

“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

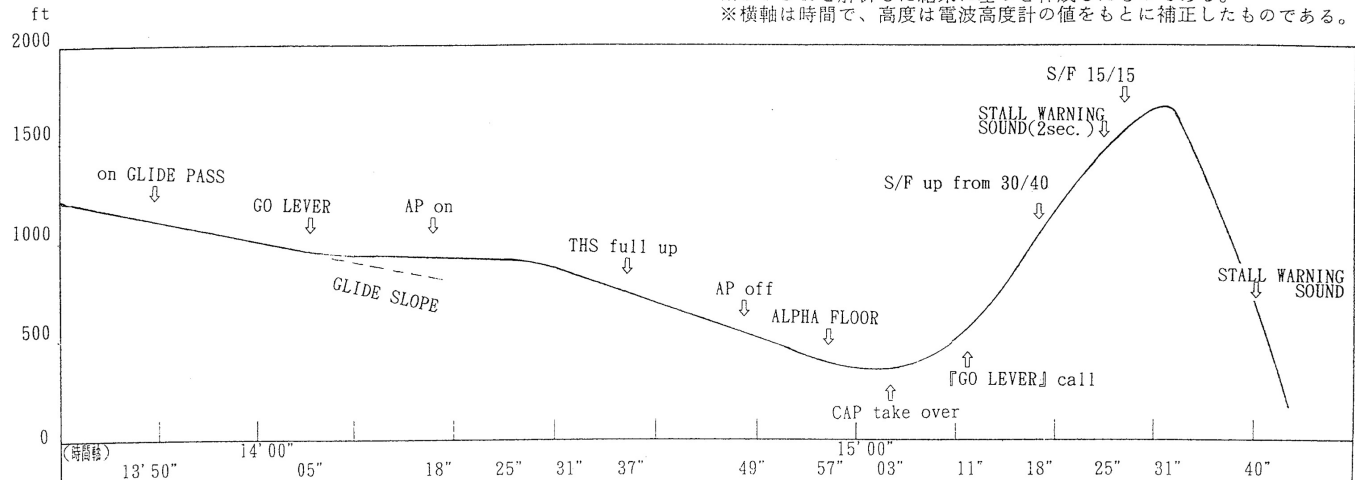
Nagoya District Court, 2003/12/26

- 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	1.2 1.8	3.5	5.5	8.6	10.6	21.5	36.2	52.2	43.8	-12.0
AOA c(補正後) (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	32.1
CAS (kt)	139	141	145	146	141	138	129	127	128	135	124	87	102	102
EPR #1/#2	1.09/1.08	1.10/1.09 1.21/1.21	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	1.60/1.62	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?