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COMMITTEE ON BILLS OF LADING SUBCOMMITTEE ON HAGUE RULES JURISPRUDENCE

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Mitsui & Co. v. *American Export Lines et al,* Nos. 80-7095 and 80-7085 (2d Cir. 1981) Detailed review of container/package limitation cases. Functional economics approach rejected. Presumption that goods loose-stowed in container are "bulk" shipments so as to make container "the package" disallowed. Prejudgment interest allowed only from date goods should have been delivered.

Atlantic Richfield Co. v. *U. S.,* 640 F2d 759 (5th Cir. 1981) Propeller damage discovered after 14 days' trouble-free steaming did not raise presumption vessel was unseaworthy on sailing so as to defeat owner's claim for general average contribution.

Eagle Terminal Tankers, Inc. v. *Insurance Co. of U.S.S.R. Ltd.,* 637 F2d 890 (2d Cir. 1981) Damage to propeller sustained on passage but discovered after vessel moored at a safe haven was enough to create fact issue and preclude summary judgment denying owner general average sought by cargo on basis ship was not in peril.

Harbert Intern. Establishment v. *Power Shipping,* 635 F2d 370 (5th Cir. 1981). COGSA § 1303(6) presumption of delivery of goods in condition described in B/L arising from failure of "cargo" to give notice of damage disappears upon presentation of "sufficient" evidence to suggest cargo damaged prior to delivery.

Morrison Grain Co. v. *Utica Mutual Ins. Co.,* 632 F2d 424 (5th Cir. 1980) Insurer's efforts to avoid loss under all risk cargo policy (on theory insured had burden of proving loss was occasioned by an external cause and was fortuitous) were fruitless. Extended discussion of cargo insurance law.

T. J. Stevenson & Co., Inc. v. *81,193 Bags of Flour,* 629 F2d 338 (5th Cir. 1980) A 47 page *post mortem* report of the consequences of weevil infestation of 3 vessel loads of flour. Source of infestation, pre-loading treatment of flour, failure of carrier to clause bs/1, consignee's refusal to receive goods, construction of sale contract under U.C.C. and much, much more . . .

Blasser Bros., Inc. v. *Northern Pan American Line,* 628 F.2d 376 (5th Cir. 1980) Damage to cartons of cosmetics stowed in a container which was shipped on deck under clean b/l. Court reviews the shifting of burdens from shipper's duty to make *prima facie* case to carrier's last ditch effort to apportion damage between part caused by excepted perils and that caused by carrier's negligence or failure to exercise due diligence, etc.

Cook Industries, Inc. v. *Barge UM-308,* 622 F2d 851 (5th Cir. 1980) Carrier's failure to inspect soybeans during unexpected delay in transit was negligent failure to protect cargo rendering carrier liable for damage. Court's treatment of damage issue required resolution of apparently irreconcilable conflict between "sound market value minus damaged market value" and "indemnification for loss sustained" and is thought-provoking.

Matter of Ta Chi Navigation (Panama) Corp'n & c, Nos. 75-2735 and 76-2102 (E. D. La. 3.31.81) Owner of carrying vessel, solely at fault in collision with naval vessel, required to indemnify US (as owner of naval vessel) for amounts paid in settlement of cargo claims. The errors in navigation on part of carrying vessel's crew were so gross as to raise presumption of incompetence, which owner failed to overcome. Owner held in privity so ineligible for limitation and, having failed to exercise due diligence in selection of crew, unable take advantage of "error in navigation" COGSA defense.

All Union Export Import Ass'n v. *M.V. Hellenic Carrier et al,* 78 Civ. 1239 (CHT) (S.D.N.Y. 1981) A catalog of points to consider when tallies disagree. Here, plaintiff cargo insurer failed to carry burden of proving short delivery of bagged corn.

Watermill Export, Inc. v. M/V Ponce, 506 F. Supp. 612 (S.D.N.Y. 1981) East Coast-Puerto Rico shipment of potato laden containers under bs/l incorporating *all* of COGSA. Shipper's motion to strike package limitation affirmative defense granted. The potatoes were shipped in bulk and customary freight unit was 100 pounds.

Hellenic Army Command v. *M/V Livorno,* Docket No. 79-2229 S.D.N.Y. Jan. 9, 1981, not yet officially reported. Carrier's 18-month delay in delivering cargo shipped from New York to Piraeus constituted an unreasonable deviation, depriving the carrier of the $500 COGSA package limitation.

Gradmann & Holler GmbH v. *Continental Lines, S. A.,* 504 F. Supp. 785 (D.P.R. 1980) Effort by seller of cargo sold c.i.f. to recover as subrogee after indemnifying buyer failed because: (1) seller had no interest in goods after shipment under c.i.f. terms, and (2) claused b/l ("atmospheric rust" and "contents unchecked") prevented shipper from making out a *prima facie* case.

Complaint of Ta Chi Navigation (Panama) Corp., S.A. 504 F. Supp. 209 (S.D.N.Y. 1980) Shipowner sought exoneration under federal fire statute and limitation of damages after fire onboard ship destroyed much of its cargo. Court held the stowage of oxygen and acetylene cylinders in proximity of engine room rendered vessel unseaworthy at commencement of voyage and rendered shipowner liable for that portion of damage which would have been averted had cylinders been stowed elsewhere.

Caemint Food, Inc. v. *Lloyd Brasileiro & c,* 501 F. Supp. 791 (S.D.N.Y. 1980). Consignee of canned corned beef sought recovery for mold and rust damage and succeeded in establishing that carrier's negligence caused some of the cargo to become wet and to remain wet because of high humidity and poor ventilation. Carrier was liable for entire amount of loss even though some damage was caused by factors for which carrier or its agents were not responsible.

Black Sea & Baltic General Ins. Co., Ltd. v. *SS Hellenic Destiny,* 500 F. Supp. 677 (S.D.N.Y. 1980). Suit for shortlanded and damaged cargo turned on interpretation of Saudi Arabian Customs regulations as to when, within meaning of Harter Act, "proper delivery" occurred at Saudi Arabian port.

Alfa Romeo, Inc. v. *SS Torinita,* 499 F. Supp. 1272 (S.D.N.Y. 1980) Suit against carrier for fire damage to autos on ro-ro "car carrier" basis unseaworthiness and lack of due diligence failed. Vessel built to Lloyd's and Norwegian gov't standards and crew well-trained to fight fire. Cause of fire undetermined and effort to hold manufacturer of auto in which fire started on product liability theory also failed.

Poliskie Line Oceaniczne v. *Hooker Chemical Corp.,* 499 F. Supp. 94 (S.D.N.Y. 1980). Shipowner sued for damages to vessel and crew which resulted from improperly stowed drums of sulphur dichloride within container loaded aboard its vessel. B/L did not require description of how hazardous cargo was stowed, but dock receipt did and Court held defendant liable for damages.

U. S. Fire Ins. Co. v. *M.V. Asia Friendship,* 495 F. Supp. 244 (S.D.N.Y. 1980). Bladings numbered CS 204 and CS 207 held not to give notice that bladings were conditional or represented containerized shipment, particularly when they expressly referred to "cartons" having been delivered to the carrier in good condition.

Mavirazon Compania Naviera, S. A. v. *H. J. Baker & Bros., Inc.,* 494 F. Supp. 1023 (E.D. La. 1980) Shipowner sued stevedore for vessel damage caused by negligent discharge of bulk cargo. Stevedore sought to limit liability as set out in tariff and Court held that, in absence of actual notice or contract, limitation of liability clauses set out in tariffs are not enforceable, and that filing of tariffs gives constructive notice only of those things required by law to be inserted in tariffs.

Miller Yacht Sales, Inc. v. *M.V. Vishva Shobha* 494 F. Supp. 1005 (S.D.N.Y. 1980). Yacht owner sued carrier, stevedore and crane operator for damage to yacht during unloading. Defendants sought to limit liability to £100 sterling pursuant to blading provision under Indian COGSA. Court ruled that limitation provisions in B/L and Indian COGSA, when read together, clearly expressed intention to extend benefits of limitation to others than the carrier and allow limitation by all defendants.

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