

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES**REPORT OF THE COMMITTEE TO CONSIDER  
DECISIONS OF THE COURTS OF THE SECOND  
CIRCUIT REGARDING JURISDICTION AND FORUM**

At the meeting of the Association, held November 9, 1956, a majority of the former committee submitted a report discussing the decisions of the U. S. Court of Appeals for the Second Circuit in *The Oklahoma*, 224 F. (2d) 806; 1955 A. M. C. 1687; of the Southern District of New York in *The Bio Bio*, 127 F. Supp. 17, affirmed 227 F. (2d) 519 (C. A. 2) and of the District of New Jersey in *The Punta del Este*, 135 F. Supp. 394. It was held in the first two cases cited that United States courts should refuse to take jurisdiction of suits filed by United States citizens as cargo owners against foreign vessel owners if the bill of lading contracts contain provisions requiring that suits based on breach of their terms, be filed in the courts of the country of the ships' flags.

The report of the majority of the former committee recommended that no action be taken by the Association in relation to remedial legislation. A minority report was filed which pointed out that the decisions made it clear that without a prohibition in the United States Carriage of Goods by Sea Act or some other act against "jurisdictional" clauses in bills of lading, courts would continue to hold that a citizen of the United States having claims against a foreign vessel owner for damage to cargo, may not look to the courts of his own country for justice, but is bound to institute any suit in a foreign country where there is a bill of lading provision limiting suit to the country of the ship's flag. It was recommended that a bill be introduced to amend the Carriage of Goods by Sea Act in this regard.

A motion to adopt the majority report having been lost, the Association adopted the minority report and directed that any proposed legislation which the Committee might advance for the approval of the Association, be circulated among the entire membership of the Association before any action should be taken on the Committee's recommendation.

It having been suggested at the meeting of the Association that a new committee be appointed to draft the proposed legislation with a majority not opposed to the principle of remedial legislation, the president re-appointed the former committee with the addition of three new members.

Those members of the present committee who sign this report recommend to the Association that a bill be introduced in Congress amending the Carriage of Goods by Sea Act and that the Association actively work for adoption by Congress of this amendment. The amendment proposed by the Committee is to add the following language after Sec. 9:

Any clause, covenant or agreement in a contract subject to this Act requiring the prosecution of claims in the courts of a foreign country shall be null and void and of no effect. A citizen of the United States of America suing in his or its own right to recover damages from a carrier for breach of such a contract shall not be barred from prosecuting his or its suit in the courts of the United States of America.

The purpose of the proposed amendment is, we think, clear. Prior to the decision in *The Oklahoma* (supra) it had long been the established law that a contractual provision seeking to oust a United States court of jurisdiction was void. The result of the decisions in *The Oklahoma*, *The Bio Bio*, and in the most recent case of *The Monrosa*, decided in the Eastern District of Texas (not reported), inhibiting a United States citizen from pursuing his rights against a foreign vessel owner in a United States court is, we think, so strange and inequitable as to require legislative action. The adoption by the Association, at the meeting of November 9, 1956, of the minority report of the former committee, makes it apparent that the Association as a whole agreed that legislation is called for.

Respectfully submitted,

RUSSEL A. MACKAY;  
 RUSSEL T. MOUNT;  
 WILLIAM G. SYMMERS;  
 GEORGE B. WARBURTON;  
 HENRY N. LONGLEY, Chairman.

October 29, 1957.

The undersigned members of the present Committee remain opposed to the introduction of the proposed bill, for the reasons stated in the report submitted at the 1956 Fall Meeting by a majority of the Committee as it was then constituted. That report, which failed of adoption by a vote of 39 to 30 of the members of the Association present and voting, appears at pp. 4074-6 of M. L. A. Document No. 403 (Minutes of the 1956 Fall Meeting).

It is still felt there has been no serious prejudice to American litigants as a class as a result of *The Oklahoma* decision, and that this Association should not sponsor legislation to counteract the effect of isolated court decisions unless a substantial majority of the members believe that the decisions are contrary to the objectives of the Association.

In any event, if the Association is going to sponsor a bill to amend the Carriage of Goods Act, the undersigned members of the Committee feel that the bill should not be limited to the proposed addition of Section 9a, but should be enlarged so as to cover other amendments as well. For example, many members of the Association would probably be in favor of an amendment which would nullify the effect of the "both-to-blame" decision (*The Esso Belgium*, 343 U. S. 236, 1952 A. M. C. 659).

Respectfully submitted,

NORMAN M. BARRON,  
HENRY C. BLACKISTON,  
JOHN F. GERITY,  
NICHOLAS J. HEALY, 3rd,  
GORDON W. PAULSEN.