

“recklessly and with knowledge” in Japanese Law

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Two Standards for Limitation Break

- recklessly and with knowledge that damage/loss would probably result
 - Japanese COGSA, Art.13-2 (HVR, Art.4(5)(e)) (international sea carriage)
 - Limitation break & exclusion of damage-computation rule (HVR4(5)(b))
 - Act on Limitation of Liability of Shipowner, Art.3(3) (LLMC'76/96, Art.4)
 - Montreal Convention, Art.22(5) & Warsaw/Hague, Art.25
- gross negligence
 - Commercial Code, Art.581 & 766 (land & domestic sea carriage)
 - Exclusion of damage-computation rule
 - Also applied to breaking limitation by contracts and excluding exemption of liability for undeclared precious goods (CC Art.578)
 - Warsaw 1929, Art.25 (Supreme Court, 1976/3/19)

Gross Negligence

■ Two types of “gross negligence”

- State of mind nearly equal to “intentional” or “willful”
- Significant lack of due care

■ Supreme Court, 1980/3/25 (on Art.581)

- Hatchback door of a minivan opened while driving and goods (jewelry inside a cardboard box) fell out. Driver didn't check whether the door was locked, as he had never experienced similar accident
- Driver significantly lacked due care and was grossly negligent, exemption of liability for undeclared precious goods denied
- The amount of damage awarded was decreased by taking the account of shipper's fault for not declaring the value

“Recklessly and with Knowledge”

■ Literature

- “recklessly” standard is different from “gross negligence” and should be interpreted as such

■ Case law

- None on J-COGSA or Japanese LLMC
- Only one case on Warsaw/Hague: Nagoya District Court, 2003/12/26, affirmed by Nagoya Court of Appeals, 2008/2/28

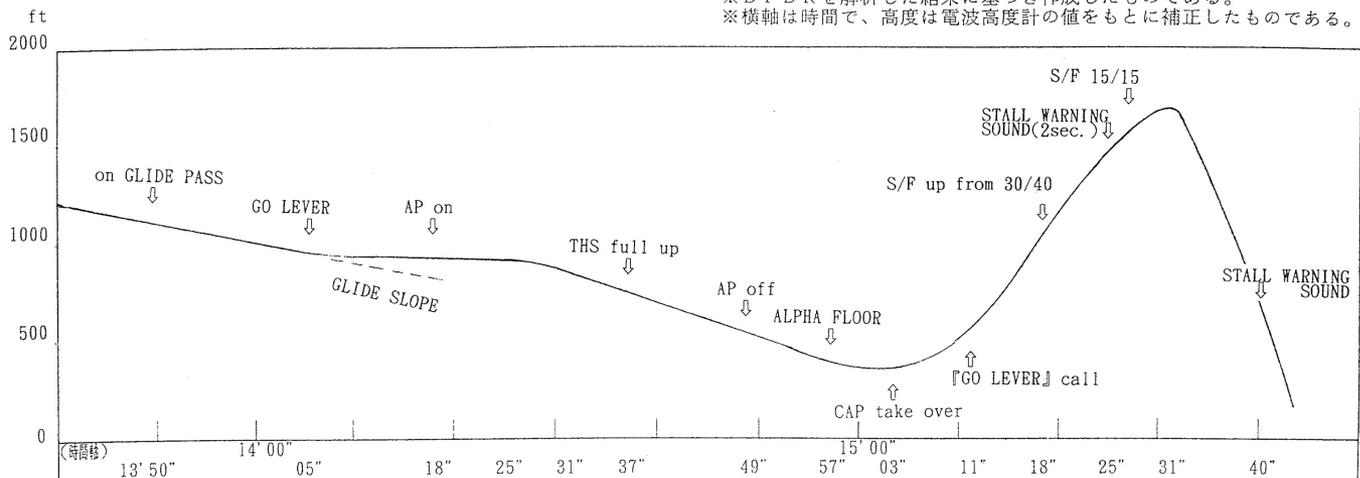
Nagoya District Court, 2003/12/26

- **Clash of China Airline, Flight 140 (1994/4/26)**
 - Operational error on landing procedure by co-pilot
 - Killed 249 passengers (7 survived) & all 15 crews
- **1 survivor and families of 87 victims sued China Airline (and Airbus) for total of about 200M USD**
- **China Airlines invoked limitation under Warsaw/Hague (250,000 francs \approx 20,000 USD)**
 - Cf. So-called “Japanese Initiative” on 1992
 - Cf. Montreal Convention entered into force on 2003/11/4
- **Limitation of liability was denied, ordered to pay 50M USD in total**

Nagoya District Court, 2003/12/26

付図5 拡大航跡図

※ D F D R を解析した結果に基づき作成したものである。
 ※ 横軸は時間で、高度は電波高度計の値をもとに補正したものである。



PITCH (度)	3.9	4.0	5.3	4.6	1.8	3.5	5.5	8.6	10.6	21.5	36.2	52.2	43.8	-12.0
AOA c (修正後) (度)	6.5	6.3	5.0	4.6	5.3	7.1	9.6	12.2	10.4	8.7	11.9	24.5	32.1	
CAS (kt)	139	141	145	146	141	138	129	127	128	135	124	87	102	
EPR #1/#2	1.09/1.08	1.10/1.09	1.18/1.17	1.03/1.03	1.01/1.01	1.00/1.00	1.04/1.04	1.04/1.04	1.30/1.30	1.35/1.52	1.47/1.27	1.61/1.61	1.60/1.62	
ELEVATOR *1 (度)	0.7	0.3	3.5	5.6	6.0	8.5	9.9	9.9	14.1	14.1	14.1	11.7	11.3	-10.2
THS *2 (度)	-5.3	-5.3	-5.3	-6.7	-9.5	-12.3	-12.3	-12.3	-12.3	-12.3	-11.3	-8.1	-7.4	-7.0

*1: 可動範囲 -30~15°, 精度±0.9°, <0=NOSE UP

*2: 可動範囲(ELECTRICAL) -13~2.5°, 精度±0.9°, <0=NOSE UP

Nagoya District Court, 2003/12/26

- Knowledge of the employee of the carrier necessary for limitation break
 - “should have known” is insufficient (from the drafting process)
 - Rejected plaintiff’s argument that break should be made easier since limitation under Warsaw is out of date
- Knowledge inferred from objective circumstances
 - Knowledge that the control lever was heavy → knowledge that he was attempting to override auto-pilot → basics of aircraft operation + highlighted warnings in the operation manual + simulator training → knowledge that his attempt would put the aircraft in out-of-trim and cause crash → knowledge that damage would probably result
- Effect on future maritime case law?