

## **BONITA**

*(Cargo damage, reloading, deck-cargo, responsibility for owner or time charterer, choice of law, limitation of liability)*

The M/S BONITA, a ship transporting general cargo, was owned by Hill Ltd., Bergen, and registered in Bergen. BONITA was in October 1994 fixed on a twelve month “Baltimé” time charterparty to the Chilean “Aranjuez Line”, which had its principal place of business in Valparaiso.

In the beginning of March 1995, a shipment of Vinyl Acetate was sold by a company in Baltimore to the firm Tastad & Co. in Bergen. The company in Baltimore phoned the agent of Aranjuez Line and under the telephone conversation it was agreed that Aranjuez Line should procure the carriage of the goods by sea from Baltimore to Bergen. The shipment was brought to the docks and loaded in BONITA. The agent of Aranjuez Line issued a “Conlinebill” bill of lading for 150 barrels each containing 150 kilos of Vinyl Acetate. The bill of lading was signed by the agent “on behalf of the master”. On the front page of the bill of lading (page 2) in the box “Port of discharge” was typed “Bergen via Copenhagen”. Aranjuez Line did not normally call Norwegian ports, but it had occasionally done so when there was sufficient cargo to make it profitable.

BONITA arrived in Copenhagen around March 18th. As the barrels with Vinyl Acetate were the only cargo destined for Norwegian ports, they were reloaded onto the Dutch general cargo ship M/S MALICE. Malice was chartered in Copenhagen on a “Gencon 1994” voyage charterparty by the agent of the Aranjuez Line in order to complete the transport to Bergen. As MALICE was already fully loaded in the holds the master on his own decided to store the barrels on deck.

MALICE arrived in Bergen March 27th. When the goods were discharged it appeared that four barrels were missing. After some pressure the master of MALICE admitted that the four missing barrels had not been sufficiently lashed and might have been washed overboard on the trip from Copenhagen, as the journey had been extremely stormy. According to the amount of the invoice, the loss was estimated at NOK 5100 per barrel.

Tastad & Co. (the Norwegian receiver of the goods) sued the owner of BONITA (Hill Ltd.), the Aranjuez Line and the owner of MALICE for damages in the Court of Bergen.

### **1. The defence of the owner of Bonita (Hill Ltd.):**

The owner of BONITA (Hill Ltd.) refused all claims. Primarily because BONITA was chartered on a time-charter party to the Aranjuez Line without Hill Ltd. having any influence on the occupation of the ship. Furthermore, it was claimed that Hill Ltd. under no circumstances could be responsible for loss that had arisen while the goods were onboard MALICE, since this was a ship totally irrelevant to Hill Ltd.

## 2. The defence of the Aranjuez Line:

The Aranjuez Line claimed that the line had to be acquitted according to Chilean law. Chile had never joined neither the Haag Convention nor the Haag-Visby Convention and it was documented to the Court of Bergen that Chilean courts in similar cases consequently had acquitted the shipping line. The Aranjuez Line submitted that the connections to Norway or Denmark were not sufficient to make the Norwegian or Danish Maritime Code applicable. Even if the Norwegian or Danish Maritime Code were to be applied, the Aranjuez Line should be acquitted. The cargo was loaded on deck and therefore not subject to the mandatory Haag-Visby Rules. Furthermore, the damage had arisen after a legitimate reloading, and negligence onboard MALICE, if proven, would not bring any liability upon the Line. Finally, the BONITA was chartered on a time charter-party with a Norwegian time-carrier and according to the ‘‘Conlinebill’’ the charterer would therefore be without any responsibility whatsoever.

## 3. The defence of the owners of MALICE:

The owners of MALICE claimed to be acquitted. They submitted that they were not responsible, since the damage to the goods was caused by the hard weather. Regardless of this, there were neither a bill of lading nor a charter-party creating a contractual relation between MALICE and Tastad & Co. and accordingly there could be no responsibility. Finally, the owners of MALICE submitted that any negligence committed had to be regarded as negligence in the management of the ship, which would lead to acquittal from all liabilities. Regarding the argument that MALICE had no right to store the goods on deck, the owners of MALICE pointed out that stowage on deck was the only way to get the goods to Bergen. It was documented that the next suitable departure to Bergen would be three weeks later than the departure of MALICE from Copenhagen.

Both the owner of BONITA (Hill Ltd.), the Aranjuez Line and the owners of MALICE claimed alternatively that any liability should be limited to NOK 12000. Tastad & Co. disputed this and claimed that the liability should be unlimited. Tastad & Co. documented the loss, including loss of profit, which was NOK 31550. It was agreed, that one SDR equalled NOK 10.

Discuss the claims and arguments. Decide whether Tastad & Co. (the receiver of the goods) has got any claims against the defendants and, if so, for how much.

Discuss also, whether there will be claims of recourse between the defendants, if one or more of the defendants are found liable.