

### **Asoma Corporation v. SK Shipping Co., Ltd., et al. United States Court of Appeals for the 2nd Circuit 467 F.3d 817 (Decided October 24, 2006)**

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suspicionless searches in a variety of circumstances in which the government's actions were motivated by "special needs."

In applying the special needs doctrine, courts must assess the constitutionality of the challenged conduct by weighing "the government conduct -- in light of the special need and against the privacy interest advanced"-- through the examination of three factors: 1) the nature of the privacy interest involved; 2) the character and degree of the governmental intrusion; and 3) the nature and immediacy of the government's needs, and the efficacy of its policy in addressing those needs. *Palmieri v. Lynch*, 392 F.3d 73, 81 (2d Cir. 2004).

After a lengthy analysis of the three factors, the Court, while conceding that plaintiffs enjoyed undiminished privacy expectations in their carry-on baggage and in the trunks of their vehicles, found that the remaining two factors under the "special needs" doctrine weighed heavily in the government's favor. Because the Court found the intrusions on plaintiffs' privacy interests to be minimal and the measures adopted by LCT "reasonably efficacious" in serving the government's "undisputedly important" special need to protect ferry passengers from terrorist acts, there was no Fourth Amendment violation. Accordingly, the Court of Appeals affirmed the district court's judgment granting defendants' motion to dismiss.

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### **COURT OF APPEALS RESOLVES DISPUTE AS TO MULTIPLE FORUM SELECTION CLAUSES IN CASE ARISING FROM GOODS DAMAGED IN INTERCONTINENTAL SHIPMENT**

**In a case arising from damage to a shipment of steel coils shipped from Taiwan to the United States, the Court of Appeals was presented with the question whether a forum selection clause contained in a contract of charter, stipulating that claims be litigated in United States District Court for the Southern District of New York, or a forum selection clause contained in bills of lading, stipulating that claims be litigated in South Korea, governed the dispute. The Court concluded that the former was controlling.**

*Asoma Corporation v. SK Shipping Co., Ltd., et al.*  
United States Court of Appeals for the 2<sup>nd</sup> Circuit  
467 F.3d 817  
(Decided October 24, 2006)

In September 1999, Plaintiff-Appellant Asoma Corporation's ("Asoma") affiliate Macsteel International Far East Limited ("Macsteel Far East"), entered into a contract with Yieh Loong Enterprise Co., Ltd. ("Yieh Loong"), a Taiwanese company, for the purchase of 10,000 metric tons of steel coils for \$2.75 million. The steel was to be shipped to the United States during October or November 1999. Defendant-Appellee SK Shipping Co., Ltd. ("SK"), as "time chartered owner," entered into a "contract of charter," leasing a vessel to another Asoma affiliate, Metall und Rohstoff Shipping London Ltd. ("MUR London") for shipment of the coils. Adding to the complexity of the transaction was the fact that two other Asoma affiliates -- Metall und Rohstoff Shipping London USA Corp. ("MUR USA"), and Macsteel International USA Corp. ("Macsteel USA") -- played a role in the transaction.

The contract of charter identified the "charterer" as MUR London, or its "nominee." MUR London nominated Asoma. The contract of charter contained a forum selection clause requiring that

claims for cargo loss or damage be litigated in the United States District Court for the Southern District of New York. In January 2000, when the steel coils were subsequently loaded onto SK's vessel, the M/V Faros, in Taiwan, SK issued twelve bills of lading to Yieh Loong; the latter was designated the shipper, and the "consignee" was designated "To Order," rendering the bills negotiable. The reverse of each bill of lading contained a forum selection clause stipulating that any claim concerning goods carried under the Bills would be brought before the Seoul District Court in South Korea.

Asoma claims that, at some point after Yieh Loong delivered the steel onto the M/V Faros in Taiwan, and before the March 2000 delivery to the United States, the coils were damaged by seawater. Asoma brought suit against SK in the Southern District of New York, seeking in excess of \$140,000 in damages. Defendants moved to dismiss by reason of the South Korea forum selection clause in the bills of lading. After Asoma amended its complaint to assert its claims under the contract of charter, and to rely on that contract's forum selection clause, the defendants moved for judgment on the pleadings based on the South Korea forum selection clause. The district court ultimately dismissed the Amended Complaint, ruling that the controlling contracts of carriage were the bills of lading issued by SK to Yieh Loong. The district court concluded that the contract of charter between SK Shipping and Asoma was irrelevant, because the bills of lading were the contract of carriage.

The Court of Appeals reviewed the district court's factual findings for clear error and legal conclusions *de novo*. *Evolution Online Sys., Inc. v. Koninklijke PTT Nederland N.V.*, 145 F.3d 505, 508 (2d Cir. 1998). The Court noted that, as between a shipowner and the charterer, a bill of lading never affects the terms of a contract of charter; bills of lading operate as receipts for goods, and also as documents of title for the purpose of passing possession of the goods, but they do not operate as new contracts, or as modifying the contract of charter. *The Fri*, 154 F. 333, 336-37 (2d Cir. 1907). The Court concluded that the district court should have enforced the New York forum selection clause of the contract of charter, because SK Shipping entered into a contract with MUR London and its "nominee," Asoma, to litigate cargo claims brought under the contract in the Southern District of New York. SK Shipping could not escape that contractual commitment by issuing bills of lading containing a different forum selection clause to the shipper of the cargo. A carrier which entered into a contract of charter could not unilaterally alter the terms of its contract by issuing bills of lading containing inconsistent terms upon its receipt of the cargo.

Because Asoma was the charterer under a contract of charter made with SK as owner, Asoma was entitled to bring its claim for cargo damage in the Southern District of New York. The Court noted that the fact that the carrier's obligations would have been governed by a different contract had suit been brought under the bills of lading by a stranger to the contract of charter did not alter the fact that SK had agreed in the charter contract to be bound by its terms in disputes with the charterer.

Accordingly the Court of Appeals reversed the district court's dismissal of Asoma's suit against SK Shipping.

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### **COURT OF APPEALS SUBSTANTIALLY REDUCES DISTRICT COURT'S AWARD OF PUNITIVE DAMAGES IN *EXXON VALDEZ* CASE**

**Defendant oil company and its related shipping company sought review from a decision of the United States District Court for the District of Alaska, which imposed \$4.5 billion in punitive damages after defendants' negligence caused the oil tanker *Exxon Valdez* to run aground in Alaskan waters, resulting in a large oil spill, in 1989. The Court of Appeals for the 9<sup>th</sup> Circuit had remanded the district court's decision as to punitive damages on two previous occasions. The**