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Through Transport - Another US Supreme Court Admiralty Decision about a Train Wreck

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Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.: In June 2010, the U.S. Supreme Court resolved a split between the U.S. Courts of Appeals as to whether a law regulating railroad carriage of goods, the Carmack Amendment ("CA"), applied to the inland portion of an international shipment under a through bill of lading and thereby "trumped" the forum selection clause in it. The Ninth Circuit Court of Appeal held that it did. It reversed the trial court which had granted a motion to dismiss on the basis that "K" Lines' "Tokyo District Court" and Japanese law clause was reasonable and applicable to the inland rail carrier, Union Pacific, based on the Himalaya clause in the "K" Lines' through bills of lading. That court was, in turn, reversed by the Supreme Court, in a ruling that now is binding on all lower federal courts.



The Facts

Plaintiffs were cargo owners, and their subrogated underwriters ("cargo"), who arranged four different container shipments on "K" Line vessels from China to California and then on to Midwestern US destinations under the bills of lading.

In addition to the forum/choice of law clause and the Himalaya Clause, the bills of lading permitted "K" Line to "sub-contract on any terms whatsoever" for the completion of the journey. "K" Line sub-contracted for U.S. inland carriage of the containers with Union Pacific. The train carrying the containers derailed in Oklahoma, allegedly destroying the cargo.

The Carmack Amendment

Cargo claimed the protections of the CA which has specific venue provisions and imposes upon "receiving rail carrier[s]" liability for damage caused during the rail route under a bill of lading, regardless of which carrier caused the damage; the intention being to relieve cargo owners' burden of establishing the negligent carrier from among many. Cargo asserted that the Tokyo forum provision was pre-empted by the venue provisions in the CA.

The Majority Decision

The Supreme Court first examined its decision in *Norfolk Southern R. Co. v. James N. Kirby, Pty, Ltd.*, 503 U.S. 14 (2004) (holding a through bill governed by federal admiralty law, notwithstanding contrary state law) and stated much of that decision applied, because "Congress considered such international through bills and decided to permit parties to extend COGSA's terms to the inland domestic segment of the journey." As Cargo and "K" Line had so agreed, and as the Tokyo forum was otherwise reasonable, its terms were binding.

The majority rejected Cargo's argument that the CA's venue provisions controlled, holding it inapplicable "to a shipment originating overseas under a single through bill of lading," where there is no requirement for the receiving rail carrier to issue a CA-compliant bill of lading. "The initial carrier ... receives the property at the shipment's point of origin for overseas multimodal import transport, not for domestic rail transport." The court distinguished the case where the cargo owners themselves contracted with rail carriers after conclusion of the ocean voyage. Further, the court held that applying CA's provisions would "undermine" the purposes of COGSA in facilitating international contracts for carriage by sea; "sophisticated cargo owners" agreed to the Himalaya Clause, contracted with "K" Lines for through transportation and forum-selection clauses are indispensable to international trade.

The Dissent

The Ninth Circuit had followed the Second Circuit (*Sompo Japan Ins. Co. v. Union Pacific R. Co.*, 456 F.3d 54 (2d Cir. 2006)) so perhaps it is not entirely surprising that the newly elevated judge from that court, J. Sotomayor, wrote the dissent, in which Justices Ginsburg and Stevens joined. She considered the CA's language to have an "expansive intent to provide the liability regime for rail carriage of property" within the US so that it, and not the bill of lading, would govern. She concluded, quoting from Kirby: "It is not ... this Court's task to structure the international shipping industry."

Conclusion

The decision providing COGSA protections under a Himalaya clause and for enforceability of reasonable forum selection clauses to U.S. inland rail carriers under through bills of lading (where the carriage of cargo starts overseas) is a singular vindication of COGSA and of its importance to "the international shipping industry", including its sub-contractors.

Article by Jeremy Harwood of Blank Rome LLP, New York. The reference in the title is to the description used by the Court in Kirby.