

FRENCH REPUBLIC  
ON BEHALF OF THE FRENCH PEOPLE

**PARIS COURT OF APPEAL**

**International Commercial Chamber  
DIVISION 5 - CHAMBER 16**

**JUDGEMENT OF 13 FEBRUARY 2024**

(No. 21/2024, 14 pages)

General Directory Entry Number: No. **RG 23/04993** – Portalis n o. **35L7-V-B7H-CHJLX**

Decision referred to the Court: judgement of Bobigny Commercial Court (8th chambre) delivered on 17 January 2023, under number RG 2021F00706.

**APPELLANTS**

**KUEHNE+NAGEL**

a company incorporated under Luxembourg law,  
having its registered office at: [Address 1] (LUXEMBOURG)  
represented by its legal representatives,

**XL INSURANCE SE**

**successor in law to the company AXA CORPORATE SOLUTIONS**

a company incorporated under German law,  
having its registered office at: [Address 1] (ALLEMAGNE)  
represented by its legal representatives,

*Represented by Mr. François TEYTAUD of the AARPI TEYTAUD-SALEH, counsel with right of audience of the Bar Council of PARIS, bar number: J125*

*Assisted by Mr. Christophe NICOLAS substituted in audience by Mr. Thomas GODENER, of the SELARL NICOLAS & ASSOCIES, litigators at the Bar Council of PARIS, bar number: J54*

**RESPONDENT**

**ALLIANZ FRANCE**

a public limited company registered in the NANTERRE Register of Commerce and Companies (RCS) under no. 303 265 128,  
having its registered office at: [Address 1] (FRANCE)  
represented by its legal representatives,

**ALLIANZ IARD**

a public limited company registered in the NANTERRE Register of Commerce and Companies (RCS) under no. 542 110 291,  
having its registered office at: [Address 1] (FRANCE)  
represented by its legal representatives,

*Represented, as counsel with right of audience, by Ms. Anne GRAPPOTTE-BENETREAU of the SCP GRAPPOTTE BENETREAU, member of the Paris Bar, locker: K0111*

*Represented, as trial counsel, by Ms. Caroline COURBRONTCHOULEV, member of the Paris Bar, locker: E0827*

**GT SOLUTIONS RESEAUX SPECIALISES  
formerly named FRET INDUSTRIES**

SASU registered in the BOBIGYNY Register of Commerce and Companies (RCS) under no. 314 764 630,

having its registered office at: [Address 1] (France)

represented by its legal representatives,

*Represented, as counsel with right of audience, by Mr. Matthieu BOCCON GIBOD of the SELARL LX PARIS-VERSAILLES-REIMS, member of the Paris Bar, locker: C2477*

*Represented, as trial counsel, by Ms. Victoire REVENAZ of the AARPI LEXLINE, member of the Paris Bar, locker: D 0717*

**COMPOSITION OF THE COURT:**

The case was heard on 21 November 2023, in open court, before the Court composed of:

Mr Daniel BARLOW, President of chamber  
Ms. Fabienne SCHALLER, President of chamber  
Ms. Laure ALDEBERT, Judge

who have ruled thereon.

A report was delivered at the hearing by Ms. Fabienne SCHALLER under the conditions referred to in Article 804 of the French Code of Civil Procedure.

**Court Clerk**, at the hearing: Ms. Najma EL FARISSI

**JUDGEMENT:**

- adversarial

- by making the judgement available at the Court Clerk's, the parties having been previously notified thereon under the conditions referred to in the second paragraph of Article 450 of the French Code of Civil Procedure.

- signed by Mr. Daniel BARLOW, President of chamber, and by Ms. Najma EL FARISSI, Court Clerk to whom the judgement's original was handed over by the judge signatory.

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## **I/ FACTS AND PROCEDURE**

1. An appeal was brought before the Court against a judgement delivered on 17 January 2023, by the Bobigny Commercial Court (8th chambre), in a dispute between:

- a company registered under Luxembourg law Kuehne + Nagel (hereinafter K+N), freight forwarder, and the insurance company registered under German law XL Insurance Company SE (hereinafter XL);
- the companies registered under French law GT Solutions Réseaux Spécialisés (formerly Fret Industrie, hereinafter GT Solutions) and the insurance companies registered under French law Allianz I.A.R.D (hereinafter Allianz Iard) and SA Compagnie d'Assurance Allianz France (hereinafter Allianz France).

2. The dispute concerns an international freight transport between the Netherlands and France, involving Apple (iPhones and accessories), for delivery to the companies Bouygues and Orange in France, which was covered by two CMR consignment notes no. 2100304 and 2100305 of the 23 July 2018 and, during which a theft was committed in Fret Industrie's warehouses (now known as GT Solutions).

3. K+N, freight forwarder, had entrusted to Bas Logistics, sub-freight forwarder, this transport, not a party in this proceeding, who entrusted this transport between the Netherlands and France to its carrier BAS Transport, and then has commissioned DL Services (since absorbed by Fret Industries) to arrange the transport on the French soil, entrusted to Devillard.

4. Merchandise arrived from the Netherlands were transhipped on a Fret Industrie's cross dock platform during transit in France, so as to be handled by Transports Devillard towards their final destination. During this transit, five pallets were stolen on the night of 24 to 25 July 2018.

5. An amicable expertise was carried out and noticed that the alarm system had been deactivated before the theft, the mechanic doors of the warehouse have not suffered any damage, the room in which merchandise were stored was neither split nor locked and finally the week which preceded, one of the employees of Fret Industrie would have been dismissed for having committed a similar theft.

6. The expert assessed the amount of the damages at EUR 121,619.10 corresponding to the value of the stolen merchandise.

7. By an originating application of 24 March 2021, K+N and XL Insurance sued Fret Industrie, now known as GT Solutions, before the Bobigny Commercial Court on the basis of Articles 1915 and 1240 of the French Civil Code.

8. On 11 October 2021, GT Solutions summons its insurance company Allianz France and asked the court to force the intervention of a third- party and claim the application of the Transport law. Allianz Iard voluntarily participated in the existing proceedings in April 2022.

9. By a judgement of 17 January 2023, the court:

- Declared inadmissible KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions for failure to bring out an interest in taking legal action;
- Declared inadmissible, in addition, KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions as they are time-barred;

- Finds that there is no need to rule on the merits of KUEHNE + NAGEL and XL INSURANCE COMPANY SE's claims against GT SOLUTIONS RESEAUX SPECIALISES the sum of EUR 2 000 pursuant to Article 700 of the French Code of Civil Procedure.
- Finds that there is automatic provisional enforcement;
- Orders jointly and severally KUEHNE + NAGEL and XL INSURANCE COMPANY SE to bear full costs;
- Liquidates the costs to recover by the Court Clerk to the sum of EUR 131.14 VAT (of which EUR 21.86 VAT).

10. K+N and XL Insurance lodged an appeal on 10 March 2023 and the appeal proceedings was followed pursuant to the provisions of Article 905 of the French Code of Civil Procedure.

11. The case was closed on 14 November 2023.

## **II/ CLAIMS OF THE PARTIES**

12. In their final submissions, served electronically on 13 November 2023, **Kuehne + Nagel and XL Insurance**, under Articles 1240 and seq., 915 and seq. and 1927 and seq. of the French Civil Code, request the court to:

- Reverse the judgement of the Bobigny Commercial Court of 17 January 2023 (RG 2021F00706) in that it has:
  - Declared inadmissible KUEHNE + NAGEL and XL INSURANCE's actions for failure to bring out an interest in taking legal action;
  - Declared inadmissible, in addition, KUEHNE + NAGEL and XL INSURANCE's actions as they are time-barred;
  - Found that there is no need to rule on the merits of KUEHNE + NAGEL and XL INSURANCES's claims against GT SOLUTIONS;
  - Ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE to pay to GT SOLUTIONS the sum of EUR 2,000 under Article 700 of the French Code of Civil Procedure;
  - Ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE to pay to ALLIANZ FRANCE the sum of EUR 2,000 under Article 700 of the French Code of Civil Procedure;
  - Found that there is automatic provisional enforcement;
  - Ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE to full costs;

And in a further hearing, to:

- On the admissibility:
  - Hold that KUEHNE + NAGEL has compensated APPLE;
  - Hold that XL INSURANCE has compensated its insured KUEHNE + NAGEL of its prejudice, after deducting an allowance of EUR 50,000;
  - Hold that XL INSURANCE is validly subrogated to KUEHNE + NAGEL's rights up to the compensation paid;
  - Hold consequently admissible the claims of KUEHNE + NAGEL and XL INSURANCE, thereof having an interest and capacity in taking legal action;
- On the period of limitation and limitation of liability:
  - Hold that FRET INDUSTRIE was acting as the freight's holder at the time of their theft;
  - Hold that FRET INDUSTRIE cannot avail itself of the rules related to transportation contracts or freight forwarder contracts;
  - Hold consequently that KUEHNE + NAGEL and XL INSURANCE's action is not time-barred, and that FRET INDUSTRIE cannot avail itself of the applicable liability limitations to transportation contracts or freight forwarder contracts;
- On the merits / the liability of FRET INDUSTRIE as :
  - Hold that FRET is liable in tort to KUEHNE + NAGEL and XL INSURANCE as a result of the theft of the goods;
  - Hold that KUEHNE+NAGEL and XL INSURANCE have proved the harm of which they rely on;
- Consequently:
  - o Order jointly and severally, or one of them if there is no other, GT SOLUTIONS RESEAUX SPECIALISES (formerly FRET INDUSTRIE), ALLIANZ IARD and ALLIANZ FRANCE to pay KUEHNE + NAGEL the sum of EUR 50,000, corresponding to the remaining excess, besides the sum of EUR 3,695.00, under the costs of expertise, unless otherwise agreed, plus interest at the legal rate from the date of this summons;
  - o Order jointly and severally, or one of them if there is no other, GT SOLUTIONS RESEAUX SPECIALISES (formerly FRET INDUSTRIE), ALLIANZ IARD and ALLIANZ FRANCE to pay XL INSURANCE, the sum of EUR 71,619.10, corresponding to the amount of compensation paid to the insured, unless otherwise agreed, plus interest at the legal rate from the date of this summons;
  - o Order the interest to be capitalised;
- On the claim for sentencing ALLIANZ FRANCE on the grounds of an allegedly abusive continuation of the proceedings:
  - Dismiss ALLIANZ FRANCE of its claim for sentencing KUEHNE + NAGEL and XL INSURANCE to pay damages because of an allegedly abusive continuation of the proceedings, the latter having had no choice but to act in this way in order to protect their rights;
- In any case:

- Order jointly and severally, or one of them if there is no other, GT SOLUTIONS RESEAUX SPECIALISES (formerly FRET INDUSTRIE), ALLIANZ IARD and ALLIANZ FRANCE to pay the appellants the sum of EUR 14,000 in respect of the legal costs of the first instance and of the appeal pursuant to Article 700 of the French Code of Civil Procedure, and to pay all the costs of the proceedings;

13. In their latest submissions, served electronically on 13 November 2023 and, under Article 31 of the French Code of Civil Procedure, Article L121-12 of the French Insurance Code, Articles 1346 and seq. of the French Civil Code, Article 1411-11 of the French Transports Code and Articles L132-6 and L133-6 of the French Commercial Code, **Fret Industrie** request the court to:

- UPHOLD the judgement rendered on 17 January 2023 by the Bobigny Commercial Court in all its provisions and particularly in that it has:
  - Declared KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions inadmissible for lack of interest in bringing proceedings and lack of subrogation;
  - Declared, in addition, KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions inadmissible as they are time-barred;
  - Ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay GT SOLUTIONS RESEAUX SPECIALISES the sum of EUR 2,000 under Article 700 of the French Civil Code of Procedure;
  - Ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay the costs.

Alternatively, in the event of which KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions were to be declared inadmissible and lapsed,

- HOLD that GT SOLUTIONS RESEAUX SPECIALISÉS (formerly named FRET INDUSTRIE) is not involved in this litigation,
- HOLD that the liability of GT SOLUTIONS RESEAUX SPECIALISÉS it cannot be engaged as a warehouse keeper, the transit of goods at the time of breaking the load being a purely accessory operation to the transport or transport commission,
- HOLD that the harm relied on by KUEHNE + NAGEL and XL INSURANCE COMPANY SE is not justified, the latter having never explained why they had (allegedly) compensated APPLE well beyond the applicable limitations of liability, when no inexcusable fault was ever alleged;

Consequently,

- DISMISS all the claims and applications of the appellant companies KUEHNE + NAGEL and XL INSURANCE COMPANY SE against GT SOLUTIONS RESEAUX SPECIALISÉS;

In the alternative,

- HOLD that GT SOLUTIONS RESEAUX SPECIALISÉS is entitled to benefit from the limitations of liability in the standard freight forwarding contract and to LIMIT its potential liability to the sum of EUR 3,620.

Consequently,

- DISMISS the appellant companies KUEHNE + NAGEL and XL INSURANCE COMPANY SE of all claims in excess of EUR 3,620,

Alternatively, in the event in which the Court were to hold that GT SOLUTIONS RESEAUX SPECIALISES acted as a depositary/ warehouse keeper, which is impossible,

- HOLD that GT SOLUTIONS RESEAUX SPECIALISÉS committed no fault and DISMISS the appellant companies of their actions,

In any case,

- ORDER ALLIANZ IARD to indemnify GT SOLUTIONS RESEAUX SPECIALISÉS against any order that could be issued against it,
- HOLD that no excess is here applicable, so that ALLIANZ should owe its full warranty;
- ORDER the appellant companies KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay the sum of EUR 10,000 in accordance with Article 700 of the French Civil Code of Procedure, and to full costs which are to be paid to Selarl Lexavoue Paris-Versailles,

14. In their latest submissions, served electronically on 10 November 2023 and in accordance with Article 31 of the French Civil Code of Procedure, Article L121-12 of the French Insurance Code and Article L1346-1 of the French Civil Code, **Allianz France et Allianz Iard** request the court to:

- UPHOLD the judgement rendered by the Bobugny Commercial Court on 17 January 2023 in all its provisions and particularly in that it has:
  - declared KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions inadmissible for lack of interest in bringing proceedings and lack of subrogation;
  - declared, in addition, KUEHNE + NAGEL and XL INSURANCE COMPANY SE's actions inadmissible as they are time-barred;
  - ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay ALLIANZ FRANCE the sum of EUR 2,000 in accordance with Article 700 of the French Civil Code of Procedure;
  - ordered jointly and severally KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay the costs.

ALTERNATIVELY

- Dismiss the claims of KUEHNE + NAGEL and XL INSURANCE COMPANY SE against GT SOLUTIONS RESEAUX SERVICES in its alleged quality of warehouseman, for lack of foundation,
- Hold that the claims brought on a tortious basis by KUEHNE + NAGEL et XL INSURANCE COMPANY SE, against co-contractors GT SOLUTIONS RESEAUX SPECIALISES are inadmissible,

Alternatively,

- Hold that the evidence of an alleged tortious misconduct on the part of GT SOLUTIONS RESEAUX SPECIALISES has not been produced,

Consequently:

- Dismiss the claims brought on an extra-contractual basis by KUEHNE + NAGEL and XL INSURANCE COMPANY SE against GT SOLUTIONS RESEAUX SPECIALISES for lack of foundation,

- Hold irrelevant the claim for warranty brought by GT SOLUTIONS RESEAUX SERVICES against ALLIANZ IARD,

#### ALTERNATIVELY

Having regard to the Geneva Convention of 19 May 1956, known as the "CMR Convention",

- Limit all order issued against GT SOLUTIONS RESEAUX SPECIALISES in its quality of freight forwarder guarantor of its substitutes to the sum EUR 1,763.05,
- Dismiss KUEHNE + NAGEL and XL INSURANCE COMPANY SE of the remainder of their claims.

Alternatively,

Having regard the Standard Transport Commission Contract,

- Hold that GT SOLUTIONS RESEAUX SPECIALISES committed no personal misconduct,
- Limit the potential ordering of GT SOLUTIONS RESEAUX SPECIALISES to pay the sum of EUR 3,620, which would be issued on the basis of a personal misconduct,
- Dismiss KUEHNE + NAGEL and XL INSURANCE COMPANY SE the remainder of the claims,

#### IN ANY CASE

- Hold inadmissible the claims brought by KUEHNE + NAGEL and XL INSURANCE COMPANY SE against ALLIANZ FRANCE and ALLIANZ IARD, pursuant to Article 564 of the French Civil Code of Procedure,
- Hold inadmissible the claims brought by KUEHNE + NAGEL and XL INSURANCE COMPANY SE against ALLIANZ FRANCE and ALLIANZ IARD, as they are time-barred,

Alternatively,

- Dismiss KUEHNE + NAGEL and XL INSURANCE COMPANY SE's claims brought against ALLIANZ FRANCE, for lack of foundation,

Exclude ALLIANZ France from the case, as it was abusively retained in the proceedings.

- Order jointly and severally, or one of them if there is no other, KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay ALLIANZ FRANCE the sum of EUR 3,000 as damages for the loss suffered,

Having regard the general and specific terms and conditions of the insurance policy taken out by FRET INDUSTRIE now known as GT SOLUTIONS RESEAUX SPECIALISES with ALLIANZ IARD,

- Hold that intermediate storage of goods on the quayside is only covered by ALLIANZ IARD in the exclusive context of a transport contract, with an



excess of EUR 3,000,

Consequently:

- Dismiss the warranty claim of GT SOLUTIONS RESEAUX SPECIALISES for lack of purpose, since its liability cannot be incurred under a transport contract since KUEHNE + NAGEL and XL INSURANCE COMPANY SE's claims are time-barred,
- Dismiss the warranty claim of GT SOLUTIONS RESEAUX SPECIALISES against ALLIANZ IARD in the event that it is held liable on the basis of a warehousing contract separate from the transport contract,
- Dismiss the warranty claim of GT SOLUTIONS RESEAUX SPECIALISES against ALLIANZ IARD in the event that it is held liable on a tortious basis,
- Order ALLIANZ IARD to be exonerated.
- Order jointly and severally, or one of them if there is no other, KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay ALLIANZ IARD the sum of EUR 12,000 pursuant to Article 700 of the French Code of Civil Procedure,
- Order jointly and severally, or one of them if there is no other, KUEHNE + NAGEL and XL INSURANCE COMPANY SE to pay full costs of the appeal, which are to be paid to SCP GRAPPOTTE BENETREAU pursuant to Article 699 of the French Civil Code of Procedure.

### **III/ REASONS FOR THE DECISION**

#### ***A. In limine litis, on the pleas of inadmissibility***

15. GT Solutions maintains that K+N and XL are inadmissible to bring an action as they are not validly subrogated to the rights of their clients and that, in any case, the one year limitation period has expired.
16. It challenges that K+N and XL are validly subrogated to the rights of Apple, the victim of the damage, and argues in particular that:
  - K+N and XL do not provide evidence of an actual payment to Apple, which would justify K+N being subrogated to Apple's rights, considering that the credit note issued by K+N and produced in support of its claim, constitutes evidence that K+N has established for itself;
  - K+N and XL do not justify having applied the limitations of liability applicable to the compensation, in particular those of the CMR Convention applicable to the transport at issue.
17. It then challenges the subrogation of XL insurance company to K+N's rights in the amount of EUR 71,619.10, as XL has not demonstrated that it paid the insurance allowance to K+N through its broker, and as no evidence of traceability of the payments has been produced.
18. It raises that the claims are time-barred pursuant to Article L. 133-6 of the French Commercial Code on the grounds that:
  - the freight forwarder guarantees his substitutes throughout the transport chain covered

by the contract,

- the transit of goods through a transshipment platform does not constitute a separate storage or warehousing contract that can give rise to an action subject to the ordinary law limitation period,
- the annual limitation period under transport law began to run on 25 July 2018 and the action brought more than two and a half years after the events is time-barred.

19. Allianz France and Allianz Iard maintain that K+N and XL are inadmissible to appeal new claims against them, having not filed any claim against them in first instance, by application of article 564 of the French Civil Code.

20. In the alternative, they argue that K+N does not justify having acquired a right to bring a main action against its substitute, as there is nothing to justify the effectiveness of the alleged compensation.

21. They argue that the conditions for subrogation are not met, in particular that proof of payment has not been established, this condition being required under French or Dutch law.

22. They maintain that in this case the conditions for legal or conventional subrogation, under French law or Dutch law, are not met, as proof of the alleged payment is not provided, and the credit note of the insurance broker and the screenshot or email exchanges are not sufficient to justify an effective payment.

23. They conclude that in the absence of subrogation, the warranty action against them is devoid of purpose.

24. They maintain that in any case the claims of K+N and XL are inadmissible as they are time-barred, with the application of the annual limitation period relating to the transport contract.

25. K+N argues in response that it has an interest and quality to bring an action against any substitute responsible for the loss of goods since it has compensated its customer or has already undertaken to do so.

26. It considers that it is validly subrogated to the rights of Apple, which it compensated for the loss of the goods by issuing a credit note dated 21 September 2018, which is a perfectly standard method of compensation, without it being necessary to prove the reality of an effective payment, once it is established that it has undertaken to do so, that Apple was the owner of the products stolen during transport, and that K+N acted as freight forwarder against its substitute Fret Industrie and its insurer Allianz.

27. K+N and XL further maintain that the subrogation of the damage's insurer falls under the law of the insurance contract, which is governed in this case by Dutch law, which provides that once the insurer has paid a compensation to its insured, there is subrogation to the rights of the insured in favour of the insurer who therefore has an interest in bringing an action.

28. XL indicates that it has paid its insured the insurance compensation, by compensation with a credit, which is a sufficient condition in application of this right, justifying the traceability of the payment. In particular, it produces the capture of the accounting system of the broker Nacora, which proves that XL Insurance indemnified its insured Kuehne by compensation and sets of internal entries. The broker attested to having paid the funds to the insured for the damage it suffered.

29. XL finally maintains that, even if French law were applicable, it can rely on subrogation because K+N took out an insurance policy for goods transported with AXA Corporate Solutions, now known as XL Insurance, the insurance was applicable at the

time of the loss, XL Insurance compensated Kuehne for the loss of the goods to the amount of EUR 71,619.10 and therefore has an interest in bringing an action.

30. Concerning the annual limitation period, Kuehne and XL Insurance relied on the five-year limitation period applicable to the liability of a depositary.

31. They argue that:

- Fret Industrie was the custodian of the goods at the time of the theft because the goods were received by the latter and it never provided transport services.
- Transportation between Tremblay-en-France and the premises of Bouygues and Orange was carried out by Transports Devillard

32. They argue that Fret Industrie and DL Services were two separate companies at the time of the events, even though they belonged to the same group and that it cannot be inferred from the fact that DL Services was mandated by Bas Logistic BV as a freight forwarder, to claim that Fret Industrie would have participated in transport operations in addition to its warehousing mission and to apply the annual limitation period to it.

33. Consequently, the rules relating to the transport or commission contract do not apply to it.

THEREUPON:

34. Under Article 31 of the French Code of Civil Procedure, the action is open to all those who have a legitimate interest in the success or rejection of a claim, subject to cases in which the law grants the right to act only to those the law qualifies to raise or challenge a claim or to defend a specific interest.

35. The court is seized of several pleas seeking to have the appellants' claims declare inadmissible, two pleas relating to the subrogation of the insurer and the freight forwarder and one plea relating to annual limitation period.

36. The court may, independently of the order in which the parties presented their pleas, rule in the order that appears the most appropriate to it.

37. In this case, given that K+N contests the classification of a transport contract for warehousing and relies on the classification as a service provision contract for the storage of goods by Fret Industrie. First, it is necessary to determine whether the disputed contract falls within the annual limitation period provided for by the CMR, and then, if necessary, assess subrogations with regard to the legal relationships at stake.

***- On the limitation period of the action***

38. Article 1 (1) of the Convention on the Contract for the International Carriage of Goods by Road (known as CMR), ratified by 55 countries of which France and all EU countries, provides that: "This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over 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".

39. This Convention is of public policy and prevails over national laws.

40. Article 32 (1) of the CMR states that the actions to which transport subject to this Convention may give rise are time-barred within one year. However, in the case of wilful misconduct or such default, according to the law of the jurisdiction seized, considered as equivalent to wilful misconduct, the limitation period shall be three years.

41. According to Article 34, " If carriage governed by a single contract is performed by

successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note."

42. It follows from these texts that the "actions to which transport subject to the CMR may give rise" are covered by the CMR. It is therefore important to determine the actions to which transport subject to the CMR may give rise in order to assess whether the provisions of Article 32 of this Convention are applicable to them.

43. The commercial chamber of the *Cour de Cassation* held that the direct action of Article L. 132-8 of the French Commercial Code is one of those to which transport subject to the CMR Convention may give rise and these actions are not limited only to the parties to the transport contract.

44. In this case, K+N, a company incorporated under Luxembourg law and freight forwarder, was entrusted with carrying out transport for the delivery of iPhones from the Netherlands to France covered by two CMR consignment notes no. 2100304 and 2100305 for two final destinations in France, the parties are referring to them on the merits in the alternative for the limitation of the compensation requested.

45. As a freight forwarder, K+N was entrusted with the end-to-end transport, with no interruptions planned during transport.

46. The two CMR consignment notes produced both bear the mention of K+N as shipper, Orange or Bouygues, French companies, as recipients, Duiven Netherlands as the place of collection of the goods and Lieusaint France or Eragny sur Oise France as places of delivery and final destination. The entire transport had to be carried out by several Dutch and French carriers, all covered by the said consignment notes. The two French and Dutch sub-commissioners were also indicated on the said consignment notes (BAS NL and DL FR).

47. It follows from these elements that the consignment note which constitutes the transport contract provided as the end of the enforcement of the transport contract, the physical delivery of the goods to the final recipient, Orange or Bouygues, without breakage during transport, notwithstanding a transit with a service provider to move the goods from one truck to another.

48. Furthermore, contrary to what K+N maintains, no separate contract providing that Fret Industrie was in charge of receiving the goods transported by BAS Transport and handing them over to Transports Devillard nor any invoice relating to a separate storage or warehouse service at Fret Industrie for the transit of goods on its platform called "cross-dock" are included in the hearings, only DL service has invoiced its intervention for the final delivery, and there is no evidence of separate payment of a provision or service for this passage through the transit platform.

49. The fact that Fret Industrie lodged a complaint following the theft and declared that it had custody of the goods overnight does not allow this action to be separated from those covered by the end-to-end transport contract, especially since the Fret representative himself declared that the goods had to be delivered to Eragny and Lieusaint, final destination of the goods provided for in the consignment note.

50. Finally, the fact that Fret Industrie did not act as carrier and does not appear on the consignment note, only DL Services is mentioned as freight forwarder, and the fact that Fret Services had not yet merged with DL Services at the time of the facts are without impact on the analysis of the ancillary nature of the service, which consisted of passing the goods through the "cross-dock" of the Tremblay warehouse in order to transship the goods from one truck to another without breaking load, and therefore constituted a service necessary for the completion of the transport.

51. It follows from these elements that the specific regime of the transport contract applies to the disputed service and that the one year period of limitation provided for by the CMR is intended to apply to all actions resulting from this transport, including the services of transit, even if the said actions are not part of the consignment note, but are an integral part of the transport contract.

52. It is not claimed that the parties were victims of fault or wilful misconduct nor that a suspension or extension of the limitation period would be justified.

53. The summons having been issued on March 24, 2021, more than two and a half years after the events which took place on July 24, 2018, the action of K+N and XL is time-barred.

54. Insurers are therefore not eligible to exercise it by way of subrogation.

55. The decision of the first judges will thus be confirmed, on its own grounds, without there being any need to rule on the other means developed by the parties.

## **B. On other claims**

### ***- On tort liability***

56. K+N made claims for compensation on the basis of the tort liability of Fret Industrie (GT Solutions) as custodian.

57. However, the existence of a storage contract not being established and the action against Fret Industrie being covered by the transport contract and declared inadmissible by the effect of the annual limitation, it is necessary, in the absence of any allegation of faults distinct from those invoked in the context of the transport contract, to reject the requests made against GT Solutions and its insurance companies on this basis.

58. The company K+N finally makes a request for compensation for the fault allegedly committed by Fret Industrie during the theft committed in its warehouse, by not sufficiently securing the goods in transit through its premises.

59. As recalled above, only article 32 of the CMR applies to the disputed legal relationship forming part of the transport contract, the annual prescription being acquired, unless there is proof of wilful misconduct or such default, according to the law of the jurisdiction seized, considered as equivalent to wilful misconduct.

60. However, apart from the fact that the company K+N only alleges a lack of diligence on the part of Fret Industrie as custodian, and not wilful misconduct, such an allegation of wrongful act is not considered, in French law, as equivalent to wilful misconduct, it being defined according to Article 1137 of the French Civil Code, in its version in force between 1 October 2016 and 1 October 2018 as "the fact for a contractor to obtain the consent of the other through maneuvers or lies. The intentional concealment by one of the contracting parties of information of which he knows is decisive for the other party also constitutes fraud in the inducement," these elements not being present in this case.

61. This request will therefore be rejected.

### ***- On the claim for abuse of procedure***

62. Allianz France is seeking compensation for abuse of procedure on the grounds that K+N improperly retained it during the procedure and on appeal, even though it is not the insurer of Fret Industrie.

63. However, it follows from the elements of the procedure that it was Fret Industrie which called Allianz France for forced intervention at first instance, and that Allianz Iard

would have intervened only voluntarily, without however ruling out Allianz France, the status of insurer, the production insurance contracts that must intervene on the merits.

64. Allianz France's claim in this respect will therefore be rejected.

**- *On costs and expenses***

65. K+N and XL which are unsuccessful in all their claims will be ordered to pay the costs, the claims they submit under Article 700 of the French Code of Civil Procedure.

66. They will be ordered jointly and severally on the basis of this Article, to pay to the companies:

- GT Solutions the sum of EUR 10,000
- Allianz IARD the sum of EUR 5,000

**IV/ DECISION**

On these grounds, the court hereby:

**1) Upholds the judgment rendered by the Paris Commercial Court on 17 January 2023 in that it declared Kuehne + Nagel and XL Insurance Company SE inadmissible to act because of the statute of limitation,**

**2) Finds the other pleas of inadmissibility moot,**

**3) Upholds the decision for the  
remainder,**

**Adding:**

**4) Dismisses Kuehne + Nagel and XL Insurance Company SE of all claims and applications;**

**5) Dismiss Allianz France's claim for damages for abuse of procedure.**

**6) Orders jointly and severally Kuehne + Nagel and XL Insurance Company SE to pay the following sums in application of Article 700 of the French Code of Civil Procedure:**

- **ten thousand euros (EUR 10,000) to GT Solutions;**
- **five thousand euros (EUR 5,000) to Allianz Iard;**

**7) Orders Kuehne + Nagel and XL Insurance Company SE jointly and severally to pay the costs.**

THE COURT CLERK,

THE PRESIDENT,

