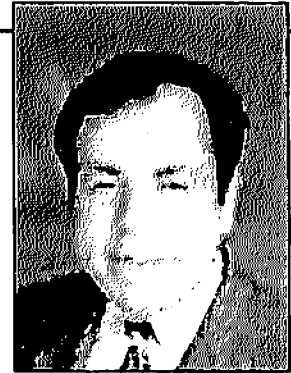


# COGSA's Package Limitation IS ALIVE AND WELL AS TO MOTOR VEHICLES

Daniel W. Raab\*



One of the major issues in ocean shipments, including intermodal litigation, is that of the package limitation under the Carriage of Goods by Sea Act ("COGSA"). This statute was originally adopted in 1936 and is one of the most often litigated sections of the Act. COGSA, among other things, provides that an oceangoing carrier's liability is limited to \$500 per package. A recent case discussing what constitutes a package is *Aniedobe v. Hoegh Autoliners, Inc.*<sup>1</sup>

*Aniedobe* involves the shipment of a motor vehicle from the Port of Baltimore to Nigeria. Plaintiff alleged the vehicle was badly damaged, as electrical parts such as the radio, computer and navigation system were removed, as well as damages to the body of the car. The Plaintiff sued the carrier, Hoegh Autoliners, Inc. ("Hoegh"), and the forwarding agent, Cartainer, Inc. ("Cartainer"). The carrier sought summary judgment asserting that the Plaintiff's notice of claim was untimely under COGSA. Hoegh also sought partial summary judgment on the basis that should it be held liable for damages, the amount should be limited to \$500.00. The agent, Cartainer, moved for summary judgment on the grounds that it merely acted as an agent for a principal, Hoegh.

Hoegh's Motion for Summary Judgment on the issue of liability was based on the COGSA requirement that notice of any loss or damage to goods must be given within three days after discharge. The court held in favor of the Plaintiff on this issue as the Plaintiff properly gave notice

within three days of the vehicle having been released to the Plaintiff by the carrier and/or its agent. The issue of limiting damages to the vehicle to \$500.00 became the crux of the case because should the carrier prevail on this issue, there would not be much point in continuing to litigate a case of that dollar amount. In arriving at its decision, the Court referred to COGSA by stating:

COGSA governs "every bill of lading ... which is evidence of a contract for the carriage of goods by sea to or from ports of the United States [and] in foreign trade." 46 U.S.C. §30701. Under COGSA, a default limitation of liability for carriers is established. Specifically, it states: "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier." 46 U.S.C. §30701 Section 4(5).

A key element in the battle over the package limitation is whether the shipper was given an opportunity to declare a higher value. In this case, the bill of lading allowed for the shipper to declare a higher value but the shipper declined to do so. The Plaintiff argued that the extent of the damages should have negated the \$500.00 limitation and tried to argue the Carmack Amendment as authority. However, the Carmack Amendment had no applicability to the situation as the Carmack Amendment applies to goods lost or damaged in interstate shipments. In the case at hand, the bill of lading issued was not for inland carriage within the United States and there is nothing in COGSA to override the damages due to their extensiveness. Shippers rarely declare a higher value, as it is expensive. In *Aniedobe*, the court held the motor vehicle was a package for the purposes of COGSA's package limitation. This is not that unusual. For instance, in *Expeditors Int'l of Wash., Inc. v. Crowley Am. Transp., Inc.*,<sup>2</sup> two buses were each held to be a package or customary freight unit.


The court also ruled Cartainer was really the forwarding agent of the Plaintiff. Plaintiff contended Cartainer should have insisted on declaring a higher value, which did not happen in this case. However,

\*Daniel W. Raab, P.A., Miami, Florida

the Court did not find that it was customary for forwarding agents to do so and granted Cartainer's Motion for Summary Judgment on liability.

The package limitation is alive and well as it relates to motor vehicles and heavy machinery. If a shipper

does not declare a higher value on an ocean bill of lading when shipping a vehicle or heavy machinery governed by the Carriage of Goods by Sea Act, there is a good chance the limitation will apply to the vehicle or piece of equipment. Therefore, it is a good idea

to purchase insurance that is offered by the forwarding agent which is often a federally regulated ocean freight forwarder. 

#### Endnotes

1. 2011 U.S. Dist. LEXIS 22909 (D. Md. March 7, 2011).
2. 117 F. Supp. 2d 663 (D. Ohio 2000).