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Not Reported in F.Supp., 1985 WL 6441, 1986  
A.M.C. 2295

American Maritime Cases

**ATLANTIC MUTUAL INSURANCE COMPA-  
NY, ET AL., Plaintiffs**

v.

**M/V HOEGH PILOT, HOEGH LINES AND  
LEIF HOEGH & CO., A/S, Defendants**  
UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF WASHINGTON  
August 20, 1985

No. C82-276R

**BILLS OF LADING - 121. Harter Act and U.S.  
COGSA - 174. Delivery, Shortage and Misdelivery.**

Ocean carrier's discharge of loaded containers into custody of Kuwait governmental authorities constituted proper delivery under the Harter Act. On the facts, cargo plaintiff failed to prove that cargo damage found three weeks later had occurred before or during discharge.

David Danielson and Craig Smith (Lane, Powell, Moss & Miller) for Plaintiffs

Thomas J. McKey and David Farrell (Bogle & Gates) for Defendants

BARBARA J. ROTHSTEIN, D.J.:

*A. Findings of Fact*

1. This litigation arose from the shipment of cargo from Seattle, Washington to the Port of Kuwait, Kuwait. The cargo consisted of 50,000 cases of 8 ounce cans of 7-Up (24 cans to a case).

2. Plaintiff Atlantic Mutual Insurance Company is the underwriter of the cargo. Plaintiff Atlantic Mutual Insurance Company paid \$95,260 \*2296 to plaintiff

Bahhar Trading Co., W.L.L., the consignee, on June 17, 1980, in payment of consignee's cargo damage claim and received a subrogation receipt from consignee for that payment. Plaintiff Atlantic Mutual Insurance Company is subrogated to the rights of consignee to the extent of that payment. Plaintiffs claimed additional moneys but withdrew those claims during trial.

3. Defendant Hoegh Lines is a joint venture of ships Arcadia A/S and Abaco A/S. Defendants were at all relevant times engaged in the business of common carriage of merchandise by water for hire and owned the vessel *Hoegh Pilot*. The *Hoegh Pilot* is a general cargo ship engaged in the common carriage of goods by water for hire between the ports, among others, of Seattle and Kuwait.

4. The shipper stuffed the 7-Up cargo into 19 containers. 2,640 cases were packed into each of 18 separate, 20 foot containers and 2,480 cases were packed into one additional, 20 foot container. The 19th container also had 1,400 cases of 7-Up trays and 4 cases of Uncola glasses. The shipper then sealed the containers and delivered them to defendants at the Port of Seattle in good order and condition. The shipper did not give defendants any instructions for special care of the cargo.

5. The cargo was loaded aboard the *Hoegh Pilot* on February 16, 1979, under bill of lading SE-4. Various external damage on 16 of the 19 containers was noted on the interchange receipts.

6. On March 31, 1979, defendants' agent gave consignee proper notice by telex that the cargo would be arriving in Kuwait shortly.

7. There is no evidence of cargo damage occurring while the cargo was in the custody of defendants. The containers travelled to Kuwait on a very good and uneventful voyage, during which the 19 containers were adequately lashed in a cool hold, below water level, and during which no rough seas were encountered.

8. The 19 containers were discharged at the Port of

Kuwait on April 14-15, 1979. As required pursuant to Kuwait's General Port Rules, and consistent with the custom and usage of the Port of Kuwait, the Kuwait Port Authority, together with Kuwait Customs, controlled all aspects of the cargo's discharge from the *Hoegh Pilot* and retained custody over the cargo until the consignee took physical custody of it. Sailable articles from the Kuwait General Port Rules include:

“54. The Port will provide facilities and labor for receiving cargo discharged from Vessels. The Port Director reserves the right to \*2297 withdraw such facilities and labor from any Vessel which in his opinion is working abnormally slowly, or for any other valid reason.

“62. The Port reserves the right to store cargo as best suited to meet the general overall working requirements of the Port, and the Port Director's decision in allocating the storage space for any Particular consignment or Ship's cargo shall be final.

“63. The Port will undertake the receiving, sorting and stacking of all import goods unloaded on the wharves.

“65. Goods will be delivered by the Port to consignees or their representatives against the production of a delivery order signed by the Ship's Agent in the form prescribed by the Port and after payment of all dues and charges thereon and after production of proof of release by Customs.

“68. The Port may demand all possible assistance from a ship with recourse to the use of special or suitable gear required for the discharge of fragile or other difficult cargo to ensure its safe handling into storage.”

9. At the time of discharge, external damage was again noted on 7 of the 19 containers and 3 of the containers' wire seals were noted as broken. The containers were not opened at that time.

10. Evidence offered by plaintiff that rough handling occurred sometime before discharge or at the time of discharge is unpersuasive. Neither the conditions aboard the ship, nor the fact that three of the containers' seals were broken at the time of discharge, nor the fact that one 1 X 10 centimeter tear was evident on one of the containers at the time of discharge, is proba-

tive of rough handling.

11. Following arrival of the 19 containers on the dock, the Kuwait Port Authority transported the containers to Customs. The containers were stored uncovered in a field until May 8-9, 1979. The containers remained in the custody of Customs until they were released and collected by consignee who took possession of 9 containers on May 8, 1979 and the remaining 17 on May 9, 1979, removing them by truck to his warehouse.

12. The containers were opened at consignee's warehouse and damage was noted. Defendants were not afforded the opportunity of a joint survey. The results of the survey are inconclusive that alleged damage was caused while the cargo was in defendants' custody.

13. It is more probable than not that the damage to the 7-Up cargo \*2298 in the containers was caused by prolonged exposure to Kuwait's desert heat and that the damage occurred after the containers were discharged in Kuwait. Plaintiffs' expert and surveyor did not offer any convincing evidence that defendants' rough handling caused the alleged damage.

#### B. *Conclusions of Law*

1. Jurisdiction is vested in this Court by virtue of [28 U.S.C. sec. 1333](#), the general maritime law, 46 U.S.C. secs. 1300-1315, the Carriage of Goods by Sea Act (“COGSA”), and 46 U.S.C. secs. 190-196 (the “Harter Act”). This is an admiralty or maritime claim within the meaning of [Rule 9\(h\) of the Federal Rules of Civil Procedure](#).

2. Under COGSA a cargo interest who wishes to recover against an ocean carrier for damage to goods bears the initial burden of proving both that the carrier received the cargo in good condition and that the carrier outturned the cargo in damaged condition. See *Vana Trading Co. v. Mette Skou*, 1977 AMC 702, 707, [556 F.2d 100, 104 \(2 Cir.\)](#), cert. denied sub nom. *Flota Mercante Grancolombiana, S.A. v. Vana Trading Co.*, 434 U.S. 892, 1978 AMC 1898 (1977). Plaintiffs did not establish their *prima facie* case inasmuch as there was no showing that the cargo was damaged prior to or the time of discharge.

3. The cargo was properly delivered pursuant to the

Harter Act.

4. In Kuwait, pursuant to the General Port Rules of Kuwait and consistent with the custom and usage of the Port, and as in other ports and as other cases have ruled, legal delivery occurs when the carrier discharges the cargo into the custody of the Port authority and its Customs officials inasmuch as those authorities are charged by the rules, custom, and usage of the Port with the duty to receive cargo and distribute it to the consignee. See, e.g., [All Commodities Supplies Co. v. Acritas](#), 702 F.2d 1260 (5 Cir. 1983); [Tapco Nigeria, Ltd. v. Westwind](#), 702 F.2d 1252 (5 Cir. 1983); [Farrell Lines, Inc. v. Highlands Insurance Co.](#), 1983 AMC 1174 , [696 F.2d 28 \(2 Cir. 1982\)](#); [La Interamericana, S.A. v. Delta Steamship Lines, Inc.](#), 1984 AMC 2972 (ED La. 1983), [aff'd](#), [736 F.2d 1524 \(5 Cir. 1984\)](#); [Tan Hi v. United States](#), 1951 AMC 127 , [94 F.Supp. 432 \(ND Cal. 1950\)](#).

5. Because defendants were not afforded the opportunity to conduct a joint survey of the alleged cargo damage, they were prejudiced thereby. See [La Interamericana](#), 1984 AMC at 2979.

6. Defendants are not liable for any of plaintiffs' alleged damages.

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W.D.Wash., 1985

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