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Published biannually by the Admiralty Law Society of St. John's University School of Law to bring to the attention of practitioners and other interested persons the highlights of recent court decisions in the admiralty field. The case summaries presented herein may not discuss all issues addressed by the various courts. Therefore, readers are advised to consult original case sources.

COGSA LIABILITY AND RELATED DEFENSES

The Court of Appeals for the Fifth Circuit affirmed the district court's judgment holding that cargo was loaded undamaged and that notations indicating certain minor flaws in the bill of lading were within the customary usage for the cargo in question. Additionally, the Court held that "peril of the sea" defense is not available solely upon a showing of turbulent conditions; a carrier's duty to exercise due diligence is non-delegable; and the package limitation is not available in an action against a carrier's agent.

Steel Coils, Inc. v. M/V Lake Marion
United States Court of Appeals for the Fifth Circuit
331 F.3d 422
(Decided May 31, 2003)

Plaintiff, Steel Coils, Inc. ("Steel Coils"), entered into a voyage charter with Western Bulk Carriers ("Western Bulk") for the *M/V Lake Marion* ("vessel") to import flat-rolled steel from Russia to the United States. Western Bulk had time chartered the vessel from Lake Marion, Inc. ("Lake Marion"). Bay Ocean Management ("Bay Ocean"), acting as the manager of Lake Marion, employed the master and crew of the vessel in accordance with the time charter agreement.

The vessel loaded the rolled steel coils at the Latvian port of Riga between February 26 and March 2, 1997. The vessel arrived at Camden, New Jersey, on March 28, 1997. After departing from Camden, the vessel stopped at New Orleans and Houston. Steel Coils alleged that the cargo released in New Orleans and Houston was damaged by saltwater. This required Steel Coils to incur cleaning and re-coating costs associated with repairing the damaged cargo. Steel Coils filed suit under COGSA against the vessel *in rem* and against Lake Marion, Bay Ocean, and Western Bulk *in personam*, as well as a separate claim of negligence against Bay Ocean. The district court held defendant's jointly and severally liable to Steel Coils for \$262,000, and Bay Ocean liable for an additional \$243,358.94.

The district court reviewed the bill of lading in determining the condition of the cargo at the time it was loaded onto the vessel. The court found that the bill of lading established prima facie evidence that the cargo was loaded in the condition described therein. *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995). The district court rejected defendants Lake Marion, Bay Ocean, and the Vessel's claim that notations in the bill of lading, indicating rust staining and moisture on the rolled steel, established evidence that the cargo was damaged at the time it was loaded onto the vessel. The court properly considered facts indicating that the steel tested negative for saltwater residue at the port of loading. Moreover, an expert testified that the notations on the bill of lading indicating such blemishes were standard clauses used in the industry. The court weighed heavily on the holding in *Thyssen, Inc. v. S/S Eurounity*, 21 F.3d 533 (2d Cir. 1994). In *Thyssen*, the court concluded that notations on the bill of lading indicating rust and moisture were standard clauses that merely indicated normal atmospheric rust and not damaged steel.

Defendants attempted to escape liability upon a showing that they exercised due diligence in making the vessel seaworthy. The court rejected this claim holding that defendants failed to adequately ensure the seaworthiness of the vessel. The evidence supported the conclusion that the vessel was not reasonably fit to perform the task of shipping steel coils. The vessel was not found to be reasonably fit for transporting steel because the hatch covers were not maintained in good condition resulting in an intrusion of seawater into the cargo hold during the voyage. Additionally, the court reasoned that it was a lack of due diligence to load steel into holds which previously carried a cargo of rock salt without washing such areas out with fresh water prior to loading the steel.

The defendants unsuccessfully claimed that the terms of the voyage charter shifted the duty to exercise due diligence in ensuring the seaworthiness of the vessel. However, the court ruled that under COGSA carriers have the non-delegable duty to ensure that the vessel is reasonably fit to perform the task at hand. *Jamaica Nutrition Holdings, LTD v. United Shipping Co.*, 643 F.2d 376, 379 (5th Cir. 1981) ("COGSA grants freedom to contract out of its terms, but only in the direction of increasing the ship owner's liabilities.") Additionally, the defendants relied on *J. Gerber & Co. v. S.S. Sabine Howaldt*, 437 F.2d 580, 588 (2d Cir. 1971), in alleging that the damage to the cargo was a result of rough conditions at sea. The district court rejected this defense asserting that evidence of fierce winds alone do not constitute a peril of the sea allowing a carrier to escape liability under COGSA. The court determined that since the vessel failed to sustain any damage due to the inclement weather, there is no basis for asserting such a defense. Steels Coils was also successful on a general maritime negligence claim against Bay Ocean. As to this negligence claim, the court ruled that Bay Ocean was not covered by the COGSA package limitation.

In admiralty cases tried without a jury, an appellate court reviews the district court's legal conclusion *de novo* and the court's factual findings under the clearly erroneous standard. *Sabah Shipyard Sdn. Bhd. v. M/V Harbel Tapper*, 178 F.3d 400, 404 (5th Cir. 1999). On appeal, the Fifth Circuit found that language in a bill of lading can be interpreted in accordance with customary usage. The court also decided that evidence at trial supported the finding that the defendants failed to exercise due diligence in ensuring the vessel was seaworthy. The court also determined that it was clearly established that the hatches of the vessel were not maintained in good condition prior to commencing the

transportation of the cargo. Moreover, evidence showed that the holds had previously contained a cargo of rock salt contributing to the damage affecting the present condition of the cargo. The court affirmed the lower court's holding that a carrier cannot delegate its duty to provide a seaworthy vessel to another party. Finally, the Court of Appeals felt that peril of the sea defense was not available to defendants based on the lower courts analysis.

The court affirmed that Bay Ocean was not a carrier within the meaning of COGSA and therefore, was not entitled to its package limitation. In *Sabah*, the court stated that the determination of whether a party is classified as a carrier under COSGA focuses on whether that party executed a contract of carriage with the shipper. Under COGSA a party is classified as a "carrier" and thereby covered by the \$500-per-package limitation on liability if that party executed a contract of carriage with the shipper. It is undisputed that Bay Ocean is not explicitly named in the voyage charter between Western Bulk and Steel Coils. Nevertheless, Bay Ocean maintained that since it was a party to the time charter between Lake Marion and Western Bulk, they should be considered a "carrier" within the meaning of COGSA. The Fifth Circuit found the voyage charter was the applicable contract of carriage. However, even if the time charter held any weight, it would still not save Bay Ocean because it merely acted as agent in the charter, as evidenced by the express language contained in the time charter contract. In *Robert C. Herd & Co. v. Krawill Machinery Corp.*, 359 U.S. 297 (1956), the Supreme Court clarified that agents do not qualify for the \$500-per-package limitation, determining that Congress did not intend to limit liability of "negligent agents of a carrier." *Id.* at 301. For the foregoing reasons the decision of the district court was affirmed.

Frank M. Jenkins
Class of 2004

DEFINITIONS OF "SEAMAN" AND "VESSEL IN NAVIGATION" DEFINED UNDER THE JONES ACT

The New York Supreme Court erred in denying summary judgment to defendant City of New York where plaintiff was not a "seaman" nor working on a "vessel in navigation" as defined by the Jones Act (46 U.S.C. § 688).

Orr v. City of New York
Supreme Court of New York, Appellate Division, Second Department
304 A.D. 2d 541
(Decided April 7, 2003)

Plaintiff was employed by the defendant, City of New York ("City"), as a "marine oiler" or a "tankerman" at the St. George Terminal on Staten Island. Plaintiff was injured when he stepped off a gangplank onto a barge, where he slipped on oil. Plaintiff commenced action against the City pursuant to the Jones Act (46 U.S.C. § 688) which provided that "any seaman who shall suffer personal injury in the course of his