



RECKLESSLY AND WITH KNOWLEDGE  
THAT DAMAGE WOULD PROBABLY  
RESULT

INTERPRETATION OF CROATIAN COURTS

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# OPEN FOR INTERPRETATION

- Not interpreted in the maritime law practice
- Theory
  - *Dolus* with a subjective element
  - Ultimate breach of due diligence with awareness that the damage will probably occur
  - Necessary to establish a link between
    - (a) the actual damage, and,
    - (b) the actor's cognitive recognition, at that precise moment under those precise circumstances, of a strong possibility that the damage will probably occur

| Croatian Maritime Code | International Law |
|------------------------|-------------------|
| Article 390            | LLMC              |
| Article 566            | Hague-Visby       |
| Article 623            | Athens            |
| Article 816            | CLC               |
| Article 823b           | Bunker            |

# CASE LAW OF INTEREST (I)

- High Commercial Court, Pž-1367/80-2, 1981
- Carrier: issued the Bill of Lading, never loaded the cargo
- Consignor: transported the cargo via road and air, demanded compensation for the said costs
- First instance court – no right to avail limitation of liability, costs not related to sea carriage
- Second instance court – “carrier more than gross negligent”
  - Carrier aware of the urgency of shipment (artifacts, scheduled exhibition), forged the Bill of Lading (subject to criminal responsibility)

# CASE LAW OF INTEREST (II-A)

- High Commercial Court, PŽ-3312/87-2, 1988
- Undisputed facts
  - Issued the Bill of Lading, the cargo of jute (natural fiber) carried from Calcutta, via Rijeka, to Valparaiso (port of delivery per B/L)
  - Cargo discharged at San Antonio (usual port of discharge)
  - First stored in customs warehouse, then carried by road to Valparaiso
  - Both the customs and the road carrier declared the cargo damaged
- Disputed facts
  - Whether the carrier has notified the consignee of the discharge
  - Whether the carrier is liable until the cargo is delivered to the port of delivery
  - Whether the carrier can avail the right to limit liability

# CASE LAW OF INTEREST (II-B)

1. Unless specifically stipulated in B/L, consignee has a duty to receive the cargo at the port of delivery
  - “Notify address” stating that the cargo is discharged at the port of discharge does not affect this general obligation
  - Consignee was never actually notified
  - Usual discharge at different port – not relevant
2. Carrier liable for the cargo until delivered at the B/L stipulated port of delivery
  - Breach of contract - did not deliver the undamaged cargo to the port of delivery
  - Storage at port of discharge - carrier liable for the choice and work of the storekeeper
    - Carrier did not follow the specific rules with regard the storage of cargo

# CASE LAW OF INTEREST (II-C)

3. Carrier held liable, not allowed to avail the right to limit liability
  - Carrier knew that the in-door storage capacity is small, and that, therefore, the discharged cargo will be kept on open (based on his previous experience)
  - Carrier knew that the nature of cargo demands an in-door storage in order to prevent the cargo from being damaged
  - Carrier knew that keeping the cargo in open creates a highly probable possibility that the damage may occur
- The court found that the carrier knew and had to know that the damage will most probably occur, and nevertheless acted in a way that obviously exposed the cargo to the danger and the consequent damage
- Not just a breach of due diligence, but also a breach of general duty of fairness and a duty to act in accordance with fair trade customs

# SEAWORTHINESS

- High Commercial Court, Pž-2542/90 – lack of a required number of crew (including the steering master)
- Supreme Court, Revt-116/06-2, 2006
  - Loss of insurance coverage (sinking, loss of life)
  - Master – multiple breaches of norms regulating the safety of navigation
  - Courts:
    - Such behavior leads to serious repercussions
    - Not a *vis major*, accident or bad luck, but a foreseeable consequence of a continuous breach of duty
- Is hiring such a Master a serious breach of due diligence and a reckless behavior on the part of the designated person or an alter ego acting on behalf of a shipping company?