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SNC S.L.B. v. M/V Newark Bay, 111 F.3d 243 (2nd Cir. 1997) (Decided April 2, 1997)

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LIMITATION OF LIABILITY

Carrier's reorganization of services and routes to provide service to the United States government in support of Operation Desert Shield, which resulted in an unprojected stop in Lisbon, Portugal where damages to cargo were sustained, was not an unreasonable deviation sufficient to abrogate the contract of carriage and its COGSA \$500-per-package limitation.

SNC S.L.B. v. M/V Newark Bay, 111 F.3d 243 (2nd Cir. 1997)
(Decided April 2, 1997)

This case arises out of a contract of carriage dated November 23, 1990 between defendant-appellant Sea-Land Services, Inc. ("Sea-Land") and American Trading Industries, Inc. ("shipper") to transport a 37-foot yacht from Port Everglades, Florida to Marseilles, France. After the yacht was delivered in good condition to the carrier it was loaded onto the M/V NEWARK BAY on November 29, 1990 and carried to Felixstowe, England where it was transferred to the SEA EAGLE, a "feeder vessel," for shipment to Marseilles.

During this time, Sea-Land reorganized its routes to provide service to the United States government in support of Operation Desert Shield. As a result, Sea-Land transferred the yacht from the SEA EAGLE to another feeder vessel at Lisbon, Portugal on January 3, 1991 for the completion of the trip to Marseilles. It was uncommon for Sea-Land to use this port because, unlike the nearby port of Algeciras, Spain, Sea-Land did not have facilities in Lisbon. During this transfer the yacht was severely damaged.

The bill of lading for the yacht contained a "clause paramount" which incorporated by reference all of the provisions of the Carriage of Goods by the Sea Act (COGSA), which applies only to goods stowed between the decks or in the hold. However, a separate clause in the bill of lading applied COGSA to the stowage of the yacht above the deck, limiting Sea-Land's liability to \$500. Plaintiff-appellee SNC S.L.B. ("SNC"), as consignee of the yacht, and plaintiff-appellee Gilles Bentin, manager of SNC in Marseilles, brought this action against Sea-Land to recover the cost of the yacht claiming that the SEA EAGLE had "unreasonably deviat[ed] from the contract of carriage [by unloading the yacht at Lisbon] and the defendants are, therefore, strictly liable for the damage to the [yacht]." In response, Sea-Land denied that it had unreasonably deviated from the contract of carriage and that "the maximum liability of defendant, if any, is \$500 per package...as agreed to in the provisions of the bill of lading and under the provisions of [COGSA]."

The district court ruled in favor of the plaintiff, holding that Sea-Land unreasonably deviated from its projected route which constituted a breach of contract. The court based its decision on the fact that Sea-Land did not inform the plaintiff of the possibility that the yacht could be transferred at Lisbon. The court gave significant weight to testimony given by Brian Fitzgibbon, Sea-Land's general manager of vessel operations and planning for the Atlantic Division, who said that Lisbon had a reputation of being a "labor problem" port. The court deemed this testimony sufficient to declare that the port in Lisbon placed the yacht at foreseeable

risk during the transfer. The defendant, therefore, was found fully liable for the damages sustained by the plaintiffs thereby abrogating its \$500 liability limitation in the contract of carriage

On appeal, defendant contested the district court's finding that the transfer at Lisbon constituted an unreasonable deviation. The United States Court of Appeals will review a district court's findings for clear error and will reverse only when left with a "firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L.Ed. 746 (1948). In light of this, the court first examined general maritime law where a vessel is said to "deviate" when it leaves its planned or customary course or itinerary. The district court found that Sea-Land had indeed deviated from its course because Lisbon was not a customary port for its vessels. On appeal, the defendant did not challenge this finding but instead contended that its deviation was reasonable. The Court of Appeals agreed.

It is well settled that courts will deprive a carrier of the benefit of contractual limitation of liability for damage to goods only when a vessel unreasonably deviates from the terms of the contract. *Italia Di Navigazione, S.P.A. v. M.V. Hermes I*, 724 F.2d 21, 22 (2nd Cir 1983) In *General Elec. Co. Int'l Sales Div. v. S.S. Nancy Lykes*, 706 F.2d 80, 86 (2nd Cir 1983), it was held that a "deviation is unreasonable...when, in the absence of significant countervailing factors, the deviation substantially increases the exposure of cargo to foreseeable dangers that would have been avoided had no deviation occurred."

Holding that the deviation was in fact reasonable, the Court of Appeals reversed the district court's decision. The court concluded that the evidence did not support the finding that the yacht was placed in foreseeable and avoidable danger by its being transferred at Lisbon instead of at Algeciras. The court reasoned that the testimony given by Fitzgibbon explained why Sea-Land did not use Lisbon as a regular port rather than that the Lisbon port lacked competence to unload cargo. As such, the Court of Appeals found that the evidence which the district court relied on did not support the finding that the transfer at Lisbon placed the cargo at undue risk nor that the deviation to Lisbon was unreasonable.

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PUNITIVE DAMAGES UNDER MARITIME LAW (Two Cases)

I. Punitive damages are not available to non-seamen/non-seafarers under maritime law.

Frazer v. City of New York & Circle Line Sightseeing Yachts, Inc., 659 N.Y.S.2d 23
(A.D. 1 Dept. 1997)
(Decided June 24, 1997)

On May 25, 1986 a Circle Line sightseeing boat collided while on the Harlem River in New York with the Willis Avenue Bridge, allegedly causing injury to plaintiffs. Plaintiffs brought suit against both Circle Line and the City of New York for compensatory and punitive damages. Defendant's motion to dismiss the punitive damages claim was denied by the Supreme Court,