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Insurance Co. of North America v. G.I. Trucking Co. United States Court of Appeals, Ninth Circuit 2 August 1993 1 F.3d 903 (9th Cir. 1993)

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this case, thus preventing Ceramic from obtaining relief in that forum. *Ceramic*, 1 F.3d at 949. As a result, the court ruled that this case falls within the exception "where the remedy provided by the alternative forum is 'clearly unsatisfactory.'" *Id.* at 949-50 (citing *Piper Aircraft*, 454 U.S. at 254 n.22). Because no adequate remedy existed in Japan, dismissal was an abuse of discretion. *Id.* at 950. The vessel interests contended that dismissal was appropriate regardless of the German forum selection clause because Germany is an adequate forum and U.S. courts would have honored the forum selection clause anyway, thus forcing litigation in Germany. *Id.* The court did not decide these issues because they didn't pertain to whether Japan was an adequate forum. *Id.*

Christopher McCarthy '95

INSURANCE CO. OF NORTH AMERICA V. G.I. TRUCKING CO.
UNITED STATES COURT OF APPEALS, NINTH CIRCUIT
2 AUGUST 1993
1 F.3d 903 (9th Cir. 1993)

Ninth Circuit holds that the Interstate Commerce Commission ("ICC") regulations, specifying the minimum requirements of a written claim against a carrier under the Uniform Bill of Lading ("UBL"), apply to both contested and uncontested claims. A written claim against a carrier which identifies the shipment, contains a clear intention to hold the carrier liable, and provides a reasonable estimate of the claim, but does not specify a dollar amount, is legally sufficient under the ICC regulations, outlining the minimum requirements of the UBL.

FACTS: The G.I. Trucking Company ("G.I.") transported a shipment of intraocular lenses for Eye Technology, Inc. ("Eye Tech") from Los Angeles to Calexico, Ca., on April 19, 1988. *Insurance Co. of North America v. G.I. Trucking Co.*, 1 F.3d 903, 904 (9th Cir. 1993). The shipment was damaged. *Id.* Eye Tech's insurer, Insurance Company of North America ("INA"), compensated Eye Tech and became the subrogee of Eye Tech's claim against G.I. *Id.* On December 2, 1988, INA's subrogation unit, Recovery Services, International ("RSI"), sent G.I. a written notice of damage which identified the shipment, communicated an intent to hold G.I. liable and provided an estimate of $100,000 in damages to the lenses. *Id.* INA paid Eye Tech $97,500 on March 3, 1989. *Id.* On March 27, 1989, RSI sent G.I. a "Standard Form for Presentation of Loss" in the amount of $100,000, but G.I. denied liability and refused to pay. *Insurance Co.*, 1 F.3d at 904-05.

INA filed a claim against G.I. for carrier liability and negligence in California State court. *Id.* at 905. G.I. denied the claims, removed the suit to federal district court, and filed a motion for summary judgement, asserting that INA failed to file a written claim within the nine month period required by the ICC regulations. *Id.* The United States District Court for the Northern District of California granted the motion holding that INA's December 2nd notice of claim was for an "uncertain amount" and was not considered a legally sufficient claim within the requirements of the ICC regulations. *Id.* INA appealed to the United States Court of Appeals for the Ninth Circuit. *Id.*

ISSUES: (a) Do the ICC regulations,

specifying the minimum requirements of a written claim against a carrier under the UBL, apply to both contested and uncontested claims?

(b) Is a written notice of claim against a carrier which identifies the shipment, contains a clear intention to hold the carrier liable, and provides a reasonable estimate of the claim, but does not specify a dollar amount, legally sufficient under the ICC regulations outlining the minimum requirements of the UBL?

ANALYSIS: The Ninth Circuit first noted that G.I. Trucking and Eye Tech had entered into a carrier contract which incorporated by reference the UBL. *Insurance Co.*, 1 F.3d at 905. The court cited Section 2.(b) of the UBL which states that in order to recover from a carrier for damage, a written claim must be filed within nine months. *Id.* The court further cited the ICC regulations which outline the minimum requirements of a written notice of claim under the UBL. *Id.* The regulations state "that a notice must be in writing and contain (1) 'facts sufficient to identify the baggage or shipment ... of property, (2) [an assertion] of liability for alleged loss, damage, injury, or delay, and (3) a claim for the payment of a specified or determinable amount of money[.]'" *Id.* (alteration in original) (quoting 49 C.F.R. § 1005.2(b) (1992)).

(a) The court noted that the circuits are split as to whether the ICC regulations apply to contested claims. *Id.* The First and Second Circuits cite § 1005.1 of the ICC regulations which "provides that the regulations 'shall govern the processing of claims for loss, damage, injury, or delay to property.'" *Insurance Co.*, 1 F.3d at 905 (quoting 49 C.F.R. § 1005.1 (1992)). These circuits hold that the wording in the regulations applies to all claims. *Id.* at 905-06 (citing *Nedlloyd Lines v. Harris Transport*, 922 F.2d 905, 907 (1st Cir. 1991); *Pathway Bellows, Inc. v. Blanchette*, 630 F.2d 900,904 (2nd Cir. 1980)). The Seventh Circuit, however, holds that the regulations only apply to uncontested claims. *Id.* at 906 (citing *Wisconsin Packing Co. v. Indiana Refrigerator Lines, Inc.*, 618 F.2d 441, 445 (7th Cir.) (en banc), *cert. denied*, 449 U.S. 837 (1980)).

Although the Ninth Circuit has never addressed whether the regulations apply to contested claims, the court noted that *Culver v. Boat Transit, Inc.*, 782 F.2d 1467 (9th Cir. 1986), implies that the regulations apply to contested claims. *Insurance Co.*, 1 F.3d at 906. In holding that the regulations apply to contested claims, the court adopted the First Circuit's rationale in *Nedlloyd* which argues that if the regulations applied only to uncontested claims, carriers could circumvent the regulations by contesting all claims. *Id.* (quoting *Nedlloyd*, 922 F.2d at 908).

(b) The court further noted that although the Ninth Circuit has never decided whether the ICC regulations require a written claim to specify a dollar amount, it has held subsequent to the regulations that a claim was legally sufficient even though it did not specify an amount. *Id.* (quoting *Culver*, 782 F.2d at 1467-69.) The court observed, however, that the First and Second Circuits have ruled that the regulations require a written claim to specify a dollar amount. *Id.* (citing *Nedlloyd*, 922 F.2d at 908-09; *Pathway Bellows*, 630 F.2d at 900-03). In holding that the regulations do not require that a written claim specify a dollar amount, the court cited its decisions subsequent to the regulations, which hold that "written claims are to be construed liberally" and "the standard for determining sufficiency is one of substantial performance." *Id.* (citing

Taisho Marine & Fire Ins. Co. v. Vessel Gladiolus, 762 F.2d 1364 (9th Cir. 1985); *Culver*, 782 F.2d at 1469). The court stated that the purpose of the regulations is to provide the carrier notice of the claim's basis and the fact that compensation will be sought. *Insurance Co.*, 1 F.3d at 906. Achieving this objective is more important than the form of the written claim. *Id.* (citing *Taisho*, 762 F.2d at 1368). Furthermore, the court quoted *Culver* which "concluded that '[1] a written notice of damage coupled with [2] a clearly communicated intent to hold the carrier liable, plus [3] the carrier's investigation, suffices as a written claim.' *Id.* (quoting *Culver*, 782 F.2d at 1469).

The court emphasized that RSI's letter to G.I. provided written notice of the damage and an intent to hold G.I. liable. *Id.* at 907. Furthermore, the court observed that G.I. investigated the claim. *Id.* Because the purpose of the written notice is to provide the carrier with sufficient information to make an investigation, the court held that this is all that *Taisho* and *Culver* require. *Insurance Co.*, 1 F.3d at 907. Although RSI's letter did not specify the amount of damages, the court stated that it might still satisfy a strict interpretation of the regulations because the amount of damages was readily ascertainable by the information in the letter. *Id.* Finally, the court ruled that a written notice of claim which identifies the shipment, contains a clear intention to hold the carrier liable, and provides a reasonable estimate of the damage is all that is required to enable the carrier to make an investigation and thus satisfy the purpose of the regulations. *Id.* (citing *Culver*, 782 F.2d at 1469).

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