

# Five Hundred Dollar per Package LIMITATION LIVES ON

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The package limitation continues to be litigated under the Carriage of Goods by Sea Act. An example of this is a case that was decided on May 13, 2014 entitled *Outokumpu Stainless USA, LLC v. M/V VEGALAND*, 21 F.Supp.3d 816 (2014).

In this particular case, the plaintiff sent industrial machinery from Genoa, Italy to Houston, Texas. The type of machine in question was a 63-ton tilt drive industrial machine for installation which was sent by Outokumpu Stainless USA to its facility in Alabama. The particular piece of equipment was prepared at Siemens-VAI Metal Technologies location. The value of the machinery was not declared by the shipper. When the ship transporting the machinery, the M/V VEGALAND, reached the Port of Houston, the cargo was found tipped over and on its side in damaged condition.

Subsequently, a lawsuit was filed in admiralty claiming \$566,740.80 in damages to this machine which is

also referred to as a melt shop. During the course of the litigation, both the plaintiff and defendant filed cross-motions for summary judgment. The defendant filed a motion for summary judgment to limit its damages to \$500. The plaintiff contested this assertion.

Judge Miller found that the packaging of the melt shop and the contents of the bill of lading were not in dispute. What is interesting is that the space for the number of packages was left blank on the bill of lading. The court noted that the melt shop was fully enclosed in a crate made of wooden slats and was attached to H-beams in order to facilitate shipping. The Judge felt that the shipper had the best knowledge of the packing and that the shipper had the responsibility of declaring a higher value and was given the opportunity to do so by the defendant. The plaintiff contended that it did not have an opportunity to declare a higher value. The district court rejected that argument and noted that there was a space in the bill of lading for declaring a higher value.

As a practical matter, shippers rarely declare a higher value on a bill of lading as it is usually less expensive to purchase cargo insurance. The court also stated that the incorporation of a published tariff within the bill of

lading also adequately gave notice regarding a chance to declare a higher value.

The plaintiff also asserted that there was a geographic deviation and that this would negate the \$500 per package limitation. Such a deviation must be unreasonable and cause material damage to the cargo interest. The court did not find that the plaintiff had established a genuine issue of material fact on this issue as it referred to its tariff on its website to rebut this contention.

As the Judge found that the crate was a package, there was an opportunity to declare a higher value and there was no deviation, he issued a summary judgment for \$500 in favor of the defendant.

When litigating a case under the Carriage of Goods by Sea Act, it is a good strategy to test the \$500 per package limitation early on before other types of discovery need to be done on liability. The parties should find out early on the amount of the damages at issue. In this case, the court felt that the parties were dealing with a \$500 case, not one for \$566,740.80. This decision also demonstrates why it is a good practice for a shipper to purchase cargo insurance. 