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When Actions Really Do Speak Louder than Words: The Central District of California Expands the Definition of "Implied Consent" in Maritime Shipping Contracts in *Milos Product Tanker Corp. v. Valero Marketing & Supply Co.*

I. INTRODUCTION

Who is going to pay me? Too often, what begins as a simple question in a contract for the carriage of bulk cargo by sea is anything but. Subcontractors, delays, conflicting "contract" documents, and ambiguous terms can transform a straightforward A to B shipment into a complex dispute. This is the situation Milos Product Tanker Corporation (Milos) recently found itself in after entering into a voyage charterparty with GP Global Ptd. Ltd. (GP Global) for Milos' tanker, *M/T Seaways Milos*, to transport nearly 40,000 tons of jet fuel from Singapore to California on behalf of Valero Marketing and Supply Company (Valero).[1] Under the terms of the charterparty, Milos was supposed to receive payment of freight and other related charges immediately after the discharge of the fuel in California—"as per [Milos'] telexed/emailed invoice"—but in another clause, Milos agreed to release the fuel to Valero without the original bills of lading in hand if GP Global provided a letter of indemnity.[2] The charterparty also provided that Milos would have an absolute lien on the cargo and all sub freights for all amounts due, and included an English choice of law clause.[3]

1. Milos Prod. Tanker Corp. v. Valero Mktg. & Supply Co., 2:22-CV-01545-CAS, 2023 WL 4296055, at *1-2 (C.D. Cal. June 28, 2023) (Valero filed a timely notice of appeal on July 23, 2023). The parties used an industry standard SHELLVOY 6 charter form. *Id.*

2. *Id.* The full text of this clause was "[i]f original bills of lading are not available at discharging port in time, owners agree to release cargo in line with charterers' instructions against L.O.I. as per owners P&I Club wording without bank guarantee signed by charterers." *Id.*

3. *Id.* at *2.

Although it was not a signatory to the charterparty, Valero negotiated the details of the shipment with GP Global and the seller, Koch Refining International PTE Ltd. (Koch), before and during the voyage.[4] Through these negotiations, Valero requested and received a copy of the charterparty, instructed GP Global to include certain terms on the bills of lading, and requested quality/quantity assurance documentation.[5] On July 19 and July 20, 2020, the fuel was loaded on to the *Seaways Milos* in Singapore, and two negotiable bills of lading were issued naming Valero as the notify party, GP Global as the shipper, and containing the clause "Freight and all other conditions and expectations as per Chartered stated date in Freight Payable As Per Charterparty."[6] When *Seaways Milos* arrived in California, Valero did not have the original bills of lading in hand. However, under the terms of their charterparty with GP Global, Milos allowed discharge of the fuel based on a letter of indemnity from GP Global.[7] Several months passed, and Milos still had not been paid freight or the other related charges.[8] On March 8, 2022, Milos filed a complaint against Valero for $1,054,456.74 in unpaid freight charges and other expenses. Both parties filed cross-motions for summary judgment on March 22, 2023.[9] The United States District Court for the Central District of California *held* that even if Valero never agreed orally or in writing to pay Milos, Valero had still (1) expressly consented to the terms of the charterparty through its conduct, control of the cargo throughout the voyage, and acceptance of cargo; and (2) regardless of express consent, Valero had an implied obligation to pay freight charges as the recipient and owner of the cargo who benefitted from its carriage. *Milos Prod. Tanker Corp. v. Valero Mktg. & Supply Co.*, 2:22-CV-01545-CAS, 2023 WL 4296055, at *13 (C.D. Cal. June 28, 2023).

II. HISTORICAL BACKGROUND

The responsibility for paying freight charges often falls on shippers when a dispute arises out of a charterparty or bill of lading.[10] However, the United States Supreme Court has shifted liability, in certain circumstances, onto entities that are not express parties to those

4. *Id.*

5. *Id.*

6. *Id.* at *3. Valero received copies of the bills of lading on July 21, 2020, the day after *Seaways Milos* departed Singapore. *Id.*

7. *Id.* Valero did not receive the original bills of lading until over two months after discharge. *Id.* at *4.

8. *Id.*

9. *Id.* at *1.

10. *See, e.g.*, Louisville & N. R. Co. v. Central Iron & Coal Co., 265 U.S. 59, 67 (1924).

agreements. The Court's decision in *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. v. Fink* was one such instance.[11] In *Fink*, a railway company brought an action against the consignee over unpaid tariffs for cargo it carried from Los Angeles, California to Dayton, Ohio.[12] The consignee claimed that they were unaware of any additional fees beyond those specified on the waybill to be paid upon receipt of the cargo.[13] The Court found that the consignee was liable for the tariffs and stated that "the weight of authority seems to be that the consignee is prima facie liable for the payment of the [tariff] charges when he accepts the goods from the carrier."[14] While the Court also grounded its decision in the applicable federal statutes governing interstate commerce by rail, it highlighted the consignee's acceptance and ownership of the cargo as a factor that might shift liability from the shipper in transactions for the shipment of goods.

The Ninth Circuit has consistently analyzed a non-party's course of conduct to determine whether it should be bound to the terms of a bill of lading. In *Pacific Coast Fruit Distributors, Inc. v. Pennsylvania*, the court held that a third party was liable for freight charges under bills of lading based on a manifestation of consent to be bound through its conduct.[15] According to the court, the acceptance and subsequent redirection of the cargo were sufficient in showing that "unqualified unequivocal dominion and control of the shipments . . . is equivalent to acceptance and actual receipt of the goods for the purposes of determining liability for freight charges."[16]

How or why a non-party accepts cargo has been a central factor in the Ninth Circuit's course of conduct analysis. In *States Marine International, Inc. v. Seattle-First National Bank*, the court held that a bank that acted solely as a creditor who was notified of the discharge of cargo into the plaintiff's warehouses was not bound by the terms of a shipping contract.[17] The court explained that because the bank dealt with the acceptance and subsequent sale of the cargo solely as an authorizing power, it could not be found to have manifested dominion over the cargo sufficient to assign liability for freight charges to it.[18]

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11. 250 U.S. 577, 581 (1919).
12. *Id.* at 580.
13. *Id.*
14. *Id.* at 581.
15. 217 F.2d 273, 275 (9th Cir. 1954) (after receiving a shipment of tomatoes as consignee the Appellant made successive diversions of the shipments to various designated consignees, thus taking on the role of consigner).
16. *Id.*
17. 524 F.2d 245, 249, 1976 A.M.C.1463 (9th Cir. 1975).
18. *Id.*

The Second Circuit took this reasoning further in *A/S Dampskibsselskabet Torm v. Beaumont Oil Ltd.*, where it held that a defendant was not liable for freight charges because it acted solely as a creditor in its management of the discharge and storage of cargo on behalf of its debtor.[19] Comparing the defendant's conduct to that of the bank in *States Marine*, the Second Circuit noted that, contrary to the creditor in that case, the defendant was named as a consignee of the bills of lading and had co-signed a letter of indemnity for the cargo's release.[20] Nonetheless, the court ultimately found that the defendant's conduct prior to discharge was "consistent with [its role] as a secured creditor,"[21] and that its conduct was "not indicative of an ownership interest."[22] Clearly, the line between acting as a secured creditor and manifesting an ownership interest is thin but—according to the Second Circuit, at least—the analysis should prioritize the nature of the activity.[23]

Other jurisdictions have also identified exceptions where parties to a shipping contract may be liable even in the absence of an express obligation. In *Ingram Barge Co., LLC v. Zen-Noh Grain Corp.*, the Sixth Circuit—while affirming the dismissal of an action to recover freight charges from a non-party to a bill of lading—explained that liability can, in some cases, be manifested through a non-party beneficiary's consent to be bound.[24] The court outlined three factors that may show third-party consent to the terms of a contract: "(1) filing suit [asserting rights under the bills of lading]; (2) its course of conduct; or (3) accepting through its agent."[25] The court also clarified that absent a sufficient showing of consent, a non-party beneficiary cannot be held liable simply because it is a beneficiary of the bills of lading.[26]

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19. 927 F.2d 713, 722, 1991 A.M.C. 1573 (2d Cir. 1991) ("A court should look beyond the shipper's primary obligation only pursuant to statutory or contractual obligations, or if the conduct of another party gives rise to an implied obligation to pay freight").

20. *Id.* at 720 (overruling the trial court's holding that the additional step of being "active" in the release of the cargo created an implied obligation for the defendant-creditor).

21. *Id.* at 720.

22. *Id.* at 721.

23. *Id.* at 720 (". . . the proper inquiry was not whether the secured creditor was 'active', but rather whether its activity was indicative of an ownership interest").

24. 3 F.4th 275, 279 (6th Cir. 2021) ("Consignees are considered third-party beneficiaries to bills of lading . . . [a] bill can bind them, but only with their consent").

25. *Id.*

26. *Id.* at 280 (the appellee, who listed as a notify party on bills of lading for the ship of grain, went out of its way to avoid a contractual relationship with the carrier when it received notice of the carrier change in term, by sending notice that it did not consider itself bound by terms between the seller and the carrier); *see also*, Dynamic Worldwide Logistics v. Exclusive Expressions, LLC, 77 F. Supp.3d 364, 374 (S.D.N.Y. 2015) (noting that "[a]lthough intended

While analysis of a party's conduct can be central to identifying consent to be bound to terms in a shipping contract, courts have also found that the mere fact of accepting cargo can create an implied obligation regardless of consent. In *Arizona Feeds v. Southern Pacific Transport Co.*, the Court of Appeals of Arizona found an implied obligation to pay freight for an assignee to a bill of lading due to it accepting and assuming control of the cargo.[27] The court explained that by the assignee stepping in for the shipper to accept the cargo, an implied obligation was created.[28] Further, the court noted that acceptance of the cargo manifested control to such a point that the assignee was clearly more than just a beneficiary of the shipment.[29]

A secondary element that courts consider is how an entity has been put on notice of obligations provided under a charterparty or bill of lading. In *OOCL (USA) Inc. v. Transco Shipping Corp.*, the United States District Court for the Southern District of New York held that a defendant listed as a consignee on three bills of lading was liable for freight because it had notice of provisions outlined in those documents.[30] Through an analysis of the party's conduct, the Southern District found that the defendant had numerous opportunities to view the terms of the bills of lading, had an employee endorse the bills of lading, and had presented ninety other bills of lading from the same carrier.[31] All of this, the court held, offered a more than sufficient showing that the defendant was on notice of the terms and the freight obligations under the bills of lading.[32]

III. THE COURT'S DECISION

In the noted case, the United States District Court for the Central District of California held that Valero was liable for the freight charges owed to Milos under bills of lading in which Valero was listed as a notify party.[33] Through an analysis of Valero's conduct as well as implied obligations as a benefitting party, the court found that Valero had consented to be bound by the bills of lading, implied obligations it

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third-party beneficiaries may enforce contract terms in their favor, the mere fact that a party is a beneficiary does not create contractual obligations for the beneficiary").

27. 519 P.2d 199, 207 (1974).

28. *Id.* ("When Arizona Feeds accepted the bills of lading and delivery of the goods, as an owner, it, as the assignee of…stepped into its assignor's shoes. It assumed the position of [its assignor] and agreed to pay for the goods by its acceptance of delivery").

29. *Id.*

30. No. 13-cv-5418, 2015 WL 946055, at *4 (S.D.N.Y. Dec. 2015).

31. *Id.*

32. *Id.* at *6.

33. Milos Prod. Tanker Corp. v. Valero Mktg. & Supply Co., 2:22-CV-01545-CAS, 2023 WL 4296055, at *13 (C.D. Cal. June 28, 2023).

assumed under the bills of lading, and was on notice of the provision holding them liable for freight charges under the bills of lading.[34] In its claim against Valero, Milos offered three avenues for establishing Valero's liability for freight and associated charges: (1) that Valero consented to be bound by the bills of lading, (2) that Valero was bound by the English choice of law clause in the charterparty, and (3) Valero assumed an implied obligation to pay freight when it accepted the cargo.[35] The court considered each of these arguments in turn.

The court recognized that a party cannot be bound to the terms of a bill of lading without offering consent to be bound, nor can a third-party beneficiary be bound unless it has manifested acceptance to being bound or has formed an agency relationship with one of the contracting parties.[36] Considering the first question of consent, the court analyzed Valero's behavior from the negotiations with GP Global to transport the jet fuel through the acceptance of the jet fuel in California.[37] Examining the Ninth Circuit's holding in *Pacific Coast Fruit* that "a consignee brought itself into the contract of affreightment . . . [when it] took control and direction of the shipment,"[38] the court determined that Ninth Circuit precedent required the consideration of "attending circumstances or factors" when determining whether a non-party has manifested an intent to be bound.[39] Practices such as the presentation of the original bills of lading and how cargo is accepted are each factors that are a part of that analysis.[40] The court considered Valero's conduct, including that it had: (1) required certain terms be added to the bills of lading, (2) made suggestions to the seller on vessel speed, and (3) assumed complete control of the discharge arrangements.[41] The court noted that while Valero did not present the original bills of lading upon the discharge of the cargo, it had "owned" the cargo throughout the voyage, had assumed control of the cargo before reaching California, and, therefore, had manifested consent to be bound.[42]

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34. *Id.*

35. *Id.* at *5.

36. *Id.*

37. *Id.* at *8.

38. *Id.* at *5 (quoting Pacific Coast Fruit Dist. v. Pennsylvania R.R., 217 F.2d 273, 275 (9th Cir. 1954)).

39. *Id.* at *7.

40. *Id.*

41. *Id.* at *4-9. The court specifically considered the following conduct: prior to the departure of the carrier from Singapore, Valero had vetted the vessel and cleared it for discharge operations, provided GP Global with instructions and terms to be included on its bills of lading with Milos, GP Global instructed the master of the vessel to proceed at max speed upon Valero's suggestion, and Valero arranged the discharge of the cargo and paid the load port inspector to ensure quality and quantity of the cargo. *Id.*

42. *Id.* at *8.

According to the court, despite not having the original bills of lading at discharge or for a time thereafter, Valero was sufficiently on notice of the bills of lading to be aware of the freight charges provision.[43] The court found that Valero's involvement with the shipment of the cargo from beginning to end was all done pursuant to the terms of the charterparty[44] and, as a result, showed that Valero was on notice of the terms of the bills of lading.[45] The court cast aside Valero's contention that its purchase/sale contract with Koch established that Koch would handle charges related to shipping and freight, and held that the Valero-Koch contract did not show that Valero rejected any conflicting terms in the bills of lading.[46]

The court did not feel the need to consider Milos' second argument—that the dispute should be analyzed under English law due to the choice-of-law provision—because it had already established that Valero consented to be bound through its course of conduct.[47] The court then turned to Milos' third argument concerning an implied obligation to pay freight and related charges. Milos primarily relied on the Ninth Circuit's reasoning in *States Marine* that, even where there is no express contractual obligation, an implied contractual obligation may exist regardless of whether the bill of lading imposes any liability on a consignee.[48] Adopting Milos' reasoning, the court explained that "[t]he most obvious indication of a consignee's implied agreement to pay for freight charges occurs when he accepts the goods himself, indicating that they are his own and not the shipper's."[49] Valero argued that this case is distinguishable due to it dealing with non-negotiable bills of lading. However, the court dismissed this claim, finding that whether the bills of lading were negotiable or non-negotiable made no difference.[50] Looking at the Second Circuit's holding in *Dampskibsselskabet Torm*, the court noted how the Second Circuit applied the Ninth Circuit's *States Marine* reasoning to establish that a court must analyze the conduct of the party receiving the cargo to assess the existence of an implied obligation irrespective of the type of bill of lading that the obligation stems from.[51] The court went further and pointed to the underlying rule of *States Marine* that the "equitable principle that, by accepting the cargo, the owner

43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.* at *9.
48. 524 F.2d 245, 248, 1976 A.M.C.1463 (9th Cir. 1975).
49. *Milos Prod. Tanker Corp.*, 2023 WL 4296055, at *10 (citing *Fink*, 250 U.S. at 581).
50. *Id.* at *10-11.
51. *Id.* at *11.

benefits from its carriage and should thus be obliged to pay freight."[52] The court stated that this principle should be applied to those voyages governed by negotiable bills of lading as they govern non-negotiable bills of lading.[53]

Made clear by *States Marine*, the court concluded that the initial analysis of consent to be bound is unnecessary to show Valero's liability because an implied obligation was created once Valero became the owner of the cargo.[54] The court found that Valero had owned the cargo throughout the voyage and that its acceptance of the cargo only further showed its ownership and how it benefitted from the cargo's carriage as its owner.[55] Under this reasoning, an implied obligation was created once Valero assumed ownership of the cargo, irrespective of any liability found under the express terms of the bills of lading.[56] Ultimately, the court granted Milos' motion for summary judgment, holding that—with the facts viewed in a light most favorable to Milos—Valero could be liable for freight and other related charges if the case proceeded to trial.[57]

IV. ANALYSIS

The Central District of California's holding in the noted case is sound relative to the precedents utilized to reach its conclusions; however, the weight given to implied obligations over a manifestation of consent to be bound creates a system where buyers are at risk of liability by simply managing the delivery details of purchased goods.[58] The combination of the elements of consent and notice of obligations analyses leads to predictable interpretations of a buyer's intentions or knowledge of assumed liability.[59] In contrast, holding that the mere ownership and control of goods can lead to an implied obligation may leave buyers vulnerable to liability under agreements they may either never see or

52. *Id.* (citing *States Marine*, 524 F.2d at *248).

53. *Id.*

54. *Id.* (". . . the implied obligation is one that exists as a result of the parties' conduct, not under express terms in a contract to which the parties have agreed."); *see also Arizona Feeds*, 519 P.2d at 207.

55. *Id.* at *12.

56. *Id.*

57. *Id.* at *13.

58. *Id.* at *11 (noting that ". . . the question of whether a party has consented to be bound by the bills of lading appears to the Court to be beside the point").

59. Ingram Barge Co., LLC v. Zen-Noh Grain Corp., 3 F.4th 275, 279 (6th Cir. 2021) (listing the way in which consent might be manifested by a third-party beneficiary: (1) filing a suit asserting rights under the agreement, (2) course of conduct, (3) accepting liability through an agent).

handle with a very limited capacity.[60] The court conflates the requirements of the consent and ownership tests, muddying the ways in which businesses consider themselves in transactions.

This decision blurs the lines of liability through expanding the elements considered in the consent analysis. On its face, the consent analysis requires courts to look at how a party's course of conduct within a transaction may have manifested consent to bound.[61] The court found that Valero's conduct had manifested binding consent.[62] However, its analysis gave special attention to the question of whether Valero had notice of the obligations under the bills of lading.[63] This is where the lines between consent and an implied obligation begin to blur. The court felt that Valero's conduct established that it had notice of the terms and attributed that notice to the creation of an obligation.[64] As a rebuttal to Valero's assertions of not having the original bills of lading at the time of discharge, the court relied on its finding that Valero conducted itself in a way that illustrated its awareness of the terms.[65] However, awareness on its own should not manifest liability for a third-party beneficiary, nor can it be considered a nail in the coffin for manifesting binding consent.[66] A party's awareness of the terms should only be relevant to a course of conduct analysis where actions are taken on behalf of that party pursuant to the terms in dispute. In this case, the court did not look at the ways Valero conducted itself in relation to the terms of the bills of lading but merely highlighted the instances in which Valero had come into contact with its language.[67]

Objectively, the court's consideration of having notice of the bills of lading's terms and its relation to Valero's course of conduct is harmless. It is well understood in contract law that assent to the terms of an agreement can come in the form of conduct found to be aligned with that agreement's terms or that would reasonably allow the other party to infer

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60. *See* Milos Prod. Tanker Corp., 2023 WL 4296055 at *13; *see also Ingram Barge Co., LLC*, 3 F.4th at 279. (noting that the appellee did not conduct itself in any of the three ways in which binding consent could be found).

61. *Milos Prod. Tanker Corp*., 2023 WL 4296055 at *5.

62. *Id.* at *8.

63. *Id.*

64. *Id.* ("It strikes the Court as inequitable and unreasonable under the circumstances to find the defendant not bound simply because the original bills of lading did not arrive in time for discharge").

65. *Id.*

66. Dynamic Worldwide Logistics v. Exclusive Expressions, LLC, 77 F. Supp.3d 364, 374 (S.D.N.Y. 2015).

67. *Milos Prod. Tanker Corp*., 2023 WL 4296055, at *2-3, *8.

their assent.[68] What is perplexing about the court's implied consent finding is how it bases Valero's consent to be bound solely on the times it came into contact with the terms of the bills of lading and not specific conduct that may be considered performed pursuant to those terms.[69] Of the conduct considered, the manner in which Valero conducted the discharge of the cargo is the only action noted by the court that may have related to the terms of the bills of lading.[70]

Additionally, the complexity of a transaction should not be ignored. Transactions involving the shipment of goods entail the formation of a number of agreements, and not all of these agreements directly implicate every party involved in its successful completion. Ownership is usually defined in the purchase and sale agreement between the buyer and seller, where details regarding the transfer of title and closing obligations are provided. The court leverages the concept of ownership in both its consent and implied obligation analyses, but ignores how each party understands ownership relative to their role in the entirety of the transaction. In the noted case, Valero purchased approximately 40,000 tons of aviation jet fuel from Koch for almost $16,000,000—not a small transaction.[71] It is reasonable to assume that, in a transaction of this size between two multinational corporations, the parties would have reached a clear understanding of who was responsible for shipping costs.[72] In light of this, it is surprising that the court rejected consideration of the Koch-Valero contract as evidence against Valero's express or implied consent to be bound.

Finally, the court's implied obligation analysis requires courts to consider actions that can be reasonably attributed to a buyer's due diligence in ensuring the close of a sale. In its analysis, the court considered Valero's conduct from its negotiations with GP Global and Koch to the arrangement of the cargo's discharge.[73] The court regarded

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68. RESTATEMENT (SECOND) OF CONTRACTS § 19 (Am. Law Inst. 1981) ("(1) The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act. (2) The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows that the other party may infer from his conduct that he assents. (3) The conduct of a party may manifest assent even though he does not in fact assent…").

69. *Milos Prod. Tanker Corp.*, 2023 WL 4296055, at *8. The court examined the documents received by Valero throughout the transaction, how it negotiated specific terms with the charterer of the vessel, and facilitated the cargo's discharge. *Id.*

70. *Id.* (The defendant "received and accepted the cargo . . . pursuant to a letter of indemnity because the charterparty instructed that delivery be made pursuant to a letter of indemnity in the event that the original bills of lading were not available upon discharge").

71. *Id.* at *2-3.

72. *Id.*

73. *Id.* at *2-3, *8.

these actions as manifesting control, but how does the nature of these actions differ from those of the creditor in *States Marine*? The actions of the bank in that case were considered in relation to its role within the transaction, contextualizing its involvement with discharge and other decisions relating to the cargo.[74] It stands to reason that the conduct of the buyer ought to be contextualized by its role in the transaction as well.

Acknowledging its role in the transaction, Valero asserted that it was not liable for the freight charges, pointing to terms in its purchase agreement with Koch concerning the shipment of the fuel.[75] In a footnote to the background section of its decision, the court acknowledged that Valero purchased the cargo from Koch on CIF/CFR terms.[76] Despite this, the court rejected Valero's argument by explaining that while the Koch-Valero purchase agreement could have meant that Valero could seek indemnity from Koch for the freight charges, it was not sufficient evidence to show that Valero rejected the terms of the bills of lading.[77] Relying on its finding of Valero's notice of the terms of the bills of lading, the court ignored how Valero could reasonably not consider itself an owner of the fuel, or its liability for freight charges, given its role in the whole of the transaction. The conduct considered by the court, most notably in its discussion of consent, is the reflection of good business practice. It is challenging to understand the court's decision to ignore Valero's assertion of the same facts that the court had deemed worthy of further explanation in a footnote earlier in the opinion. Seemingly for the sake of finding Valero liable, the court ignores these facts of the transaction between Valero and Koch and unwisely blends the elements of binding consent with those of a manifestation of ownership.[78]

V. CONCLUSION

In the noted case, the court found that Valero's involvement in the shipment of the cargo it was buying was *extraordinary,* and thus, it held that Valero was liable for freight and other related charges because Valero's conduct created an express and implied obligation to be bound.[79] In the absence of a consideration of Valero's role as a buyer in this transaction, the court was right to find both consent and a manifestation of ownership over the cargo as a basis for liability. However, in the

74. States Marine Int't, Inc. v. Seattle First Nat. Bank, 524 F.2d 245, 249, 1976 A.M.C.1463 (9th Cir. 1975).

75. *Milos Prod. Tanker Corp*., 2023 WL 4296055, at *8.

76. *Id.* at *2 n.2.

77. *Id.* at *8.

78. *Id.* at *11.

79. *Id.* at *13.

absence of those considerations, the court conflates the elements of the express and implied obligations tests in a way that unwisely ignores the complexity of the transactions involved in the shipment of goods. While the future consequences of this holding are unclear, third-parties to ocean shipping contracts on the west coast should conduct themselves cautiously—especially if the Ninth Circuit upholds this decision on appeal.

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