



Ship Type: All      Trade Area: USA

## **Bulletin 376 - 08/04 - Federal Court Ruling - Pallets not Cartons are US COGSA “Packages” - USA**

The Federal Court in New York has ruled that where the number of pallets and smaller packing units shipped in a container are both listed in the “description” box of a bill of lading and neither appears in the column listing the “number of packages,” the bill of lading is ambiguous, and the court will look to other evidence to determine the parties’ intent.

While bills of lading are viewed as “contracts of adhesion” and ambiguities in the printed contract are generally resolved against the carrier, the court ruled that “the justification behind resolving ambiguities against the carrier does not hold,” where the shipper causes the ambiguity by his typewritten description of the cargo.

The Judge noted that it was the shipper who;

- 1 chose to pack the cartons onto the pallets which were then wrapped in plastic
- 2 loaded the pallets, which made it easier to handle the cartons for transportation, into the container without any opportunity for the carrier to count the number of cartons
- 3 prepared the bill of lading which described the cartons as placed on eight pallets
- 4 chose not to declare the value and;
- 5 opted to obtain cargo insurance from plaintiff’s insurer in order to take advantage of the carrier’s lower freight rate based upon COGSA’s (Carriage of Goods by Sea Act) US\$500 package limitation.

The cargo was insured for US\$330,000, and if the shipper believed the cartons were the COGSA packages, it could have expected to collect US\$297,500 from the carrier. However, if the limitation was intended to apply to the eight pallets, the shipper could recover only US\$4,000. Hence, the need to insure the cargo with cargo underwriters.

Further ambiguity was caused by the shipper who entered under the “No. of Pkgs” column “1 (ONE) and described the cargo as “20 ft reefer container said to contain 595 cartons on 8 pallets.” This suggested the container was the intended COGSA “package.”

However, the Court of Appeals, Second Circuit, had ruled that where the number shown in the “No. of Pkgs” column is “plainly contradicted” in the description box, the court must look beyond that number to other figures in the bill of lading that refer to something else that could qualify as a COGSA package,. This rule plainly reflects the Second Circuit’s reluctance to treat a container as a “package.”

In this case, the parties agreed to ask the Court to decide only whether the pallets or the cartons were the COGSA “packages.”

The court ruled that Plaintiff “cannot use the ambiguity it created to obtain the maximum recovery.”

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