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TRANSPORTATION UPDATE

Supreme Court Issues Cargo Liability Decision

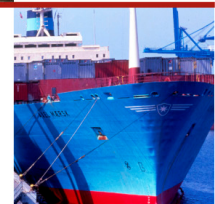
On June 21, the U.S. Supreme Court issued a decision in *Kawasaki Kisen Ltd. et. al. v. Regal Beloit Corp. et. al.*, holding that the Carmack Amendment does not apply to the inland portion of international import shipments to the U.S. where a through bill of lading extends application of the Carriage of Goods by Sea Act (COGSA) to the inland leg of the transportation. Thus, because COGSA does not prohibit the application of a foreign forum selection clause, the Court held that a Tokyo forum selection clause in the through bill of lading was enforceable against the shipper.

The case involved a shipper, Regal Beloit Corp., which purchased goods in China and arranged for Kawasaki Kisen Ltd. to provide ocean and rail transportation of the goods from China to the U.S. The shipment moved under a through bill of lading that incorporated COGSA for the ocean and inland portions of the shipment and selected Tokyo as the forum for claims related to the carriage. The shipper's goods were damaged on the inland leg of transit in the U.S. and the shipper filed suit against Kawasaki Kisen Ltd. and Union Pacific Railroad in the U.S. The defendants sought to dismiss the shipper's claims based upon the Tokyo forum selection clause; however, the shipper argued that the forum selection clause did not apply, because the Carmack Amendment applied to the U.S. inland portion of the transportation. The Carmack Amendment requires suits to be filed exclusively in the U.S., and would have barred application of the foreign forum selection clause.

The Supreme Court based its decision that the Carmack Amendment does not apply to through bills for U.S. imports on a textual analysis of the amendment. Specifically, the Court analyzed Carmack's requirements pertaining to the "receiving carrier," which is the carrier that receives the cargo for transportation at the journey's domestic origin and is required to issue a bill of lading for rail transport. The Court distinguished the role of a rail carrier that "receives" a shipment at a U.S. origin from a rail carrier that receives a shipment from an ocean carrier as part of a through bill of lading involving an import. Thus, the Court held that a U.S.-based rail carrier that receives cargo from an ocean carrier as part of a through bill is not a "receiving carrier" under the Carmack Amendment, and thus, it does not apply.

In light of the Court's decision, importers should review ocean carriers' contract terms for choice of forum provisions prior to shipping cargo to prevent the application of an inconvenient forum selection by the carrier.

The Court also expressly stated that its decision did not address the applicability of the Carmack Amendment where goods are received in the U.S. for export or whether it would apply if the goods are initially received in Mexico or Canada for shipment to the U.S.



FOR MORE INFORMATION

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