

# LP BULLETIN

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## Bulletin 570 - 3/08 - Owners' Dangerous Goods Liability Decision - USA

The following has been received from the law firm Blank Rome in New York:

**“On March 3, 2008, the United States Court of Appeals for the Second Circuit in *In re M/V DG HARMONY*, issued an important decision which clarifies the standard used to determine the liability of shippers and carriers transporting hazardous cargo under the Carriage of Goods by Sea Act (“COGSA”).**

Under the holding of this case, shippers will not be held **strictly liable** for damage caused by hazardous goods if both shipper and the carrier had pre-shipment knowledge of the dangerous nature of the cargo, even if the carrier lacked information about the precise characteristics of the cargo and its hazards. Instead, in such a case the shipper's liability will be determined on **negligence** principles. In particular, where the carrier alleges that the shipper failed adequately to warn the carrier about the characteristics of the particular shipment, the carrier must show:

- (1) that the shipper had a duty to warn because the cargo presented dangers of which the carrier could not reasonably have been expected to be aware
- (2) That the ship failed to provide the adequate warning, and
- (3) That this failure caused the damage complained of

### Conclusion

Where the carrier is generally aware of the hazardous nature of cargo, even if it is not aware of the precise nature of the risk, and the carrier nevertheless exposes it to potentially dangerous conditions, it will not be able to rely on the strict liability provisions of COGSA but will be required to show that the shipper acted negligently with respect to the cargo and/or its obligation to warn the carrier of the specific nature of the cargo's risks.”

A more detailed review of this decision can be found on the Blank Rome website  
<http://www.blankrome.com/siteFiles/Publications/5FF4899327997746DE3E8C933B222C5B.pdf>

Source of information: Blank Rome  
Email: [LLambert@BlankRome.com](mailto:LLambert@BlankRome.com)  
Tel: +1 212 885 5148  
Internet: [www.BlankRome.com](http://www.BlankRome.com)