

US SUPREME COURT APPLIES MARITIME LAW AND COGSA TO CLAIM FOR CARGO DAMAGE OCCURRING AS A RESULT OF TRAIN DERAILMENT



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The Supreme Court of the United States issued its decision on 21 June 2010 in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.* This decision clarifies and affirms the scope of the maritime jurisdiction of US courts in cases involving transportation of goods by water under multi-modal (through) bills of lading. As a result, if a through bill of lading is properly drafted and used for a multi-modal shipment from a foreign country to the US and damage occurs on an inland leg of the transportation, the ocean carrier will be able to limit its liability in accordance with the United States Carriage of Goods by Sea Act (COGSA) to \$500 per package or customary freight unit. In addition, a foreign choice of forum clause in such an ocean bill of lading will be enforced. Although it sounds odd that federal maritime law applies to damage occurring as a result of a train wreck in Oklahoma or that the parties in such a case are required to proceed in Tokyo, the Court's decision in *Kawasaki* will make predicting the outcome of such cases easier and should be welcomed by all parties who are involved in such contracts.

The decision in *Kawasaki* builds on the Court's decision in 2004, in *Norfolk Southern Ry. Co. v. Kirby Pty Ltd.* In this case, the Court held that disputes arising under an ocean carrier's multi-modal bill of lading were to be determined under federal maritime law, not the law of the state where the damage occurred and even though the damage resulted from a train derailment. In *Kawasaki*, the Court had to interpret and reconcile an apparent conflict between maritime law and another federal law, the Carmack Amendment, which governs the terms of bills of lading issued by domestic rail carriers. The Carmack Amendment requires a rail carrier to offer terms by which the carrier is liable virtually as an insurer. The carrier and shipper may contract for a lesser liability and usually do; however, the carrier must have offered full liability as a condition to enforcing the lesser, contractual terms.

In *Kawasaki*, the shippers delivered goods to the ocean carrier in China for shipment to inland destinations in the United States. The ocean carrier issued a multi-modal bill of lading that, among other things, gave the carrier the right to subcontract to other carriers, made COGSA applicable to the entire journey and required disputes arising under the bill of lading to be resolved in court in Tokyo. The ocean carrier subcontracted the carriage to a railroad company at the US port of arrival for transportation to the inland destinations. The railroad company did not issue its own bill of lading to the shipper. The goods were damaged inland while being transported by rail. The owner of the goods sued both the ocean carrier and the rail carrier. The rail carrier invoked the Tokyo forum selection clause and the \$500 per package limitation of COGSA. The owner of the goods sought full liability, contending that the rail carrier had not complied with the Carmack Amendment. The district court ruled in favour of the carriers. The appeals court reversed this decision. Disagreeing with the appeals court, a majority of six justices of the Supreme Court held that the Carmack Amendment does not apply to the inland segment of an overseas import shipment under a through bill of lading. Three justices joined in a dissent.

For the purposes of this article, the reasoning, much of it technical, of the majority and dissenting opinions need not be discussed. The decision announces a clear rule that is favourable to members and the club with respect to the carriage of goods to the United States under through bills of lading. Accordingly, members should consult their legal advisors with respect to the terms of their bills of lading as well as with respect to their procedures in order to take advantage of the Court's ruling and avoid becoming involved in litigation in inland US jurisdictions and/or to take advantage of COGSA's \$500 per package limitation of liability.