

Maritime Update: Himalaya Clause Protects Actual Carriers from Sizable Cargo Claim

ATTORNEYS

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On August 2, 2018, the United States Fifth Circuit Court of Appeals, in the case *Royal Smit Transformers BV, et al. v. Onego Shipping and Chartering, BV, et al.*, affirmed a judgment in favor of sea, rail and truck carriers in a dispute over damage to a power transformer. This opinion is significant because it addresses an issue of first impression in the Fifth Circuit.

A. Background

Royal Smit Transformers B.V. ("Royal"), a Netherlands company, manufactures large power transformers. In November 2015, Royal sold three transformers to Entergy Louisiana, LLC. Royal contracted with Central Oceans USA, LLC ("Central Oceans") for the delivery of the transformers from Rotterdam to St. Gabriel, Louisiana, by means of a multimodal through bill of lading.

The through bill of lading stated that its "provisions ... apply to all claims against [Central Oceans] relating to the performance of Multimodal Transport Contract." The bill of lading anticipated that, as Royal's intermediary, Central Oceans would facilitate the transport by contracting with other entities to serve as agents of Central Oceans. The bill of lading contained a Himalaya Clause, which prohibited Royal from suing Central Oceans' subcontractors.

The delivery comprised three legs and three actual carriers: ocean from Rotterdam to New Orleans (Onego Shipping & Chartering BV), rail from New Orleans to St. Gabriel (Illinois Central Railroad Company) and truck to Entergy's substation (Berard Transportation, Inc.). The respective carriers were not involved in, nor aware of, the agreement between Central Oceans and Royal.

Upon arrival at their destination, an inspection revealed the transformers had been damaged by "excessive vibration" in transit.

B. The Dispute

Royal and its cargo insurers sued Central Oceans and the actual sea, rail and truck carriers for breach of contract, fault and negligence, seeking over \$1.6 million in damages. The actual carriers collectively filed a Motion for Summary Judgment to have Royal's claims against them dismissed. They maintained that the Himalaya Clause protected them from all liability to Royal.

Royal opposed the motion, claiming it did not agree to contractual terms barring it from any action or recovery for damages sustained to its transformers from the entities involved in the transport. The district court disagreed and dismissed Plaintiffs' claims against the carriers. Plaintiffs appealed.

C. Discussion

One issue raised on appeal was whether the Himalaya Clause was enforceable. The Fifth Circuit noted that through bills of lading are central to modern maritime commerce, which uses available modes of transportation by air, water and land. A through bill allows a cargo owner to arrange complex transportation of goods in a single transaction. The Fifth Circuit affirmed the district court's ruling that the through bill of lading's Himalaya Clause was enforceable and protected the downstream actual carriers from liability to Plaintiffs.

D. Why is This Important?

1. A carrier providing transportation of goods as part of multimodal transport under a through bill of lading should consider securing a copy of the through bill of lading.
2. Cargo owners/insurers should understand that a Himalaya Clause contained in a through bill of lading could significantly limit their potential avenues of recovery for cargo damaged in transit.
3. Understanding the complexities and anatomy of multimodal cargo claims can make a significant difference in the outcome of a dispute.