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Institute of London v. Sea-Land Service, Inc. United States Court of Appeals, Ninth Circuit, 4 August 1989 881 F.2d 761

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INSTITUTE OF LONDON v. SEA-LAND SERVICE, INC.
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In a contract for foreign carriage that is not statutorily governed by but rather incorporates the Carriage of Goods by Sea Act, COGSA has the effect of a contractual term only, and inconsistent terms may therefore be given force.

FACTS: A 45 foot yacht was carried aboard a cargo ship from Taiwan to the port of Tacoma, Washington. The yacht was held in a cradle on the deck of the ship during transit. During the process of unloading the yacht in Tacoma, the yacht slipped from its slings, fell into the water and was damaged.

The bill of lading for the shipment of the yacht incorporated by reference the Carriage of Goods by Sea Act ("COGSA"). COGSA regulates the contractual terms of ocean carriage covered by bills of lading and applies only to foreign carriage, meaning between ports in the U.S., its possessions or territories, and foreign ports.

The Act permits the parties to the bill of lading to incorporate COGSA's terms in their contracts, even where COGSA would not apply under its own authority. For example, by agreement of the parties, COGSA terms can be used for domestic carriage or for goods not normally within COGSA's scope. Under COGSA, liability for damage to shipped goods is limited to $500 per "package" or per "customary freight unit" ("CFU"). The act specifically defines "goods" so as to exclude cargo which by contract is stated as being carried on deck and is so carried.

The Institute of London Underwriters Company and Ferguson and Co., (the "cargo interests") sued the carrier, Sea-Land Services, and the stevedore, the Container Stevedorings Co., Inc., for damages to the yacht.

The district court found that COGSA could be applied to the contract. Thus, as to the $500 limit on liability for "goods" shipped per "package," the yacht was excluded from the per package limitation because it was shipped on the deck of the vessel. Therefore, the carrier may not rely on the $500 liability limit for goods per package. As to the CFU, the court ruled, as a matter of law, that the CFU is the unit upon which the cargo for freight not shipped "per package" is computed. Since Sea-Land Services charges by the linear foot and the yacht was 45 feet long, the court ruled Sea-Land's liability was 45 (the per foot CFU) multiplied by $500, or $22,500.

The cargo interest appealed the ruling that applied COGSA to the bill of lading thus limiting the liability for damages and also the extension of limited liability to the stevedores. The carrier and stevedore, together, cross-appealed the holding that the yacht comprised 45 CFU, thus bringing their liability to $22,500 rather than simply $500.

ISSUES: (1) Were terms used in the bill of lading and which were inconsistent with the provisions of COGSA, preempted by COGSA once it was invoked?

(2) Was the limitation of liability under COGSA properly extended to benefit the stevedores?

(3) Was the yacht a "package" or a non-package comprised of 45 CFU's?

ANALYSIS: As to the first issue, the Court of Appeals for the Ninth Circuit looked at how to incorporate inconsistent provisions via-a-vis COGSA and secondly, the ability of the cargo interests to opt out of the COGSA liability limit by declaration of a higher cargo value. The court held that terms, inconsistent with COGSA but which are otherwise valid contract terms, can be given force when COGSA is incorporated into a contract for foreign carriage but where COGSA would not otherwise apply on its own authority.

To completely invoke COGSA, the court ruled that the carrier and stevedores must also demonstrate that the shipper was given a fair opportunity to "opt out" of the bill of lading liability limits in order to enforce COGSA limits. The bill of lading clearly presents prima facie evidence that this opportunity was available by providing space for the shipper to declare a higher value for the cargo and expressly stating that such declaration eliminates the carrier's "package" liability limitations. Further, the cargo interests failed to meet their burden of proving that such an opportunity was denied to them. The court affirmed the lower court's ruling imposing a limitation of liability for the carrier under COGSA.

In deciding the question of extending liability limitations to the stevedores, the court looked to the Himalaya Clause. In admiralty, a Himalaya Clause is the language used in a contract to extend the carrier's defenses and limitations of liability under COGSA to agents and independent contractors. In this instance, both courts found that the bill of lading clearly expressed the intent of the carrier to extend liability limitations under COGSA to the stevedores. The language was unambiguous and the district court's extension of COGSA was affirmed.

Finally, the court held that the district court erred in its ruling that the yacht should be considered a non-package good. Instead, the court pointed to specific language in the bill of lading which states that "defenses and limitations of (COGSA) shall apply to goods whether carried on deck or under deck." Additionally, the bill of lading limits liability of "goods" to $500 and then defined "package" to include cargo shipped on a cradle.

The court found that the bill of lading covered the specific situation which arose in the case. The court refused to allow COGSA to preempt all contradictory contract terms when its sole force was by incorporation into a contract for foreign transport. The court reversed the district court's judgment based on a $500 limit per 45 CFU's or $$22,500. The case was remanded for judgment in the amount of $500, representing the limitation of liability on a single "package."

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