

# MALOOF & BROWNE LLC

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## **Via Email**

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## **Via Email**

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**Re: *Amending the Carriage of Goods by Sea Act***

Dear Ms. Holland and Mr. Newcomb:

I have been a member of the Maritime Law Association of the United States (“MLA”) for 37 years and am a leading international maritime lawyer specializing in cargo claims, representing shippers and insurers subject to the transportation laws discussed herein. It is my intention in this letter to respectfully seek a vote by the MLA Carriage of Goods Committee and then perhaps the entire MLA during its Fall Meeting at the Argonaut Hotel in San Francisco, California in October of 2023 on the above subject.

The topic of the vote would be the need for the MLA, the Carriage of Goods by Sea Committee, and the MLA Membership, to pursue an interim effort to temporarily patch the 1936 Carriage of Goods by Sea Act (“COGSA”), which has been languishing for the past 15 years (while efforts continue to be made to enact the Rotterdam Rules into law, an effort which has been entirely unsuccessful thus far).

As the MLA is well aware, COGSA was enacted in 1936 and has literally never been amended or updated, not even once. COGSA’s \$500 per package limit of liability woefully antiquated, not to mention having been virtually nullified by inflation over the past 87 years, and additionally, has been so far eclipsed by the progress that other maritime nations have made in recognizing updated liability limits based not only upon package, but also upon weight.

COGSA is now literally a rusty old barge that no one should be using anymore, which has been sorely neglected, which has thoroughly rusted and has developed substantial holes,

but which no one has even bothered to patch, let alone replace. The slow sinking of COGSA from neglect threatens to bring the U.S. maritime bar down with it.

We propose, as an alternative temporary measure to our continual wait for the Rotterdam Rules to be enacted, that a simple “pump and patch” of rusty old leaky barge that is COGSA be done.

We attach a proposed simple bill, which literally fits on one piece of paper, ready to submit to Congress, which has three simple patches to stop the four biggest leaks that COGSA has. Specifically, the proposed bill:

- 1) Updates the \$500 COGSA limit of liability to modern Hague Visby partially weight-based limits, along with the rest of the world.
- 2) Reconfirms that Non Vessel Operating Common Carriers are bound by COGSA’s duty to provide a seaworthy vessel, thus correcting the overbroad holding of *Chubb Seguros Peru S.A. v. As Fortuna Opco B.V.*, No. 1:20-CV-3392 (ALC), 2022 WL 973708, at \*2-3 (S.D.N.Y. Mar. 31, 2022).
- 3) Revises the law on covenant not to sue clauses in bills of lading, and thus correcting the overbroad holding of *Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry. Co.*, 762 F.3d 165, 178-84 (2d Cir. 2014).
- 4) Revises the law on forum selection clauses and thus correcting the overbroad holding of *Vimar Seguros y Reaseguros, S. A. v. M/V Sky Reefer*, 515 U.S. 528 (1995).

We attach the following documents which provide more detail regarding the issues with COGSA in its current form, and the corrections that are needed to it:

- Attachment 1: Letter to Transportation Secretary Pete Buttigieg dated March 14, 2022, which reviews just how truly antiquated COGSA is.
- Attachment 2: Letter to the MLA dated May 10, 2022, which reviews in greater detail the three legal issues which the proposed “Patch COGSA” concerns. If you will recall, following this letter, I gave a presentation to the MLA on this very topic.
- Attachment 3: A simple proposed bill to amend COGSA, ready to present to both the Senate and the House of Representatives, a bill which is small enough to literally fit on one single page, which we propose the MLA, the Carriage of Goods Committee, and the MLA membership make a push for Congress to enact.

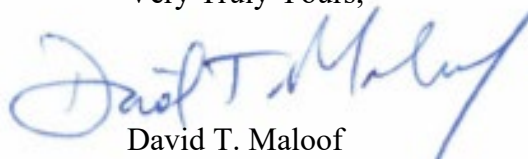
It is respectfully submitted that new congressional legislation, such as the simple one-page bill to amend COGSA attached to this letter, is now urgently required to patch the four most outdated provisions, with the hope that such a quick patch will assist the industry until the Rotterdam Rules are finally (someday) enacted into law.

I therefore request the opportunity to present this for a vote during the MLA's Fall meeting at the Argonaut Hotel in San Francisco, California.

I thank you in advance for your consideration in respect of the foregoing, and respectfully request that you contact me at your earliest convenience so we can discuss this matter further.

We respectfully request that you circulate this letter to the full Carriage of Goods Committee.

Very Truly Yours,

A handwritten signature in blue ink that reads "David T. Maloof". The signature is fluid and cursive, with the first name "David" being the most prominent.

David T. Maloof

DTM/ca  
Enc.

**CC via Email:**

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