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CARGO LAW NEWSLETTER NO. 5

Tyrone Pacific International, Inc. v. M/V EURYCHILI, 658 F.2d 664 (9th Cir. 1981). Ship agent's refusal to issue bills of lading until shipper paid dead freight was not enough to establish damages for conversion.

Philipp Brothers Metal Corporation v. S.S. RIO IGUAZU, 658 F.2d 30 (2nd Cir. 1981). Shipowner satisfied duty to deliver by turning cargo of tin bars over to stevedore. Thereafter stevedore, as consignee's bailee, was liable for shortage which developed later.

Ohoud Establishment for Trade and Contracts v. Tri-State Contracting & Trading Corporation, 523 F.Supp. 249 (D. N.J. 1981). Demonstrates the problems confronting a receiver of a container shipment of goods which turned out damaged. Claims were asserted against both ocean carrier and the manufacturer-shipper. The interplay between COGSA and the Uniform Commercial Code and court's refusal to refuse to allow consequential damages for lack of forseeability are of interest.

Jardine, Gill & Duffus, Inc. v. M/V CASSIOPEIA, 523 F. Supp. 1076 (D. Md. 1981). Shipowner held liable for variance between bill of lading weight and outturn weight notwithstanding argument that contract price was adjusted to accommodate any such variances.

Gebr. Bellmer K.G. v. Terminal Services Houston, Inc., 523 F. Supp. 941 (S.D. Tex 1981). Terminal operator protected by Himalaya clause with respect to crates of machinery secured on container flat, hence entitled to limit liability to $500 per package.

Nissho-Iwai American Corporation v. S.S. EURYMEDON, 1981 A.M.C. 2062 (S.D. N.Y. 1980), aff'd, 1981 A.M.C. 2068 (2nd Cir. 1981). Rust damage to steel products shipped on bulk log carrier with inadequate ventilation system. Failure to secure tarpaulins precluded owner from taking advantage of COGSA heavy weather defense. Post discharge storage on open pier constituted improper delivery chargeable to carrier.

Sunil Industries and Northwestern National Insurance Company v. The S.S. OGDEN FRASER, 1981 A.M.C. 2670 (S.D. N.Y. 1981). Allowed cargo purchasers to pursue shipowner after expiration of COGSA one year statutory period on theory that owner tortiously interfered with purchaser's contract relations with subcharterer by inducing subcharterer to cause vessel to deviate.

ACLI International, Inc. v. S/S MAERSK RANDO and S/S ADRIAN MAERSK, 1981 A.M.C. 2620 (S.D. N.Y. 1981). Holds contacts (of owner of first of two vessels involved) with New York insufficient to warrant court's asserting personal jurisdiction in claim for non-delivery, slackage and damage to cargo shipped under through bill of lading indicating United States the destination.

Usinor Steel Corporation v. M/V DORDRECHT, 1981 A.M.C. 2630 (S.D. N.Y. 1981). Shipowner allowed to assert time bar notwithstanding charterer's having purportedly granted extension of time for suit on behalf of owner, with owner's authority, because owner not given notice of extension by charterer.

West India Industries, Inc. v. Tradex, Tradex Petroleum Services, 664 F.2d 946 (5th Cir. 1981). Bill of lading superseded letter contract of afreightment and established that freight should be calculated on weight rather than volume basis in connection with shipment of used oil well equipment.

Proctor & Gamble, Limited v. M/T STOLT LLANDAFF, 664 F.2d 1285 (5th Cir. 1982). Shipowner fulfilled its duty with respect to cargo of bulk vegetable oil by delivering it at the discharge line flanges in good order. The cargo was pumped into a shore tank containing an incompatable commodity due to a mix up by the terminal workers in connecting hoses on shore manifolds. Bill of lading placed risk on vessel so far as vessel's permanent hose connections at which point delivery occurred.

Croft & Scully Co. v. M/V SKULPTOR VUCHETICH, 664 F.2d 1277 (5th Cir. 1982). In this container/package case the Fifth Circuit remanded to allow the court to consider the impact of charging freight on a "flat container rate" as evidence of the intention of the parties.

Smythgreyhound v. M/V EURYGENES, 666 F.2d 746 (2nd Cir. 1981). The Second Circuit follows Mitsui v. American Export, reaffirming that a container is not a package if the bill of lading discloses the contents. Even where the shipper had the choice whether to send the goods break-bulk or in container.

Westway Coffee Corporation v. M/V NETUNO, 528 F.Supp. 113 (S.D. N.Y. 1981). Shipowner held liable for apparent pilferage of cartons of instant coffee from sealed containers, apparently due to insufficient general security measures with respect to the containers between stuffing and loading, all notwithstanding the bills of lading described the containers as "said to contain."

Sea-Land Service, Inc. v. American International Movers, Inc., 528 F. Supp. 224 (W.D. Wash. 1981). Carrier was not estopped to assert properly calculated tariff freight charges by negotiating shipper's check for part of the freight due. Description in bill of lading controlled.

Gill & Duffus, Inc. v. S.S. AFRICAN SUN, No. 79-252, S.D. N.Y., 10/8/81. Shipowner able to shift entire claim to stevedore because stevedore failed to distinguish on discharge tally between cargo damaged in transit and cargo damaged during discharge. Stevedore breached implied warranty to carrier in failing to properly account for cargo entrusted to it.

Exxon Corporation v. Gulf Stevedore Corp., No. 81-1342, S.D. Tex., 12/14/81. Cargo (oil drilling rig) was damaged during loading and returned to manufacturer for repairs. A

bill of lading was issued.

Subsequently, the rig was presented a second time for shipment, and a second bill of lading was issued. The shipper sued for damage within a year of actual delivery but more than one year from the time rig should have been delivered under the first bill of lading. Action time barred. Two different voyages.

C.A. La Seguridad v. Delta Steamship Lines, Inc., 1981 A.M.C. 996 (S.D. Fla. 1980). Absence of space on face of short form bill of lading in which shipper might note increased valuation did not estop carrier from asserting $500 package limitation. Incorporation of the long form bill of lading by reference was sufficient to put shipper on notice of provisions in long form.

Forwarding v. C.A. Naviera De Transporte y Turismo, 486 F. Supp. 636 (S.D. Fla. 1980). Air-conditioning equipment bolted to wooden skid was COGSA package. The shipper was at risk for failure to declare excess valuation.

Farrell Lines, Inc. v. Highlands Insurance Company, 532 F. Supp. 77 (S.D. N.Y. 1982). Delivery to Monrovian National Port Authority pursuant to Port custom was proper delivery and was made at stringpiece, hence carrier not responsible for damage detected upon consignee's receipt of goods at Port Authority warehouse.

Kerr-McGee Refining Corporation v. M/V LA LIBERTAD, 529 F. Supp. 78 (S.D. N.Y. 1981). Ship's ullage reports relied upon in preference to shipper's meter readings taken several miles from point of delivery. Case also contains discussion of problems incidental to lightering into barges necessitated by vessel's excess draft resulting from ballasting required because of pipeline damage.

Amoco Oil Company v. M.T. MARY ELLEN, 529 F.Supp. 227 (S.D. N.Y. 1981). Amoco Oil Company was not alter-ego of Amoco Transport Company (charterer) so as to be bound by arbitration provision in charter party between carrier and Amoco Transport.

In re the Complaint of Delphinus Maritima, S.A., 523 F. Supp. 583 (S.D. N.Y. 1981). Ship stranded having deviated for refuge in Bermuda as result of snap rolling due to improper loading. Owner, charterer, stevedore and agents all held liable to cargo claimants and charterer was held liable to indemnify shipowner for damages resulting from improper cargo operations. By Judge Motley.

General Electric Company, International Sales Division v. SS NANCY LYKES, No. 80 Civ. 3348 (MEL) (S.D. N.Y. filed April 15, 1982). Deviation from published itinerary to take advantage of better fuel prices was "unreasonable" and carrier was held liable for loss of locomotive cabs during rough weather during deviation. Five hundred dollar package limitation not available.

General Trading Company v. S.S. HELLENIC CARRIER, No. 80 Div 3850 (JMC) (S.D. N.Y. April 8, 1982). Plaintiff's failure to note frozen cargo as "defrosted" on tally sheets was not enough to shield owner from liability where the only plausible explanation for defrosted condition was failure to maintain stipulated carrying temperatures. Prejudgment interest at 12.5% allowed as what plaintiff would have received from reasonably risk-free investment.

Complaint of Ta Chi Navigation (Panama) Corp., S.A., No. 81-7014 (2nd Cir. April 14, 1982). Second Circuit reversed decision of District Court (504 F.Supp. 209/Newsletter No. 3) and case remanded to allow shipper to try to show carrier's negligence caused fire or prevented extinguishment.