

# Commercial Union Ins. v. Sea Harvest Seafood Co. 251 F.3d 1294 (10th Cir. 2001) (Filed June 11, 2001)

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MARINE INSURANCE POLICY IS MARITIME CONTRACT TO BE  
INTERPRETED UNDER ADMIRALTY LAW

**Human failure does not constitute a derangement or breakdown, and, as used in maritime insurance contracts, the terms “derangement” and “breakdown” refer only to mechanical failure**

Commercial Union Ins. v. Sea Harvest Seafood Co.  
251 F.3d 1294 (10<sup>th</sup> Cir. 2001)  
(Filed June 11, 2001)

Commercial Union issued a maritime cargo insurance policy to Sea Harvest, a harvester and distributor of seafood, for a shipment of frozen shrimp on July 30, 1996. This case concerns the refrigeration clause of the policy. The clause insured against the damage or spoilage of the shrimp by “derangement or breakdown of the refrigeration machinery...”

Sea Land Service Inc. provided transport of the shrimp for Sea Harvest. Sea Harvest declared shipment on October 30, 1998. The parties contracted that Sea Land would maintain a temperature suitable for the preservation of the shrimp in transit from Bangkok, Thailand to Philadelphia, Pennsylvania. After a successful crossing of the Pacific Ocean the shrimp were unloaded in California to be shipped by rail to Philadelphia on November 2, 1998. During the transcontinental journey the refrigeration unit was not properly provided electrical power due to a failure to attach a “gen-set” power device to the cargo container. Upon delivery on November 18, 1998 an inspection of the goods by Sea Harvest found the shrimp to be unsuitable for human consumption and filed a claim for the loss with Commercial Union. Commercial Union enlisted Luard & Company to do an inspection, it concluded that the shrimp were without refrigeration for two and one half days. Independent laboratory analysis by Certified Laboratories and Michelson Laboratories found that spoilage had occurred and that the shrimp needed to be destroyed.

Commercial Union denied Sea Harvest’s claim for the shrimp under the policy. On January 8, 1999 Commercial Union commenced an action for declaratory judgment under the maritime insurance policy on the grounds that Sea Harvest did not establish that the shipment was in good condition when coverage attached as required by the policy, and that the policy did not cover the claim. Commercial Union moved for summary judgment in the action on August 27, 1999. The district court granted

the motion and held that the failure to attach a gen-set to a container did not constitute the “derangement” or “breakdown” of the refrigeration unit under admiralty law. The assertion that Sea Harvest needed to establish the condition of the shrimp prior to shipment under the policy was not reached by the court because it determined that the policy excluded the claim.

Sea Harvest appealed on the grounds that the court erred in applying admiralty law to the interpretation of the insurance policy. Sea Harvest argued that the word “derangement” as used in the policy was ambiguous and that under Kansas law governing the construction of ambiguous contracts the loss of the shrimp would be covered.

The 10<sup>th</sup> Circuit reviewed *de novo* using the same legal standard used by the district court, citing *Byers v. City of Albuquerque*, 150 F.3d 1271 (10<sup>th</sup> Cir. 1998). Under Fed.R.Civ.P. 56(c) summary judgment may be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Primary issues to be analyzed under the standard are 1) the choice of law and 2) the meaning of “derangement or breakdown of refrigeration equipment.”

Sea Harvest wanted the issue settled under state law, Commercial Union under admiralty. The 10<sup>th</sup> Circuit held that the contract was maritime in nature in spite of the fact that the damage occurred on land and that the rule of admiralty should therefore be followed. The court held that the land transport was incidental to the ocean carriage. The contract was not a mixed one because the bill of lading did not consider land transport, the premium was only based on the shipment from Bangkok to Los Angeles (even though they were aware of the final destination being Philadelphia), and the warehouse to warehouse clause was controlling rather than an explicit statement of land travel in the contract.

Having settled the choice of law issue, the court found no federal statute controlling as to whether the failure to attach the gen-set was a derangement or breakdown. In the absence of a Federal Statute the court may craft a rule. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 314, 75 S. Ct. 368, 99 L.Ed. 337 (1955). The court relied upon two 9<sup>th</sup> Circuit cases to provide the rule: *Larsen v. Ins. Co. of North America*, 252 F. Supp. 458 (W.D. Wash) (“*Larsen I*”), *aff'd*. 362 F.2d

261 (9<sup>th</sup> Cir. 1997) (“*Larsen IP*”); *Suma Fruit Int’l. v. Albany Ins. Co.*, 122 F. 3d 34 (9<sup>th</sup> Cir. 1997).

*Larsen II* held “[i]n order to be deranged, machinery must have some functional disorder in its own operation as distinguished from a simple failure to operate at all or an operation at an improper or insufficient rate of production or operation, due solely to the manner in which human beings in charge of the same choose to operate it.”

In *Suma* the Ninth Circuit held that human failure does not constitute a derangement or breakdown and that as used in maritime insurance contracts the terms “derangement” and “breakdown” refer only to mechanical failure.

The Tenth Circuit adopted the Ninth Circuit holdings as law and applied them to the case before it. In so doing the court found that the policy exclusion applied and that coverage was precluded under the policy. The grant of summary judgment was affirmed.

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