussed the securing arrangements for the Vehicles although there was disagreement as to what was said. Having found that there was no conversation before the carriage took place between Mr Knapfield and Mr Constantinou, it must follow Mr Constantinou can only have received his instructions as to the carriage directly from Mr Dale. That was not Mr Constantinou's evidence and there is no document which evidences any conversation between Mr Constantinou and Mr Dale. Although Mr Dale did not remember a conversation with Mr Constantinou, his evidence was that in the normal course he would have passed on what Mr Knapfield said to him to the driver at the first opportunity after the call and in the absence of any other reliable explanation as to how Mr Constantinou received instructions, that is likely to have been what occurred.

43. Mr Knapfield maintains that he instructed first Mr Dale and subsequently Mr Constantinou (when he spoke to him when Mr Constantinou was in Chantilly) to secure

the Talbot through the leaf springs, both front and rear. Mr Knapfield said that, having initially discussed with Mr Dale the arrangements for securing both Vehicles for transportation to Chantilly, he told Mr Dale that he wanted to check with his engineer before agreeing to any configuration for the Talbot. He said he then called Barry Foulds, who advised that straps could be used through the leaf springs. He then called Mr Dale "*straight back and passed on this information. And he [Mr Dale] then agreed he would do that and use the chocks.*"

44. Mr Dale stated that Mr Knapfield agreed that the Talbot could be secured with straps over the rear axle and straps over the front wheels (rather than over the front axle), not through the leaf springs (for what it is worth, Mr Constantinou's evidence as to his alleged conversation with Mr Knapfield was to similar effect). Mr Dale's evidence was that the general policy of CARS was to apply four straps to each vehicle, over the wheels or through the axle. Mr Constantinou claimed that Mr Knapfield did not want to use straps over the front axle, because it was painted and he did not want the paint chafed.

45. It is common ground that Mr Knapfield said to Mr Dale he did not want the rear wheel spats to be removed which meant that over-the-wheel straps could not be used for that purpose.

46. Mr Dale said that it was CARS' policy to use one wheel chock where feasible in addition to the straps.

47. There was agreed to have been a call between Mr Knapfield and Mr Constantinou in the course of loading the Vehicles back on the Transporter on 30th June 2019. Mr Knapfield said he specifically instructed Mr Constantinou to ensure that all of the wheel corners of the Talbot were secured through the leaf springs with straps as well as using wheel chocks, and that the straps were under no circumstances to be passed through the spokes on the chrome wire wheels to avoid damaging them. Mr Knapfield confirmed this evidence during cross-examination.

48. Mr Jenkins was also involved in the loading of the Vehicles back on to the Transporter at Chantilly but his evidence was that he did not overhear any part of the conversation between Mr Constantinou and Mr Knapfield.

49. Mr DuRose was contacted by Mr Constantinou when the latter appreciated on 3rd July that damage had occurred to the Vehicles and Mr DuRose attended to assist. It is therefore relevant to know what Mr Constantinou told him at that stage about the securing of the Vehicles. Mr DuRose gave evidence that he knew from his discussion with Mr Constantinou Mr Knapfield "*had insisted on front wheel straps*". He said Mr Constantinou told him:

> "*Q. So, when you say you knew that the customer had insisted on front wheel straps --*
>
> *A. Mm-hm.*
>
> *Q. -- actually, you have no direct knowledge of that, do you?*

> *A. Well, Anton Constantinou told me that is what the customer had insisted upon, so I said, "Well, as a matter of course, then perhaps we should refit those".*
>
> *Q. So actually your witness statement should say, "I was told that", but it shouldn't say, "I knew that"?*
>
> *A. No, Anton had told me so therefore I had known that Mr Knapfield had asked him. Why would I not believe Mr Constantinou?*"

50. I accept this evidence as reflecting what Mr DuRose was told by Mr Constantinou as to what the latter understood the customer had wanted.

51. During the email exchanges between Mr Knapfield and Mr Dale after the damage was discovered, it is striking that Mr Knapfield did not initially say he had asked that the leaf springs should be strapped:

    a. In his email dated 6th July 2019, no reference was made by Mr Knapfield to his "instructions" given either to Mr Dale or Mr Constantinou for the securing arrangements in relation to leaf springs:

    > "*Your email states damage only to the rear of the Talbot but the front wing is also damaged as is one door. Obviously the car has moved both forward and backwards as it was not properly secured.*
    >
    > *For your information Anton admitted in front of a witness after I asked him to show me the broken strap which of course did not exist. He then said that he checked the straps in Dover and that they must have come loose on the motorway after that. I told him that this was impossible considering their design and how often they are used without a problem*."

    b. In his email dated 8th July 2019, Mr Knapfield referred to the use of "*red metal brackets*", which Mr Dale indicated meant wheel chocks, and said that "*I remember that when we first discussed the collection for Chantilly and how you would retain the cars. These brackets were confirmed as well as straps protected by special covers to certain areas that would not mark the Talbot's finish. What happened to this system on Anton's truck?*"

52. It was only in his subsequent email dated 11th July 2019 that Mr Knapfield referred to his conversation with Mr Dale about the securing of the Talbot "*with wheel chocks and straps to the leaf springs*".

53. I have already indicated my misgivings as to the reliability of Mr Constantinou's evidence. However, if Mr Knapfield had, as he suggested, clearly indicated to Mr Dale that he wanted leaf springs strapped, it is surprising that (i) Mr Dale did not recall this (ii) there was no attempt to strap leaf springs by Mr Constantinou or explanation as to why he did not do so (iii) Mr DuRose gave evidence as he did (iv) Mr Constantinou does not seem to have said anything about leaf springs to Mr Jenkins after his call with

Mr Knapfield at Chantilly (v) Mr Knapfield did not refer to leaf springs after the damage in his email correspondence with Mr Dale until his email of 11th July. It is possible that Mr Knapfield mentioned leaf springs in passing in the conversation with Mr Dale (or his Chantilly conversation with Mr Constantinou) but I find that there was nothing during that conversation which could have amounted to an "instruction".

54. Mr Dale's evidence was that CARS' policy was to apply at least one chock "*where feasible*." Mr Constantinou said he did not use chocks because the Talbot was stowed in the most forward position on the Transporter, which had forward wheel wells sunk into the deck, and the Talbot was driven into the wells, which had already acted as chocks, and there was not enough clearance to take the chocks. During his evidence, he said:

> "*A. There was -- the reason I didn't use chocks is, one reason was because, in the top deck, the first car deck of the Kassbohrer, they have effectively wheel wells. So as the car sits, it effectively -- effectively, like, dips into the trailer.*
>
> *The second reason why I didn't use chocks for this one is because to stop it -- the car was quite a bouncy car, and as it would be travelling, it would be bouncing and hit the car.*"

55. Given that it was usual practice for CARS' employees to use chocks where possible, I would expect Mr Constantinou either to have used chocks or to have considered whether it was sensible or appropriate to do so in this instance. Notwithstanding the difficulties with Mr Constantinou's evidence, this explanation makes sense and I accept he did not use chocks for the reasons he gave.

56. The CLK 97 was secured using over-the-wheel straps.

57. There is no reason to doubt Mr Constantinou's evidence that he adopted the same method of securing the Vehicles on the journey to Chantilly from that used on the return journey, although Mr Winter's evidence was that Mr Constantinou also placed a chock to the front left wheel for the return journey.

H. The carriage

58. One area on which the parties did reach agreement related to the technical experts. There is a joint report from Mr Richard Durnford of Dr JH Burgoyne and Partners LLP and Mr Richard Baker of Hawkins & Associates Ltd, both consulting engineers ("the engineer experts"). Because of their agreement, it was unnecessary for either to be called to give evidence.

59. The factual evidence as to how the Vehicles were in fact secured came from Mr Constantinou, and Mr DuRose, the latter being (as explained above) contacted by Mr Constantinou when he realised there was a problem at Cobham, as he happened to be working nearby. The explanation as to what occurred can be taken from the engineer experts' report. The Talbot had been fitted with two rear axle straps, one on each side, which remained in place and secure but could only provide tension against forward movement of the vehicle. The tension to provide rearwards movement would have come from the over-the-wheel straps fitted to the front wheels. Mr DuRose said that

when he saw the Vehicles both of the forward wheel straps had slid off the wheel of the Talbot and were lying next to the respective wheel. In one case the strap was trapped underneath the wheel as the vehicle had rolled back over it. Mr DuRose's evidence was that the straps must have come off consecutively; had they come off at the same time, the car could have been expected to have slid back in a straight line. In fact, the steering of the vehicle had turned and the vehicle was pointing slightly towards the left.

60. Although there was a suggestion that the Talbot's wheels were too narrow to take wheel straps safely, the engineer experts concluded that the width of the Talbot's tyres and the tyre construction would have been of no practical significance in the cause of the Talbot having been or becoming free to move if the straps were properly fitted.

61. It was also suggested that it was possible that Mr Constantinou failed to fit front wheel straps at all. I reject this as not consistent with Mr DuRose's evidence, in particular his evidence that one strap was underneath the wheel.

62. The engineer experts conclude that the front straps probably worked free from the tyres as the car tyres moved with respect to the straps. Thus they regard it unlikely that the Talbot became free to move as a result of a "swerve". They conclude that either both or one of the over-the-wheel straps on the front wheel were not tightened adequately or the wheel drop plates to which one or both front wheel straps were connected was not secure.

63. The engineer experts concluded that the damage to the Vehicles occurred because the Talbot moved rearwards into the CLK 97. If over-wheel straps were installed to the front wheels of the Talbot and tightened adequately at the start of the journey and the wheel plates correctly installed, they say it is unlikely the car would have moved backwards, irrespective of whether or not the rear axle was strapped or wheel chocks installed. Similarly, if the rear wheels of the Talbot had been fully and adequately secured with over-the-wheel straps, it is unlikely the Talbot would have moved regardless of any loss of restraint at the front of the car. This would however have required removal of the Talbot's rear wheel spats. If four straps were applied whereby each strap independently secured each of the respective wheel stations by connecting secure, unsprung parts of the car to secure parts of the transporter deck, the car would probably not have moved.

64. I conclude that the cause of the damage was inadequate securing of the front wheel straps on the Talbot.

I. CMR

65. The Carriage of Goods by Road Act 1965 ("the 1965 Act") includes as Schedule 1 the English text of the CMR. Articles in the CMR which are principally relevant are Articles 5, 6, 7, 17, 23, 24, 25, 26, 28, 29 and 41.

66. Because the carriage from Chantilly to Old Jordans involved international carriage, the starting point is the applicability of CMR. Mr Knapfield's case is that the liability of CARS is not limited by CMR. He relies on the following exceptions:

    a. Where the sender declares in the consignment note a value for the goods (Article 24 CMR).

b. Where the sender fixes the amount of a special interest in delivery in the consignment note (Article 26 CMR).

c. Where the damage was caused by the wilful misconduct of the carrier or its servants or agents (Article 29 CMR).

67. Mr Knapfield's case is that one or more of these exceptions applies. He also contends:

a. CARS is liable for damages for misrepresentation under s2(1) of the Misrepresentation Act 1967.

b. CARS entered into a contract with Mr Knapfield whereby it agreed to reimburse Mr Knapfield for the damage which had occurred in full, that contract being separate to CMR.

68. CMR applies to contracts of carriage by road when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country, irrespective of the place of residence and the nationality of the parties: see Article 1(1).

69. In the present case, CMR applies because there was a contract for the carriage of goods for the Vehicles by road in the Transporter for reward, and because CARS took over (collected) the Vehicles in France (Chantilly) for carriage to the United Kingdom (Old Jordans).

70. CMR applies even though Mr Knapfield as the Claimant is not (as I have found) a party to the contract of carriage. This is because he was the consignee of the Vehicles. This is reflected in the implementing 1965 Act.

71. The 1965 Act provides as follows:

> ***1. Convention to have force of law.***
>
> *Subject to the following provisions of this Act, the provisions of the Convention on the Contract for the International Carriage of Goods by Road (in this Act referred to as "the Convention"), as set out in the Schedule to this Act, shall have the force of law in the United Kingdom so far as they relate to the rights and liabilities of persons concerned in the carriage of goods by road under a contract to which the Convention applies.*
>
> ...
>
> ***14. Short title, interpretation and commencement.***
>
> ...
>
> *(2) The persons who, for the purposes of this Act, are persons concerned in the carriage of goods by road under a contract to which the Convention applies are— (a)the sender, (b)the consignee, (c)any carrier who, in accordance with article 34 in the Schedule to this Act or otherwise, is a party to the*

> *contract of carriage, (d)any person for whom such a carrier is responsible by virtue of article 3 in the Schedule to this Act, (e)any person to whom the rights and liabilities of any of the persons referred to in paragraphs (a) to (d) of this subsection have passed (whether by assignment or assignation or by operation of law).*

72. The starting point for the interpretation of international conventions is to consider the natural meaning of the language of the provision in question. The English text of CMR should be interpreted in a normal manner, unconstrained by technical rules of English law, or by English legal precedent, but adopting broad principles of general acceptation: see **Chitty on Contracts 34th Edition, para. 38-121**.

73. An argument to the effect that CMR did not apply because there was a separate claim in bailment or tort was not pursued by the Claimant.

J. Can the Claimant rely on Art 24 or 26 of CMR?

74. Having concluded that Mr Knapfield was not a contracting party, Mr Knapfield is thus not the "sender" for the purpose of CMR.

> **Article 24**: "*The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount declared value shall be substituted for that limit.*"

75. Mr Knapfield's evidence was that during his telephone conversations with Mr Dale on 24th June 2019 he expressly told Mr Dale that:

    a. The Talbot was a '100-point Concours car' worth £2.25 million. It had previously had a €1 million restoration by Egon Zweimüller. Any damage to it, even the slightest scratch to the paintwork, would cost a fortune to repair.

    b. The CLK 97 was now worth €9.5 million as Mr Knapfield had received an offer on it during Rétromobile via ADP and was in negotiations with the prospective buyer to sell it.

    c. Given the combined value of the two Vehicles, they were not to be loaded on a truck with other vehicles which would exceed the £25 million limit of CARS's insurance, as had happened on a previous occasion at Rétromobile.

    d. The Vehicles were to be fully covered by CARS' insurance.

76. Mr Dale disputed the terms of this conversation and said there was no discussion between them about the value of the Vehicles. However, whether it took place or not it cannot constitute a "declaration in the consignment note a value of the goods exceeding the limit laid down in Art 21." This is because:

    a. Even if there had been such a discussion, it is irrelevant, because there was no consignment note, and thus no declaration of value in any consignment note or document evidencing the contract of carriage.

b. It is the sender - Peter Auto - who should make the declaration, not the consignee.

c. Any declaration of value must have been made with the agreement of CARS as the carrier and that agreement must be evidenced in writing: see **Clarke, International Carriage of Goods by Road: CMR, (6th ed., 2014), sect. 100**. There was no such agreement and certainly no agreement in writing.

77. Article 26 CMR provides that:

> "*1 The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note.*
>
> *2 If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in articles 23, 24 and 25.*"

78. Mr Knapfield's arguments based on Article 26 CMR fail for the same reason as they fail in respect of Article 24 and also for the additional reason that it is simply not applicable to Mr Knapfield's claim. The "special interest" must provide for loss or damage which is not provided for in Articles 23, 24 and 25, such as consequential loss: **Clarke, International Carriage of Goods by Road: CMR, (6th ed., 2014), sect. 100; Messent and Glass, CMR: Contracts for the international carriage of goods by road, (4th ed., 2017), para. 9.50**. The only claim that Mr Knapfield makes relates to loss or damage provided for in Articles 23 and 25 CMR.

K. The Claimant's case that CARS cannot rely on the absence of a Consignment Note

79. The Claimant's case is that the Defendants should not be able to take advantage of the absence of a consignment note or written CMR contract in order to defeat Mr Knapfield's reliance on Articles 24 and 26. They say there was an obligation to issue a consignment note and the obligation to issue the consignment note was on the Defendants as carrier:

80. Article 4 of CMR provides :

> "*The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.*"

81. Article 5(1) of CMR states that:

> "*The consignment note shall be made out in three original copies signed by the sender and the carrier. .... The first copy shall be handed to the sender, the second shall accompany the goods, the third shall be retained by the carrier*".

82. The Claimant says the proper construction of these words is that the consignment note must originate from the carrier and, thus, that the carrier bears the legal burden of issuing the consignment note. They say there is support for this construction in **Messent and Glass**, para. 4.12: "*The Convention appears to assume that the carrier will be responsible for issuing the consignment note, as it states that the first copy is to be handed to sender, the second one to accompany the goods and the third one to be retained by the carrier.*" They say the Defendants failed to comply with their obligation in this case and they should not be permitted to rely on their own breach of CMR and the contract of carriage to avoid the operation of Articles 24 and 26: because the Defendant "*cannot be permitted to take advantage of his own wrong*". They say the lack of a consignment note means that the Court must determine the content of the parties' agreement using the other available evidence. Mr Knapfield's evidence, they say, has always been that he told Mr Dale about the value of the Vehicles in their telephone conversation on 24 June 2019. The Claimant relies upon Articles 6(1)(k) and 7(3) of the CMR, which provide as follows:

Article 6(1)(k): "*The consignment note shall contain the following particulars: … (k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention*."

Article 7(3): "*If the consignment notice does not contain the statement specified in article 6, paragraph 1(k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.*"

83. The Claimant continues by contending that the Defendants' omission to issue a consignment note or any written contract containing a statement that the carriage was subject to the provisions of CMR meant that Mr Knapfield's ability to comply with the technical documentary requirements of Articles 24 and 26 was prejudiced, because he was not aware of the alleged requirement to declare the value of the Vehicles or the special interest in a consignment note and, given that none was produced, he was prevented from doing so.

84. Alternatively, the Claimant submits Article 7(3) of the CMR should provide a remedy. The Defendants should be liable for the difference between the amount of the Weight Limitation and Mr Knapfield's actual loss (being "*expenses, loss and damage sustained through [the Defendants'] omission*"). They say there is support for this in **Messent & Glass** , at 4.20 FN 73: "*Article 7(3) might provide a remedy where the sender shows that, not being aware of the application of CMR, he failed to make a declaration of value in order to overcome the limit of liability....*"

85. The issue, says the Claimant, is thus whether the Defendants can rely upon the absence of the consignment note to prevent Mr Knapfield from relying on Articles 24 and 26. Article 4 anticipates the contract of carriage should remain subject to Articles 24 and 26 even absent a consignment note.

86. I regard the Claimant's case on this point as hopeless.

87. Firstly, there is nothing in CMR which expressly places the burden of issuing the consignment note on the carrier so that a claim for breach of contract can be made against the carrier for failure so to do.

88. Secondly, the sender was Peter Auto not Mr Knapfield and there is no basis for him acting as agent for Peter Auto.

89. Third, there is no justification for an argument that if a Consignment Note is not issued, a claim can be made against the carrier for substantial damages for failure so to do.

90. Fourthly, given that Mr Knapfield had no knowledge of CMR and any comment he may have made was not intended to relate to CMR or a Consignment Note, there is no reason to believe that any consignment note issued would have contained any terms which sought to exclude or modify the effect of Article 24 or 26. There was no declaration of value or special interest made in any document containing or evidencing the contract of carriage. Peter Auto concluded the contract with CARS and did not at any time include or seek to include such a declaration.

91. Fifth, there is no justification for seeking to use a counterfactual as to what information the Consignment Note might have contained if it had existed. But even if there was, there was no reason to believe it would have contained provisions now suggested by the Claimant.

92. Sixthly, the principle that a person may not rely on his own wrong is generally treated as rule of construction and the Claimant's argument significantly extends the principle.

93. Nor do the textbooks or any caselaw provide support for these arguments. The references to **Messent & Glass** relied upon do not support these conclusions.

94. Finally, Article 4 CMR provides that "*The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention*". Article 4 explicitly provides that even in the absence of the consignment note the contract of carriage remains subject to the provision of the CMR, without exception.

L. Wilful misconduct

95. Article 29 CMR provides that:

> "*1 The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.*
>
> *2 The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.*"

96. In ***Denfleet International v TNT Global SpA*** [2007] EWCA Civ 405; [2007] 2 Lloyd's Rep 504, at [8-11], Waller, LJ explained "wilful misconduct" in the context of CMR:

> "*8. There have, over the years, been many attempts to define wilful misconduct. In National Semiconductors (UK) Ltd v UPS Ltd [1996] 2 Lloyd's Rep. 212 at page 214, Longmore J, as he then was, having cited various authorities said:*
>
> > *If I summarise the principle in my own words, it would be to say that for wilful misconduct to be proved there must be either (1) an intention to do something which the actor knows to be wrong or (2) a reckless act in the sense that the actor is aware that loss may result from his act and yet does not care whether loss will result or not or, to use Mr Justice Barry's words in Horabin's case, "he took a risk which he knew he ought not to take" [1952] 2 Lloyd's Rep. 450 at page 460.*
>
> *9. In Forder v Great Western Railway Co [1905] 2 KB 532 at pages 535 and 536, Lord Alverstone CJ adopted the following definition given by Johnson J in Graham v Belfast and Northern Counties Railway Co [1901] 2 IR 13:*
>
> > *Wilful misconduct. . . means misconduct to which the will is party as contradistinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself, who knows and appreciates that it is wrong conduct in his part in the existing circumstances to do, or to fail or to omit to do (as the case may be), a particular thing, and yet intentionally does or fails or omits to do it, or persists in the act, failure or omission, regardless of the consequences.*
>
> *10. Lord Alverstone continued:*
>
> > *The addition which I would suggest is "or acts with reckless carelessness, not caring what the results of his carelessness may be".*
>
> *11. Beldam LJ, in Laceys Footwear (Wholesale) Ltd v Bowler International Freight Ltd [1997] 2 Lloyd's Rep. 369 at page 374 put it this way:*
>
> > *Further a person could be said to act with reckless carelessness towards goods in his care if, aware of the risk that they may be lost or damaged, he nevertheless deliberately goes ahead and takes the risk, when it is unreasonable in all the circumstances for him to do so.*"

97. Toulson, LJ summarised the meaning of "wilful misconduct" at [25]:

> "*To establish wilful misconduct within the meaning of the CMR, it is not enough to show that the carrier was at fault in failing to take proper care of the goods and that the carrier's conduct was the product of a conscious decision. It has to be shown that the actor knew that his conduct was wrong or was recklessly indifferent whether it was right or wrong; and, as part of that requirement, he must have appreciated that his conduct created or might create additional risk to the goods. The authorities have been referred to by Waller LJ.*"

98. In order to establish wilful misconduct on the part of the carrier or its servants and agents, the Claimant must thus prove that:

    a. There must have been misconduct.

    b. The carrier, employee or agent either (a) must have committed the misconduct deliberately knowing that the conduct was wrongful, regardless of the consequences, or (b) must have committed the misconduct deliberately with reckless indifference as to whether what he or she was doing was right or wrong, where such misconduct was unreasonable in all the circumstances.

    c. There must have been an increased real and substantial risk of damage to the goods resulting from such misconduct and the carrier, employee or agent must have been aware of that additional risk.

99. In ***Lacey's Footwear (Wholesale) Ltd v Bowler International Freight Ltd*** [1997] 2 Lloyd's Rep 369, Brooke, LJ said (at page 381) that "*since a charge of wilful misconduct was a serious charge to make, the evidence ought to have satisfied the degree of probability appropriate to the seriousness of the charge before it was appropriate to find it proved*".

100. Such misconduct is not made good by negligence or even gross negligence. **Messent and Glass, CMR: Contracts for the international carriage of goods by road**, (4th ed., 2017), at para. 9.104, state that:

> "*Summarising the position, in England, as in Belgium and the Netherlands, wilful misconduct and negligence are treated as distinct categories: the latter, however gross, cannot come within the former. Indeed, as a term denoting precise legal consequence it has been said that gross negligence "is the same thing as 'negligence' with the addition of a vituperative adjective". In the light of the Lacey's Footwear case, it is possible that there may be circumstances in which the Court will be prepared to infer the necessary mental element for wilful misconduct. However, the judge's findings in that case as to the driver's disregard of express instructions were unusually clear. The dissenting judgment of Brooke, L.J., injects a proper note of caution. It should only be in the very clearest cases that a similar inference is permissible, and as noted above, the opposite conclusion was reached on similar facts in the later case of Micro Anvika Ltd. v TNT Express Worldwide (Euro Hub) N.V.*

> *Thus in the Court of Appeal in the case of Datec Electronics Holdings Ltd. v United Parcels Service Ltd. Richards, L.J., stated: "I have borne very much in mind the observations of Brooke, L.J., [in Lacey's Footwear] with which I am in respectful and total agreement, as to the need for a properly rigorous approach to the available evidence.*"

101. Mr Knapfield contends that the conduct of CARS and Mr Constantinou constitute "*wilful misconduct*". The pleaded particulars of the alleged wilful misconduct, now limited to the conduct of Mr Constantinou, are that:

    a. CARS and Mr Constantinou knew that (a) the Vehicles were of a high value and rare, (b) the Vehicles had to be secured, which in the case of the Talbot meant that CARS should strap through the leaf spring of each wheel in addition to using chocks, and (c) they were required to comply with the instructions of Mr Knapfield in securing the Vehicles.

    b. CARS and Mr Constantinou unnecessarily and recklessly exposed the Vehicles to damage in that the Talbot was not properly secured. Mr Constantinou was solely responsible for fitting and checking the straps and there was no supervision by CARS' staff.

    c. These actions and omissions were so far outside the range of ordinary and permissible conduct to be expected of a specialist transport company in that three out of six vehicles carried on the Transporter meaning Mr Knapfield's Vehicles and one of Mr Miles' Aston Martins, which was said to have suffered from scratches.

    d. Mr Constantinou "*knew and appreciated that what the Driver was doing was wrong and contrary to the Claimant's specific instructions, yet the Driver persisted with his securing configuration for the Talbot Lago regardless of the risks and CARS allowed him to do so*"; alternatively, Mr Constantinou was recklessly indifferent.

    e. Mr Constantinou must have known or is "*deemed to have known*" that damage to the Vehicles were the inevitable consequence.

102. The case of wilful misconduct is thus based on the combination of an unjustified failure by Mr Constantinou to follow instructions given by Mr Knapfield to him and the use of an unsafe method of securing the Vehicles in circumstances. I do not accept that wilful misconduct has been proved.

103. First, to speak of Mr Knapfield giving instructions is a misnomer. It was not for him to give "instructions". Mr Knapfield was the owner of the Vehicles but not a contracting party. Responsibility and expertise in carrying the Vehicles lay with CARS rather than Mr Knapfield. Whilst a failure to do what Mr Knapfield had proposed or advised might be evidence of deliberate or reckless conduct, it would not be a breach of any obligation to fail to follow Mr Knapfield's instructions.

104. Second, I have made clear above that I do not accept Mr Knapfield's evidence as to the leaf springs. But even if I had taken a different view on that point, it would not have altered my conclusions on wilful misconduct.

105. The cause of the damage was the failure of Mr Constantinou properly to secure the front over-the-wheel straps on the Talbot on the return journey, so that in the course of that journey they worked loose. That failure can readily be described as negligent, perhaps even grossly negligent. But there is no reason to think it was reckless, still less deliberate.

106. The evidence was that Mr Constantinou was an experienced CARS driver with an exemplary record with no instances of any material damage recorded in 29 months. There is no evidence to suggest he had any reason wilfully not to follow instructions. Whilst it was company policy to use chocks where possible, I accept his explanation that he did not do so because the Transporter had forward wheel wells sunk into the deck, and the Talbot was driven into the wells, which had already acted as chocks. Whether his view on this was prudent or not (it being suggested by the Claimant that he could have still used chocks) is not relevant; it is a legitimate explanation for what he did.

107. Moreover, it is significant that the method for transportation was the same method that had been used for the carriage to Chantilly without incident. That goes against any suggestion that the method of carriage was reckless. It also strongly supports the conclusion that it was the failure sufficiently to tighten the over-the-wheel straps that caused the damage. There is no evidence that Mr Constantinou knew that the Talbot was insufficiently secured for the return journey. Indeed, the securing arrangements remained in place all the way from Chantilly until after the delivery of the Aston Martins to Mr Miles (there was a suggestion that the inspection at Mr Miles' place had not occurred because of the wording of Mr Constantinou's witness statement but it seems unlikely that damage could have gone unnoticed when Mr Miles' vehicles were unloaded). Further, the engineer experts agree that there is no evidence that the securing arrangements were intentionally changed during the journey.

108. It was the Claimant's case that the unsatisfactory nature of Mr Constantinou's evidence arose from a desire to "cover his tracks" because he was seeking to explain away his deliberate failure to follow Mr Knapfield's instructions. But the unsatisfactory nature of Mr Constantinou's evidence does not prove that he was guilty of wilful misconduct. This was an experienced driver who was regarded as reliable and a responsible employee who failed properly to secure the wheel straps on the way back from Chantilly. There is no reason or evidence to suggest that he deliberately decided to ignore or override what he had been told to do and no reason to think he had any motive so to do.

109. I reject the case based on wilful misconduct.

M. Misrepresentation Act 1967

110. Mr Knapfield also claims damages pursuant to section 2(1) of the Misrepresentation Act 1967 in respect of an alleged representation made by CARS concerning the availability of its insurance cover. The alleged representations were allegedly made

during a telephone conversation made on 24th June 2019 between Mr Dale and Mr Knapfield. The alleged representations are:

a. CARS had insurance of £25 million per truck and that there was no single limit per vehicle carried therein.

b. Mr Dale would ensure that Mr Knapfield's Vehicles would be fully covered by the £25 million limit.

111. By amendment it was pleaded that Mr Knapfield reasonably understood the representations of Mr Dale to mean that the only applicable limit of liability was £25 million per truck with no single limit per vehicle carried therein, and there were no other applicable limits of liability that were relevant to the transportation of the Vehicles.

112. Section 2(1) of the 1967 Act provides that:

> "*Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made the facts represented were true.*"

113. It was accepted by the Claimant that if (as I have found) the contract of carriage was made between Peter Auto and CARS this claim could not succeed because the misrepresentation would have been made to someone who was neither a contracting party or their agent.

114. However, the claim fails in any event. Whilst there is a dispute between Mr Knapfield and Mr Dale as to whether anything was said on 24th June about insurance, it is sufficient for me to find that nothing alleged to have been said by Mr Dale about insurance was untrue. CARS did have insurance cover of £25m per truck and there was no single limit per vehicle. There is no reason to doubt that the Vehicles would be fully covered by CARS' insurance. And the implication pleaded does not in any sense follow. CARS had liability insurance and there were statutory limitations (CMR) on CARS' liability. If I had concluded that wilful misconduct had occurred, presumably the liability insurance would be relevant. So this claim fails on the facts as well.

N. The alleged promise to reimburse

115. The Claimant's case is that during telephone calls on 4 July, as evidenced by the emails of 4th and 6th July 2019 between Mr Knapfield and Mr Dale, Mr Dale promised to reimburse Mr Knapfield in full for the consequences of the damage, in exchange for Mr Knapfield investigating and arranging for the repairs to the Vehicles himself. There was a subsequent contract to that effect. An alternative case of estoppel was not pursued by the Claimant.

116. The Claimant says this agreement covered not merely the cost of repair but also diminution in value and allege that Mr Knapfield mentioned diminution in value on the phone to Mr Dale.

117. On 4 July 2019 Mr Dale emailed Mr Knapfield referring to conversations between the two of them concerning the damage and accepting responsibility on behalf of CARS. Mr Knapfield emailed back pointing out that the email did not fully reflect their discussions. This led to a further email from Mr Dale revising his previous email:

> "*As per our various phone conversations, firstly we apologise profusely for the damage that has happened in transit to your two cars. My team are investigating the circumstances to find out how this could have happened. It goes without saying that we are distraught that your transport could have gone so wrong and left you justifiably angry and upset.*
>
> *Secondly, I confirm that CARS have accepted responsibility for the damage to the rear of the Talbot and the front of the Mercedes. As we discussed, you want to take responsibility for the repairs yourself and CARS will reimburse you, we will then seek reimbursement from our insurers.*
>
> *Our insurers are informed and we will keep them in the picture. If you can update us with estimates and costings as you go along I know they would appreciate that*."

118. Although Mr Knapfield had taken issue with Mr Dale's previous email as not reflecting their oral discussions, he does not take issue with this email (although he emailed again on 6 July on related issues). I take Mr Dale's email therefore as an accurate summary of their discussion.

119. Mr Dale accepted in evidence that he had made an agreement with Mr Knapfield. The real reason for Mr Knapfield's discussions with Mr Dale was that Mr Knapfield understandably wanted to arrange the repairs himself, wanting to ensure that these valuable cars were repaired by a company in whom he had confidence and whose reputation was such that a proper job could be assured. Mr Dale at that stage understood the damage to be relatively limited and was anxious to assist given that the damage was CARS' fault. No one mentioned CMR, diminution in value or suggested that the cost of repair would be significant.

120. The Claimant has sought to invest this with more significance than it merits. The purpose of the agreement was to allow Mr Knapfield to take control of the repairs. It is true that Mr Dale had accepted liability, which given the circumstances of the damage was not surprising, but in my view, in its proper context, the agreement can best be described as procedural or logistical rather than substantive. By agreeing that Mr Knapfield could organise the repairs and would be reimbursed by CARS who would then seek reimbursement from their insurers, Mr Dale was not suggesting that CARS would accept greater liability than their insurers: he was seeking to assist Mr Knapfield in receiving prompt reimbursement.

121. At the time of the discussion and the exchange of emails, the damage was perceived to be slight. During this telephone conversation, there was no discussion about the likely cost of repairs, or that CARS' rights of limitation of liability might be waived.

122. Properly analysed it was at best a promise to reimburse Mr Knapfield for the reasonable cost of repair, subject to any applicable limits. No reference was made in the emails to the diminution in value of the Vehicles allegedly caused by the damage.

123. What was the consideration for the agreement? The only consideration relied on by the Claimant was the agreement that Mr Knapfield should arrange the repairs. But that was an agreement purely for Mr Knapfield's benefit. There is no suggestion that conferred any advantage or benefit on CARS or that it was something they wanted. So there was in any event no valid consideration for the agreement.

124. As for the suggestion that the agreement had the effect of overriding CMR, if there were to be an enforceable promise to surrender the right to rely on the statutory limit of liability under CMR, there would have to have been express reference to the right to limit. Without such a reference, the promise would not be clear and unequivocal, which is a requirement for a contractual surrender of such rights of limitation.

125. The conclusion is supported by ***The Cape Bari*** [2016] UKPC 20; [2016] 2 Lloyd's Rep 469, a shipowner and the owner of a sea berth (BORCO) contracted on the basis that in exchange for the shipowner's vessel using the sea berth, the shipowner promised that if "*… any damage is caused to the terminal facilities … from whatsoever cause such damage may arise, and irrespective of weather [sic] or not such damage has been caused or contributed to by the negligence of BORCO or its servants, and irrespective of whether there has been any neglect or default on the part of the vessel or the Owner, in any such event the vessel and the Owner shall hold BORCO harmless from and indemnified against all and any loss, damages, costs and expenses incurred by BORCO in connection therewith*". The issue in that case was whether the shipowner's right to limit its liability under the 1976 Limitation Convention was surrendered by this contract, in particular the promise to indemnify BORCO against "*all and any loss …*".

126. The Privy Council held that the shipowner had not contracted out of its statutory right of limitation. At para. 31, 37-38, 50, Lord Clarke said:

> "*31. The principles which are principally relevant in a case of this kind are those which are applicable where it is alleged that the agreement excludes a legal right, including a legal right under a statute. The Board accepts the submission that, for a party to be held to have abandoned or contracted out of valuable rights arising by operation of law, the provision relied upon must make it clear that that is what was intended …*
>
> *37. … the Board would be in no doubt that the application of the principles identified above leads to the clear conclusion that the effect of clause 4 of the Conditions of Use is not that the parties agreed that the owners could not rely upon their right to rely upon the 1976 Convention. The 1976 Convention is an important part of the factual matrix against which clause 4 must be construed. As Willmer J put it in The Kirknes, page 62, section*

> *503 of the Merchant Shipping Act 1894 applied unless it was expressly or impliedly excluded by the terms of the contract and that "the parties should be assumed to be contracting in accordance with the known state of the law". See also, to the same effect, in the context of the 1976 Convention a recent decision of Reyes J in Hong Kong: Sun Wai Wah Transportation Ltd v Cheung Kee Marine Services Co Ltd [2010] 1 HKLRD 833, para 11.*
>
> *38. It is noteworthy that, notwithstanding the provision in section 3(1) of the 1989 Act that the provisions of the 1976 Convention "shall have the force of law in The Bahamas", there is no reference in clause 4 or any other part of the Conditions of Use to any part of those provisions. In particular there is no reference to articles 1, 2.1 or 2.2 of the Convention. In the opinion of the Board, if the parties had intended to agree that the owners should not be entitled to exercise their right to limit their liability in accordance with article 1 they would have so provided. Construed in the way most favourable to BORCO, the property claims (including claims for an indemnity) which were to be "subject to limitation of liability" were those set out in article 2.1(a) and 2.2. Provided the claims were claims so defined, it appears to the Board that the owners were entitled to limit their liability under the Act. There is nothing in clause 4 which contains even a hint that the owners were agreeing to waive their right to limit their liability under the Convention …*
>
> *50. The Board accepts the owners' submission that clause 4 of the Conditions of Use and article 2.2 of the 1976 Convention can readily be read together as a coherent scheme. BORCO is entitled to an indemnity in respect of "all and any loss" up to the maximum recoverable pursuant to the Convention. The expression "all and any loss" is simply generic indemnity clause wording which makes no reference to the statutory wording. In short, there is nothing in the language of the agreement which suggests that the owners were agreeing to waive their right to limit. Indeed, viewed objectively, it seems to the Board to be inconceivable that the owners intended to waive their right to limit. Moreover, if BORCO had intended that they should do so, it could reasonably have been expected for BORCO to include such a clause in the Conditions of Use*."

127. In consequence the claim under this head fails also.

O. Conclusion on liability

128. Thus the Claimant is limited to the CMR limit of liability.

P. Quantum

129. As both parties accept that the cost of damage exceeded the CMR limit, consideration of quantum is strictly unnecessary. I set out my findings in case my conclusions on liability are found to be wrong.

130. Expert evidence related to the cost of repairs and diminution in value.

131. The Defendants led evidence from Mr Andrew Prill who has 25 years' experience of working with classic and collector cars and is the founder of Prill Porsche Classics, specialising in the maintenance and restoration of historic Porsche cars. Mr Prill gave evidence both in relation to the Talbot and the CLK 97.

132. Dr Peter Larsen gave evidence for the Claimant in relation to the Talbot. Dr Larsen has been working in the classic car industry for over 20 years and has conducted extensive research into pre and early post war French "grand marques" and coachbuilding of which the Talbot is a prime example.

133. Mr Augustin Sabatie Garat gave evidence for the Claimant in relation to the CLK 97. He is Head of Sales of RM Sotheby's in Europe and as such responsible for a team in consigning the collection cars to Sotheby's worldwide auctions and in private sale.

134. Mr Prill was knowledgeable and experienced in the market and sought to assist the court throughout his evidence. But his experience did not match that of either Dr Larsen in relation to the Talbot nor that of Mr Sabatie Garat in relation to the CLK 97. Moreover, at times Mr Prill took a slightly extreme position that was difficult to justify. In particular, his evidence on the reasonable cost of repair of the CLK 97 seemed to me wholly unrealistic. His evidence was that the repairs should have been more cheaply done by either of two relatively unknown UK specialist companies he identified in his report. It seemed to me hard to imagine, given that the car was worth over €9m, any more certain means of diminishing the resale value of this hugely valuable car, than to tell a prospective purchaser that it had been repaired by someone few purchasers would have heard of.

135. In the event, I prefer the evidence of Dr Larsen and Mr Sabatie Garat to that of Mr Prill. Both Dr Larsen and Mr Sabatie Garat were excellent witnesses. I was particularly impressed by Mr Sabatie Garat, an understated witness who was cogent and obviously knowledgeable in his evidence.

136. The Claimant's claim is quantified as follows:

	CLK 97	**Talbot**
a.	Repairs carried out by Bräutigam: €264,673.62 (consisting of €261,905.63 paid by Azur, converted to £226,668.82, plus the excess of €2,767.99 paid by Mr Knapfield)	Repairs carried out by H Cars: €187,200 (including VAT) Converted to GBP 159,844.77
b.	*Costs of Transportation to and from Bräutigam in Germany: £7,000**	*Costs of Transportation to and from H Cars in Italy: £8,300**
c.	Costs of engineers' inspection pre repair: £180 (including VAT)	Costs of engineers' inspection pre repair: £180 (including VAT)
d.	Cost of engineers' inspection post repair: €450.08 (converted to GBP	Cost of engineers' inspection post repair: €2,440 (converted to GBP

	402.76) and *£600** (both inclusive of VAT)	2,179.85) and *£600** (both inclusive of VAT)
e.	*Preliminary Report on market value (prepared by Mr Sabatié-Garat): £4,200**	*Report on market value (prepared by Dr Larsen): £3,000**
f.	Residual reduction in market value following repairs: between €1.9 to €2.85 million.	Residual reduction in market value following repairs: £450,000.

**These ancillary costs are disputed by the Defendants.*

137. The Defendants accept that:

a. The repair costs for the Talbot should be quantified in the sum of £43,000 to £53,000 plus VAT, plus £6,850; and

b. The repair costs for the Mercedes should be quantified in the sum of £47,750 to £52,750 plus VAT, plus £4,220 and €450.08.

There was also an acceptance of wasted labour costs in the sum of £720 in relation to the cost of building a ramp.

138. The Defendants do not accept that the Talbot has suffered any diminution in value. They accept that the CLK 97 may have suffered diminution in value of up to 5%.

Q. Market value

139. The market value is relevant as diminution in value requires a starting point.

140. The experts are agreed that the market value of the CLK 97 is between €9m and €9.5m.

141. I accept Dr Larsen's valuation of the Talbot at £2.25 million. Dr Larsen's comparison of the Talbot in this case with a number of other private and public sales of T26 GSs is a fully reasoned and convincing basis for his valuation of £2.25 million. In contrast, Mr Prill's valuation of £1 to 1.25 million is largely based on general market trends and data which do not provide a reliable comparison with a T26 GS.

142. The price that Mr Knapfield paid for the Talbot at auction in 2017 is not determinative of the value of the Talbot Lago in 2019. Dr Larsen explained clearly the reasons why the auction price was a fluke and Mr Knapfield was "*very, very lucky*" to acquire the Vehicle for that price. I accept Dr Larsen's careful analysis and his undoubtedly greater familiarity with the sale of Talbots.

R. Diminution in value

143. Both Vehicles suffered relatively minor damage and were repaired by first class repairers. In those circumstances it seems counter-intuitive to think that their resale value would be diminished. Why should the damage matter? However, having heard from both Dr Larsen and Mr Sabatie Garat, it is apparent that there will have been a real diminution in value in each case.

144. The Talbot was referred to in evidence as a "Concours Car". This 1948 model is used by its owners to travel from one show to another in order to be seen and admired by

collectors and afficionados and to win prizes. Dr Larsen emphasised the importance of the vehicle's pedigree and history. Any slight imperfection or issue in its history would diminish the interest of buyers and judges.

145. Mr Sabatie Garat, in relation to the CLK 97, emphasised the very small niche market of very wealthy collectors. Prospective purchasers are looking for the ultimate best, they are purists and want the combination of period originality and unique racing history or they will look for another car. Prior to the incident, the CLK 97 had both period originality and a unique racing history. Now it does not, he said, so its value will be negatively affected. The need for the car to be resprayed and the loss of the original livery stickers and patina means that the car no longer looks as it did when it was racing and won the FIA GT Championship. This would be a huge factor in the commercial psychology of prospective buyers. Buyers would look for a different car or want to reduce the price.

146. Mr Prill disputed that there would be a reduction in value for the Talbot and considered that if there was any reduction on the CLK 97 at all it would not be more than 5%. Both Dr Larsen and Mr Sabatie Garat had in my view greater experience and cogency and as I say above I prefer their evidence.

147. In relation to the Talbot, Dr Larsen estimated the diminution in value was £450,000. I accept that evidence.

148. As for the CLK 97, there was evidence of a reduced offer from a Russian buyer who had made an offer in January 2019 and reduced the offer by €1m after the incident. I do not place weight on this as it is difficult to tell how reliable this was. I did not hear from the offeror and knew little about the circumstances of the offer and in particular how serious the second offer was. Moreover, the agent who forwarded the offers to Mr Knapfield curiously acted as seller's agent in the first offer and buyer's agent in the second offer which made comparison difficult.

149. Mr Sabatie Garat considered the value of the CLK 97 had fallen by between €1.9m and €2.85m on the basis of an original €9.5m valuation. I prefer the lower figure, 20% being the figure he originally used in his original letter in August/September 2019. That is €1.85m on a value of €9.25m.

S. Repairs cost: CLK 97

150. It was obviously crucial that, given the propensity for diminution in value, repairs were carried out by a well-known repairer. Mr Charters organised the repairs. They were done by Brautigam, who had made the original parts for the car. The work done, which involved making new moulds for the nosecone front bonnet and grille and using those moulds to engineer a new nose cone front bonnet and grille, and quality control and painting the whole car, was agreed after consultation with Brautigam themselves and Mr Charters negotiated a reduction in the cost. It would have been an utterly false saving to try to cut corners given the potential effect on diminution in value and I consider the cost of those repairs reasonable. Penny pinching would probably have proved disastrous. The relatively small ancillary costs referred to above were in my view simply part of the cost of repairs and should be allowed. Because they are in effect part of the cost of repairs, to the extent it matters, I disagree with the submission that they fell outside the provisions of CMR.

T. Repairs cost: Talbot

151. Obviously, the Talbot, being a Concours car, would have to be repaired to a Concours standard and that highly skilled work tends to be more expensive. Given the nature and value of the car and the potential for diminution in value, it was again obviously important not to cut corners and to have the best possible job done, and also a job which could be seen by any potential purchaser as being the best possible job.

152. Mr Knapfield approached various repairers for quotations for the work and H Cars were more reasonable than all of them. Mr Zweimüller's proposed terms were not a viable alternative to the quotation from H Cars. Mr Zweimüller asked Mr Knapfield to give him a 312 PB Ferrari on sale or return otherwise he would not repair the Talbot.

153. Dr Larsen, noting that it will always be possible to find someone to do the work for a higher or lower price, considered that the total amount spent on repairing the Talbot was reasonable. In his view the fixed price negotiated by Mr Charters was extremely favourable as billing by the hour would likely have cost a lot more and it would have been more difficult to control those costs. His initial estimate was not far from what it eventually cost to repair the Talbot, and spending about 7.5% of the Vehicle's value on repairs was appropriate, in his view.

154. I accept that evidence and the ancillary cost of repairs for the same reason as with the CLK 97.

155. There was a suggestion that damage to the passenger leather seat of the Talbot had been done at the same time. That small item of damage appeared to have been done before and I do not find it proved that it was done during the carriage.

U. Disposition

The Claimant's claim, which is properly made against the Second Defendant is limited by CMR to SDR 23,490.60.