

CARGO UPDATE NEWSLETTER

THE C.O.G.S.A. PACKAGE – March 2013

The liability of the ocean carrier is limited by the Carriage of Goods by Sea Act, (“COGSA”), to \$500 per package, or in case of goods not shipped in packages, to \$500 per customary freight unit, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading.

There has been much litigation as to what constitutes a COGSA package. COGSA does not define the terms “package,” and “customary freight unit.” One accepted definition of “package” is that it is a “class of cargo, irrespective of size, shape or weight, to which some packaging preparation for transportation has been made which facilitates handling, but which does not necessarily conceal or completely enclose the goods.” Aluminios Pozuelo, Ltd. v. S.S. Navigator, 407 F.2d 152 (2d Cir. 1968). One must look to the particular bill of lading description of “packages.” Generally, cartons, bags, and boxes have been determined to be COGSA packages. “Pieces” generally have been found not to be packages. “Pallets” have been determined to be COGSA packages in some instances. Some courts have held the container itself to be the “package” where the bill of lading lists the container as the package without further description. It is important for shippers to clearly state the number of packages they are shipping when booking carriage and list the number of packages in the “quantity” section of the bill of lading based upon the smallest unit of packaging. (Ex., 1 x 40’ container STC (said to contain) 1000 cartons of red wine).

Where goods are not shipped in packages, the “customary freight unit” is the measure of the carrier’s limitation of liability. The customary freight unit is the measure customarily used to calculate the freight. If, for example, the freight charge was applied as a lump sum for the shipment, the customary freight unit would be one, and the carrier’s liability would be limited to \$500. (1 x \$500). The recent trend in the courts seems to ignore the measure which is customarily used to calculate freight rates, such as measurement tons or cubic meters, and to define the customary freight unit as the actual freight unit used by the parties to calculate freight which in many cases is a lump sum or flat rate or per-container rate. The customary freight unit measure usually comes into context with shipments of single large units such as heavy equipment, machinery, vehicles, and yachts. Shippers should also be aware of any particular “package” definitions or “per container” or “per shipment” limitation clauses in carrier’s bills of lading.

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