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Gator Marine Service Towing, Inc. v. J. Ray McDermott & Co., 651 F.2d 1096 (5th Cir. 1981). Where cargo (spool of wire cable) was insufficiently secured on deck by stevedore and insufficiently inspected during voyage by crew, district court divided responsibility for damaged cargo between vessel owner and stevedore under Reliable Transfer principles. Crew's conduct was sufficient to preclude owner's recovery of indemnity.

Calmaquip Engineering West Hemisphere Corporation v. West Coast Carriers, Ltd., 650 F.2d 633 (5th Cir. 1981). Material deviation (carriage on deck) contrary to shipper's instructions, divested shipowner of right to assert $500 package limitation. Inference that damage noted upon discharge was sustained while cargo was on vessel was sufficient to cast upon the carrier burden of showing what part of damage occurred on overland movement to final destination. Summary judgment for shipper affirmed.

Brown & Root, Inc. v. M/V PEISANDER, 648 F.2d 415 (5th Cir. 1981) stevedore held protected by "Himalaya" clause in bill of lading with respect to damage to machinery occurring while stevedore was transporting same toward shipside. Pan American World Airways, Inc. v. California Stevedore & Ballast Company, 559 F.2d 1173 (9th Cir. 1977) and underlying

Tessler Bros. (BC) Ltd. v. Italpacific Line, 494 F.2d 438 (9th Cir. 1974) carefully analyzed and distinguished. Blading proviso that carrier's liability should "in no case" exceed $500 per package was not void for failure to allow shipper opportunity to declare increased value in view of Clause Paramount and tariff provisions.

North River Insurance Co. v. Fed Sea/Fed Pac Line, 647 F.2d 985 (9th Cir. 1981). Forum clause providing for Canadian jurisdiction enforced in suit for damage to yachts shipped in Hong Kong for delivery Milwaukee notwithstanding incorporation of COGSA in bill of lading. Indussa Corp. v. S.S. RANBORG, 377 F.2d 200 (2nd Cir. 1967) distinguished because there COGSA applied of its own force. While carrier deviation from bill of lading prevents carrier from relying on its terms, breach of an oral agreement outside the terms of the bill of lading is not a deviation nor does mere allegation of deviation deprive holder (and inferentially issuer) of bill of lading of applicability of governing law prescribed therein.

Caemint Food, Inc. v. Brasileiro, 647 F.2d 347 (2nd Cir. 1981) arises out of rust and mold damage to canned goods shipped in cargo cartons from Brazil to San Francisco in August. Held, shipper failed to prove cargo was in good condition when shipped. Contains a thorough review of the results of damage to goods in "apparent external good order" when shipped and of the shifting of burdens of proof

and ways for the shipper to make out a prima facie case. Vallescura distinguished.

Allstate Insurance Company v. Imparca Lines, 646 F.2d 166 (5th Cir. 1981). Shipowner's delivery of container to National Institute of Ports in Venezeula constituted good delivery pursuant to bill of lading terms which passed muster under Harter Act. Delivery was made according to the custom and usage of the port.

Allstate Insurance Company v. Inversiones Navieras Imparca, 646 F.2d 169 (5th Cir. 1981) arises out of disappearance of electronic goods from sealed carton while in carrier's custody. Bill of lading described cargo as "one 20 Ft. Container with 341 cartons" and as "one 20' Container said to contain electronic equipment radio apparatus". District court's decision that the container was the package was reversed following the Second Circuit rule. This was the first occasion upon which the Fifth Circuit has considered the problem.

Jamacia Nutrition Holdings v. United Shipping, 643 F.2d 376 (5th Cir. 1981) failure to clean pipelines, as well as tanks, was failure to exercise due diligence in case arising from contamination of soy bean oil in bulk by residue of molasses from prior cargo. Governing charter party contained clause paramount providing any term in charter party repugnant to COGSA to be void. Charter party clause providing "vessel to clean tanks, lines and pumps to charter's surveyor's

satisfaction" thus emasculated. Reprocessing charges paid in Jamacian dollars to be paid in United States dollars at conversion rate in effect when receiver incurred reprocessing charges (and paid them?).

Union Insurance Society of Canton v. SS ELIKON, 642 F.2d 721 (4th Cir. 1981) district court decision enforcing bill of lading forum clause stipulating exclusive jurisdiction in Court of Bremen reversed, following Indussa and holding bill of lading contract of adhesion. Fourth Circuit considered Court of Bremen suspect in view of shipowner's headquarters in that city. On remand, district court directed to consider possibility of forum non conveniens dismissal.

Allied International American Eagle Trading Corp. v. SS YANG MING, 519 F.Supp. 187 (S.D. N.Y. 1981). Where carrier prepared bill of lading described cargo so as to show number of cases or cartons on each pallet, e.g. "1 pallet (6 cases)", the package limitation applied to each case rather than to each pallet.

Kurt Orban Co., Inc. v. SS FEDERAL ST. CLAIR, 518 F.Supp. 837 (S.D. N.Y. 1981).

Recovery allowed for rust damage to coils of steel wire which, when delivered, was wrapped in opaque plastic and clean bill of lading was issued, because on arrival at destination the plastic was torn and fresh water rust was found on coils. Court rejected argument that bill of lading only

created prima facie case of apparent external good order in view of damage to wrappers at destination. Shipper was not obliged to submit independent evidence of good order on delivery for shipment.

Squillante & Zimmerman Sales, Inc. v. Puerto Rico Marine Management, Inc., 516 F.Supp. 1049 (D. Puerto Rico 1981). Refrigerated vans containing fresh produce shipped from Elizabeth, New Jersey to San Juan, Puerto Rico arrived with contents partially decayed and molding. The vessel was delayed by one day on the first voyage and by two days on the second voyage above the normal transit time from port to port. Cause of delay was repairs necessary to make the vessel seaworthy. The court held that delays to make such repairs did not constitute unreasonable deviations. Ship was not under an absolute contractual obligation of strict compliance with scheduled arrivals and departures. Shipper's delivery of produce at temperatures varying from the stipulated carriage temperature by more than 5° precluded recovery for failure to maintain "proper temperatures" in transit under tariff provision.

All Commodities Supplies, Ltd. v. M/V ACRITAS, et al., No. 79-3884 (E.D. La. May 26, 1981) bagged rice from Mobile to Lagos, Nigeria. Under Nigerian law the Nigerian Port Authority appointed discharge stevedores, shipowner/charterer having no authority in this connection. Charterer-appointed

talleymen tallied entire cargo off the vessel. A shortage claim was presented based upon "gate" tallies furnished by the Nigerian Port Authority. The court denied the claim observing that the bills of lading were subject to COGSA and covered from "tackle to tackle" with Harter Act covering between discharge and delivery. Delivery was according to the custom of the port and vessel interests owed no duty to cargo once it was surrendered to the Nigerian-government-contracted stevedore. Failure to object within three days of delivery was also a factor.

Royal Exchange Assurance of America, Inc. v. SS PRESIDENT ADAMS, et al., 510 F.Supp. 581 (W.D. Wash. 1981). Where one of two closely related insurance companies issued a cargo policy covering machinery shipped from Karachi to Tacoma and other insurance company covered shipowner's stevedore operation at Tacoma, the company insuring the cargo could not proceed against the shipowner, as carrier, for damage sustained during discharge of cargo and movement on the terminal because effect would be to allow insurer to sue its insured. Carriage of part of rock crushing machinery on deck was not a deviation, although clean bill of lading with no "on deck" notation was issued, in view of shipper's representative's acquiesence in carriage of that part of machinery on deck because it could not be put under deck.

Caribe Tug Boat Corporation v. J.D. Barter Construction Company, Inc., 509 F.Supp. 312 (M.D. Fla. 1981). In a

private contract for carriage of road building machinery from Jacksonville, Florida to Haiti, the carrier procured all risk cargo coverage on behalf of the shipper. The contract also allocated the "risk of loss, damage, misdelivery, delay and expense to or in connection with the cargo and the loading, stowage, transportation and discharge thereof" to the shipper and the corollary risk of loss, etc. to the vessels (which were to discharge over the beach) to the carrier. Shipper's efforts to avoid contract on Bisso principles were unsuccessful.

Dundas Shipping & Trading Co., Ltd. v. Stravelakis Brothers, Ltd., 508 F.Supp. 1000 (S.D. N.Y. 1981). Arbitration award upheld in the face of applications for modification by both parties. Agent (for apparently undisclosed shipowners) held liable for failure to present vessel despite agent's allegation of apprehension that unlawful (Rhodesian origin) cargo would be tendered based on incident in which unlawful cargo was shipped under another contract between same parties. Charterer failed to prove damages to arbitrators' satisfaction. Effort to prove charterer's damages ought to be measured by damages of connected company engaged in importing ore failed.

Croft & Scully Co. v. M/V SKULPTOR VUCHETICH, et al., 508 F.Supp. 670 (S.D. Tx. 1981). Container loaded with 1,755 cases canned soft drinks dropped by stevedore's forklift operator at load port. Himalaya clause in bill of

lading held sufficient to extend COGSA package limitation to stevedore. Shipowner's agent prepared bill of lading on shipowner's form describing cargo as "20' container STC:1755 cases Delaware Punch". Court held the container was the package and the shipper had passed up opportunity to declare a higher value than $500 and concluded that stevedore's liability was limited to $500.