

Dangerous Cargo Cocktails: An Analysis of the Second Circuit’s Application of COGSA with Respect to Strict Liability on Shippers of Dangerous Cargoes

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I. INTRODUCTION

The presence of dangerous cargoes is one of the perils faced by mariners today. The crew of the *M/V MSC Flaminia* (*M/V Flaminia*) faced these perils when three containers of eighty percent-grade divinylbenzene (DVB) auto-polymerized and exploded, killing several crew members, injuring others, and causing damage to the ship and her cargo.¹ These containers of DVB were manufactured by Deltech Corporation (Deltech) and shipped by Stolt Tank Containers B.V. (Stolt) from New Orleans to Belgium.² DVB is usually treated with an additive known as p-tert-butylcatechol (TBC). This additive acts as an inhibitor and prevents DVB from auto-polymerizing, making it safe for transport.³ However, TBC is heat-sensitive, and the longer TBC-treated DVB is exposed to heat, the less effective TBC is at inhibiting auto-polymerization, which means it must be carefully stored and handled.⁴ In this case, the shipment of DVB was made to one of Deltech’s customers in Europe via New Orleans, which is contrary to the standard protocols of Deltech.⁵ The containers were loaded into a cargo hold on board the *M/V*

1. Stolt Tank Containers B.V. v. Chemtura Eur. GmbH (*In re M/V MSC Flaminia*), 72 F.4th 430, 437, 2023 AMC 341 (2d Cir. 2023).

2. *Id.*

3. *Id.* at 440.

4. *Id.* at 440-41.

5. *Id.* at 441 (noting the standard operating protocols of Deltech were to ship DVB from Newark during the summer months when the temperatures in New Orleans were high and to avoid exposure exceeding fifteen to twenty days of average external temperatures between seventy-five and eighty-five degrees Fahrenheit).

Flaminia on July 1, 2012, and on July 14, 2012, the three containers containing DVB exploded and a firestorm ensued.⁶

Stolt and Deltech both created various documents concerning the DVB shipment. These documents served as contracts as well as guidance for treatment and safety management, but every document had some form of warning relating to the handling of DVB.⁷ Deltech had an express bill of lading that called for the master bill of lading to include the language: “DO NOT STOW NEAR HEAT SOURCES. STOW ABOVE DECK FOR TEMPERATURE MONITORING.”⁸ Stolt also prepared and sent a copy of a dangerous goods declaration (DGD) to Mediterranean Shipping Company (MSC).⁹ The DGD contained safety information regarding DVB and implied a general need for care, but the DGD did not give any additional warning or instructions concerning the DVB shipment.¹⁰ The United States District Court for the Southern District of New York broke the initial case into three phases: Phase I contained conclusions on causation,¹¹ Phase II conclusions on responsibility,¹² and Phase III the award of damages.¹³ The district court held Stolt and Deltech were liable under Carriage of Goods at Sea Act (COGSA) Section 4(6) for strict liability and under Section 4(3) for the negligent failure to warn *M/V Flaminia* crew.¹⁴ The United States Court of Appeals for the Second Circuit, however, *held* that the district court erred in its finding of strict liability under Section 4(6) of COGSA but affirmed the holding of liability under a failure to warn theory under Section 4(3) of COGSA. *Stolt Tank Containers B.V. v. Chemtura Europe GmbH*, 72 F.4th 430, 460, 2023 AMC 341 (2d Cir. 2023).

6. *Id.* at 441–42.

7. *Id.*

8. *Id.* at 443.

9. *Id.* at 444.

10. *Id.*

11. *Id.* (determining, in Phase I, that the decision to ship DVB containers from New Orleans, the early filling of the DVB containers, their premature transportation to New Orleans, the condition in which the containers were stowed at the New Orleans terminal, and the placement of the containers on the *M/V Flaminia* were the cause of the auto-polymerization that led to the incident).

12. *Id.* at 437 (determining, in Phase II, that Stolt and Deltech were wholly liable for the cargo loss on the *M/V Flaminia*).

13. *Id.* at 439, 445.

14. *Id.* at 444–45 (failing to warn MSC of the extensive information on DVB, Stolt filled the particular shipment of DVB early and then left the containers in the sun for several days before loading).

II. HISTORICAL BACKGROUND

By enacting COGSA, Congress laid out a scheme that applies to all contracts for the carriage of goods by sea. COGSA determines the standards that both shippers and carriers must meet to avoid liability for cargo damage.¹⁵ The COGSA sections relevant to liability for damage from dangerous cargoes are Section 4(3) and Section 4(6).¹⁶ Interestingly, it should be noted that the Second Circuit's decision in *Senator Linie GmbH & Co. v. Sunway Line* previously stated that "U.S. courts considering facts involving dangerous cargoes or injurious events aboard ships have been surprisingly silent on the interplay of §§ 1304(3) and 1304(6)."¹⁷ It was not until the *Senator Linie* decision in 2002 that any bright-line rules concerning the interplay of COGSA sections 4(3) and 4(6) were made, and, therefore, all prior history is relevantly new.¹⁸

COGSA Section 4(6) provides that a shipper of explosive or dangerous goods shall be liable for damages caused by the explosive or dangerous cargo if the carrier does not have knowledge of the nature and character of the goods.¹⁹ Courts have applied this section of COGSA to many cases where a cargo exploded or caught fire and damaged a ship.²⁰ The Second Circuit thoroughly analyzed the liability imposed in COGSA Section 4(6) in *Senator Linie*.²¹ In that case, cargo on a ship traveling from Asia to America caught fire and exploded in a forward cargo hold.²² The cause of the fire was determined to be thiourea dioxide, a compound not known by the carrier or the shipper to be a hazardous substance.²³ The court was tasked with determining if COGSA Section 4(6) could be used to apply strict liability to the shipper even if the shipper did not have knowledge of the cargo's dangerous characteristics.²⁴ The court determined that the shipper could be held strictly liable under COGSA Section 4(6) for damage to a carrier, regardless of whether the shipper

15. 46 U.S.C. § 30701 note (Carriage of Goods by Sea Act) (previously codified at 14 U.S.C. § 1304).

16. *Id.*

17. *Senator Linie GmbH & Co. v. Sunway Line, Inc.*, 291 F.3d 145, 156, 2002 AMC 1217 (2d Cir. 2002).

18. *See id.*

19. 46 U.S.C. § 30701 note (Carriage of Goods by Sea Act) § 4(6).

20. *See, e.g.,* *Contship Containerlines Ltd. v. PPG Indus.*, 442 F.3d 74, 2006 AMC 686 (2d Cir. 2006); *Mark Fisher v. M/V DG Harmony*, 533 F.3d 83 (2d Cir. 2008); *Senator Linie*, 291 F.3d 145.

21. *See Senator Linie*, 291 F.3d 145.

22. *Id.* at 149.

23. *Id.* at 150-51.

24. *Id.* at 153.

knew of the dangerous cargo characteristics.²⁵ This decision fulfilled the Congressional intent of COGSA to “allocate the risk of loss and create predictable liability rules.”²⁶ The court reasoned that the shipper, as opposed to a carrier, is most likely to be familiar with the goods, and if one party must suffer due to the nature of the goods, that party is the shipper.²⁷ This case set the standard for interpreting COGSA Section 4(6), and other circuits have since referenced *Senator Linie* in their COGSA Section 4(6) analyses.²⁸

The Second Circuit also analyzed the COGSA Section 4(6) meaning of “knowledge” as it applies to a carrier in *Contship Containerlines*.²⁹ In that case, a shipment of calcium hypochloride caught fire while in a ship’s cargo forward hold.³⁰ The carrier sought to invoke strict liability under COGSA 4(6).³¹ The carrier claimed that they knew only that the cargo was dangerous when heated above fifty-five degrees Celsius but that the shipper knew the cargo was dangerous even at a much lower temperature.³² The court rejected the claim of strict liability, holding that as long as the carrier has a general knowledge of the dangers of a cargo, they cannot claim strict liability, regardless of whether the carrier knew of the precise characteristics pertaining to the cargo.³³ A binary analysis is used when applying strict liability; a party either knows or does not know that a dangerous cargo reaction is possible.³⁴

If the court does not find COGSA strict liability against a shipper, a carrier can still argue for liability under COGSA Section 4(3).³⁵ This section of COSGA states: “The shipper shall not be responsible for loss or damage sustained by the carrier or ship arising or resulting from any cause without the act, fault, or neglect of the shipper.”³⁶ The Second Circuit has interpreted this section of COGSA to apply liability to a shipper for a negligent failure to warn.³⁷ The Second Circuit relied on a

25. *Id.* at 168.

26. *Id.* at 169 (quoting *Stolt Tank Containers v. Evergreen Marine Corp.*, 962 F.2d 276, 279, 1992 AMC 2015 (2d Cir. 1992)).

27. *Id.*; see also *Pierce v. Winsor*, 2 Cliff. 18, 19 F. Cas. 646, 651 (C.C.D. Mass. 1861).

28. See *APL Co. Pte. Ltd. v. UK Aerosols Ltd.*, No. 05-00646, 2007 WL 607902, 2007 AMC 368 (N.D. Cal. Feb. 22, 2007).

29. See *Contship Containerlines Ltd v. PPG Indus.*, 442 F.3d 74, 2006 AMC 686 (2d Cir. 2006).

30. *Id.* at 75-76.

31. *Id.* at 77.

32. *Id.*

33. *Id.*

34. *Id.*

35. See *id.* at 78.

36. 46 U.S.C. § 30701 note (Carriage of Goods by Sea Act) § 4(3).

37. *Contship Containerlines*, 442 F.3d at 78.

holding from the United States Court of Appeals for the Fourth Circuit, stating that “a shipper has a duty to warn . . . the ship owner of the foreseeable hazards inherent in the cargo of which . . . the ship’s master could not reasonably have been expected to be aware.”³⁸ Accordingly, liability will apply to the shipper if there is evidence that a warning from the shipper to the carrier about the cargo would have altered the carrier’s actions.³⁹ Therefore, to succeed under a failure to warn theory two showings must be made: that (1) a shipper failed to warn a carrier about the dangers of a cargo that the latter would not have reasonably known, and (2) if a warning were given, the cargo would have been stowed differently or not been carried at all.⁴⁰ The Second Circuit applied this analysis in the case of *Mark J. Fisher, Inc. v. M/V DG Harmony*.⁴¹ In that case, the court said that a determination of the degree of danger posed by a cargo must be considered, and to do this, “a fact-sensitive, ‘calibrated’ analysis of the cargo’s dangerousness and the extent to which that risk was different from risks commonly encountered by carriers” must be undertaken.⁴² The court further explained that carriers could rely on attestations from a shipper when receiving cargo since carriers must make quick decisions about stowage when dealing with a plethora of containerized cargoes.⁴³ Therefore, if a carrier relies on cargo information provided to them, and that information is inadequate to allow the carrier to assess the danger of the cargo, a carrier can seek liability against the shipper under a failure to warn theory.⁴⁴

III. COURT’S DECISION

In the noted case, the Second Circuit held that the defendants, Stolt and Deltech, were not strictly liable to the shipowner interests under COGSA Section 4(6).⁴⁵ The Second Circuit did hold, however, that the defendants were liable to the shipowner’s interests under a failure to warn theory pursuant to COGSA Section 4(3).⁴⁶

38. *Id.* (quoting *Ente Nazionale Per L’Energia Elettrica v. Baliwag Navigation, Inc.*, 774 F.2d 648, 655, 1986 AMC 1184 (4th Cir. 1985)).

39. *Id.*

40. *Id.*

41. *Mark Fisher v. M/V DG Harmony (In re M/V DG Harmony)*, 533 F.3d 83 (2d Cir. 2008).

42. *Id.* at 95.

43. *Id.*

44. *See id.* at 95-96.

45. *Stolt Tank Containers B.V. v. Chemtura Eur. GmbH (In re M/V MSC Flaminia)*, 72 F.4th 430, 438, 2023 AMC 341 (2d Cir. 2023).

46. *Id.*

In overturning the district court's finding of strict liability against Stolt and Deltech, the Second Circuit looked to the specifics of COGSA Section 4(6).⁴⁷ The court reasoned that if a carrier is aware of the dangers a cargo poses, it cannot recover under a strict liability theory if there was an agreement to transport the cargo in question.⁴⁸ The court said the liability analysis is binary, and the notice threshold for a cargo's dangerous characteristics is relatively modest.⁴⁹ Knowledge of a cargo's dangerous characteristics precludes a recovery in strict liability.⁵⁰

The court determined that MSC did have prior experience shipping DVB and it was aware, at least at a corporate level, of the dangers associated with the cargo.⁵¹ MSC had previous DGDs and straight bills of lading that warned of the dangers that DVB posed if loaded onboard a ship while the temperature of the chemical is over twenty-seven degrees Celsius.⁵² However, the court noted that MSC did not have specific knowledge of the particular DVB that caused the explosion aboard the *M/V Flaminia*.⁵³ The court reasoned that just because the specific shipment of DVB was more volatile than usual, it did not give rise to strict liability.⁵⁴ Since MSC knew DVB was generally dangerous, it would be incorrect to conclude that MSC was "not on notice as to 'any aspect of the cargo's dangerousness.'"⁵⁵ The court believed that MSC's prior experience with DVB's heat sensitivity surpassed the threshold needed to preclude recovery under COGSA's strict liability.⁵⁶

Instead, the Second Circuit held that there was a negligent failure by Stolt and Deltech to warn MSC, a holding that was in agreement with the district court.⁵⁷ Under this theory, "[a] shipper's failure to adequately inform a carrier of the foreseeable dangers posed by a cargo can constitute such 'fault[] or neglect' and may give rise to a failure-to-warn claim."⁵⁸ The court held that if the carrier was to prevail on a failure to warn theory, they must show that the shipper knew the cargo posed a risk

47. *Id.* at 447.

48. *Id.*

49. *Id.*; see also *Contship Containerlines, Ltd. v. PPG Indus.*, 442 F.3d 74, 77, 2006 AMC 686 (2d Cir. 2006); *Mark Fisher v. M/V DG Harmony (In re M/V DG Harmony)*, 533 F.3d 83, 94 (2d Cir. 2008).

50. *In re M/V MSC Flaminia*, 72 F.4th at 447.

51. *Id.* at 448.

52. *Id.*

53. *Id.* at 447.

54. *Id.* at 448.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* (alteration in original) (quoting *Contship Containerlines, Ltd. v. PPG Indus.*, 442 F.3d 74, 78, 2006 AMC 686 (2d Cir. 2006)).

that the carrier could not reasonably have known.⁵⁹ Subsequently, the court reasoned that a shipper is in the best position to know the dangers a cargo can pose to the carrier, stating that the “carrier may rely on the shipper’s attestations as to the cargo’s characteristics.”⁶⁰ Container carriers often have a diverse array of cargoes and must make quick decisions about stowage; they are not expected to know more about the dangers of a cargo than what the shipper provides.⁶¹

Given this reasoning, the district court correctly held that Stolt and Deltech breached their duty to warn the carrier.⁶² It was unreasonable to believe that the carriers knew of the particular danger posed by the specific tanks of DVB aboard the *M/V Flaminia*.⁶³ The carriers did not know or have reason to know that the tanks were filled early or that they sat in the southern sun for an extended period.⁶⁴ The Second Circuit upheld the lower court’s holding that Deltech failed to effectively ensure that the chemical tanks were at the proper temperature before loading.⁶⁵ This improper monitoring of the temperature of the cargo in the tanks posed a specific danger of which MSC was unaware.⁶⁶

The court was not persuaded by arguments made by Stolt and Deltech concerning the shipment of the DVB.⁶⁷ Stolt and Deltech argued that MSC was aware of the dangers of handling DVB in the summer and should have been on notice that the cargo could auto-polymerize.⁶⁸ The court rejected this contention, reasoning that under a failure to warn theory, the carrier must know the specific danger the DVB poses.⁶⁹ Since the carrier was unaware that the actions by Stolt and Deltech made the particular DVB more volatile, the carrier did not have proper notice of the type and degree of danger posed by the cargo.⁷⁰ Furthermore, requiring a carrier to know the specific chemical properties of three discrete tanks would unduly shift the burden of risk to a carrier.⁷¹ The court also rejected

59. *Id.* at 449; *see also* Mark Fisher v. M/V DG Harmony (*In re* M/V DG Harmony), 533 F.3d 83, 95 (2d Cir. 2008).

60. *In re* M/V MSC Flaminia, 72 F.4th at 449.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 449-50 (citing *In re* M/V MSC Flaminia, 339 F. Supp. 3d 185, 239, 2018 AMC 2113 (S.D.N.Y. 2018)).

66. *Id.*

67. *Id.* at 450.

68. *Id.*

69. *Id.* (citing Mark Fisher v. M/V DG Harmony (*In re* M/V DG Harmony), 533 F.3d 83, 95 (2d Cir. 2008)).

70. *Id.*

71. *Id.*

the theory that the carrier violated a duty to heed the warnings provided by Stolt and Deltech.⁷² Additionally, the court found that the carrier had followed the relevant safety information found on the DGD.⁷³ The carrier relied on the relevant safety information when making its load plan and didn't err when it chose to stow the DVB-80 onboard.⁷⁴ Finally, Stolt and Deltech argued that the carrier did not listen to the heat warning on the master bill of lading. However, the court noted this document was a transport document, and it is not customary for a carrier to rely on its contents for safety information.⁷⁵ Therefore, the carrier did not breach any obligation to listen, and the actions taken by the carrier did not relieve Stolt and Deltech of liability under a failure to warn theory.⁷⁶

IV. ANALYSIS

In the noted case, the Second Circuit's interpretation of the knowledge requirement in COGSA Section 4(6) went a step too far, making it so that the application of strict liability would be nearly impossible to find. With modern technology and communication systems, carriers can quickly and easily be informed of dangerous cargoes onboard their vessels. All carriers are required to receive a shipping paper describing the hazardous cargo they carry.⁷⁷ These descriptions must conform to the International Maritime Dangerous Goods (IMDG) Code, which the United States has adopted as law.⁷⁸ Taking these notification requirements along with the "any knowledge standard" that the Second Circuit has adopted to allow a shipper to escape liability creates one result: A shipper will rarely be strictly liable for any damage resulting from their shipment.⁷⁹ Considering the fact there is minimal precedent concerning the interplay of COGSA sections 4(3) and 4(6), courts could still go in another direction when deciding future cases.⁸⁰

A better way to apply COGSA Section 4(6) would be an evidentiary analysis based on the totality of the circumstances to determine if a cargo declared on the shipping documents may still be considered the same cargo loaded onto a ship. It is safe to say there is a legitimate difference

72. *Id.*

73. *Id.* at 450-51.

74. *Id.*

75. *Id.*

76. *Id.*

77. *See* 49 C.F.R. § 176.24 (2026); 49 C.F.R. § 172.200 (2026).

78. *See* 49 C.F.R. § 171.22 (2026); 49 C.F.R. § 171.25 (2026).

79. *In re M/V MSC Flaminia*, 72 F.4th at 460.

80. *See* *Senator Linie GmbH & Co. Kg v. Sunway Line*, 291 F.3d 145, 2002 AMC 1217 (2d Cir. 2002).

between carrying dangerous cargo and carrying that same cargo after it has been exposed to conditions that substantially increase its volatility. The district court found this to be the case in their analysis of the explosion on the *M/V Flaminia*.⁸¹ The facts show that the actions of Stolt and Deltech caused the DVB aboard the *M/V Flaminia* to become more volatile than the DVB that MSC handled in previous shipments.⁸² MSC had knowledge of the dangers of DVB from previous shipments and knew that DVB was a dangerous cargo, but MSC took prudent precautions to prevent any incident when they carried DVB.⁸³ There would be no reason for MSC to suspect that the particular shipment of DVB aboard the *M/V Flaminia* was different from any prior DVB shipment they handled in the past.⁸⁴ Furthermore, it would be unreasonable for MSC to know of and monitor all dangerous cargoes onboard a ship with thousands of other containers.⁸⁵ The information provided to MSC and the master of the *M/V Flaminia* in the DGDs is the most reasonable source of knowledge about a cargo's characteristics, and it is standard industry practice to rely on the DGDs provided to a carrier.⁸⁶ Since the DGDs did not contain ample information, MSC did not know of the particular danger the DVB shipment aboard the *M/V Flaminia* posed.⁸⁷

Additionally, it is a reasonable proposition that a carrier would not consent to carry goods that carry a higher probability of a catastrophic reaction. Looking at the plain language of COGSA Section 4(6),

[concerning] goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character . . . the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.⁸⁸

The statute's emphasis on the carrier's consent as to nature and character part of the statute should make this section applicable to situations where the shipper knew of the greater danger a certain shipment

81. See *In re M/V MSC Flaminia*, 339 F. Supp. 3d 185, 2018 AMC 2113 (S.D.N.Y. 2018).

82. See *id.* at 194-95.

83. See *id.* at 199, 219, 221.

84. See *id.* at 219.

85. See *id.* (monitoring all dangerous cargoes is impractical); see also Zahra Ahmed, *Top 20 Largest Container Shipping Companies in the World*, MARINE INSIGHT (Feb. 14, 2025), <https://www.marineinsight.com/know-more/10-largest-container-shipping-companies-in-the-world/> (on file with the Tulane Maritime Law Journal) (demonstrating that MSC is the world's largest container carrier by volume with the capacity to carry over five million containers).

86. See *In re M/V MSC Flaminia*, 339 F. Supp. 3d at 219.

87. See *id.* at 233, 240.

88. 46 U.S.C. § 30701 note (Carriage of Goods by Sea Act) § 4(6).

posed to a carrier but did not warn the carrier. Based on the Second Circuit's interpretation, the prior proposition would fall under the negligent failure to warn theory in COGSA Section 4(3).⁸⁹ However, when looking at the statute's language, "[t]he shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants," it can be argued this part of COGSA should apply to situations where general negligence was the main cause of a cargo issue.⁹⁰ When applying these rationales to the facts of the *M/V Flaminia*, there is an overlap in which section of COGSA could apply. However, because Stolt and Deltech knowingly went against standard operating procedures, the negligence exhibited is reckless, willful, and wanton, and this disregard for safety should push any court to find strict liability.⁹¹

A finding of strict liability should persist even with MSC's knowledge of DVB. In *Contship Containerlines, Ltd. v. PPG Industries*, the Second Circuit held that COGSA prohibits the imposition of strict liability on a shipper when the carrier has knowledge of a cargo's danger and exposes the cargo to the general condition that triggers the danger.⁹² In that case, the carrier exposed a heat-sensitive cargo to a heat source and, therefore, lost the ability to claim strict liability.⁹³ The United States Court of Appeals for the Ninth Circuit has taken a slightly different approach. It has recognized that strict liability can apply even if the carrier knows the cargo's general characteristics.⁹⁴ Imposition of strict liability will depend on what the carrier and the shipper knew, and their respective duties.⁹⁵ Based on the facts concerning the *M/V Flaminia*, the shippers of the DVB that caused the incident knew much more about the particulars of the DVB shipment than MSC.⁹⁶ MSC handled and stowed the DVB according to preestablished procedures, so it is difficult to reason that MSC exposed the DVB shipment to a condition that triggered the

89. See *Stolt Tank Containers B.V. v. Chemtura Eur. GmbH (In re M/V MSC Flaminia)*, 72 F.4th 430, 438, 2023 AMC 341 (2d Cir. 2023).

90. 46 U.S.C. § 30701 note (Carriage of Goods by Sea Act) § 4(3).

91. *In re M/V MSC Flaminia*, 339 F. Supp. 3d at 194-95, 199; see also *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-58 (2007).

92. *Contship Containerlines Ltd v. PPG Indus.*, 442 F.3d 74, 77, 2006 AMC 686 (2d Cir. 2006).

93. *Id.* at 75-78 (recovering, as the carrier, on a negligence theory, since the shipper did not provide updated industry guidance concerning the general risks associated with the cargo).

94. See *APL Co. Pte. Ltd. v. UK Aerosols Ltd.*, No. 05-00646, 2007 WL 607902, 2007 AMC 368 (N.D. Cal. Feb. 22, 2007).

95. *Id.*

96. See *In re M/V MSC Flaminia*, 72 F.4th at 438-44.

danger.⁹⁷ Furthermore, in *Senator Linie Gmbh & Co. v. Sunway Line*, the Second Circuit held that the shipper was in a better position to know about the cargo than the carrier was and, therefore, the shipper should bear the heavier burden when it comes to cargo damage.⁹⁸ Based on the above reasoning, strict liability should apply when the facts show the shipper had more knowledge about the cargo than the carrier yet did not inform the carrier of the pertinent knowledge.

Lastly, to help illustrate the overall issues of this reasoning, consider an analogy involving the Second Circuit's analysis applied to a soda can. It is widely known that when opening a can of soda, the depressurization of the can could result in the can's contents spraying onto a person's hands and clothes, leading most people to take precautions to avoid any sticky outcomes, such as opening the can slowly or letting the can sit after being shaken before opening it. Consider, though, if someone knowingly shook a can and handed it to another person without telling them of the heightened risks that the shaken can poses. If the recipient is sprayed upon opening the can, would it be fair to say they cannot hold the other person strictly accountable for the mess simply because of a general presumption of knowledge that soda cans—whether shaken or not—might spray? I say no, as there is a clear difference between opening a can of soda under normal conditions and opening a can of soda already subjected to conditions that render it essentially guaranteed to spray. However, the Second Circuit's application of COGSA Section 4(6) would not apply strict liability to the can shaker in the above example despite that person knowingly creating a condition that significantly increased the likelihood of a spray.⁹⁹

Accordingly, based on the totality of the circumstances, the interpretations of COGSA, and general common sense, the district court was correct in finding strict liability against Stolt and Deltech.

V. CONCLUSION

Overall, there is very little case law concerning the interplay of COGSA sections 4(3) and 4(6) regarding liability standards for shippers.¹⁰⁰ However, the Second Circuit's ruling on the issue in *Stolt Tank Containers B.V. v. Chemtura Europe GmbH* set the bar too high for carriers trying to invoke strict liability under COGSA Section 4(6). The

97. See *id.* at 454.

98. *Senator Linie Gmbh & Co. v. Sunway Line, Inc.*, 291 F.3d 145, 169, 2002 AMC 1217 (2d Cir. 2002).

99. See *In re M/V MSC Flaminia*, 72 F.4th at 460.

100. See *Senator Linie*, 291 F.3d 145.

“any knowledge standard” that prohibits the imposition of strict liability is impractical, as carriers have thousands of containers on each of their ships, and knowing the exact state of each dangerous cargo container is a nearly impossible task.¹⁰¹ The shipper of a dangerous cargo is in the best position to know if a certain cargo poses a heightened threat to the carrier.¹⁰² If the shipper knowingly does not make it clear to the carrier that a cargo is in a state of heightened volatility, then the shipper should be held to a strict liability standard if the carrier sustains any losses related to that cargo. Therefore, in *Stolt Tank Containers*, the Second Circuit should have upheld the lower court’s decision to impose strict liability on the carriers.

Christopher Loffler*

101. *See In re M/V MSC Flaminia*, 339 F. Supp. 3d 185, 219, 2018 AMC 2113 (S.D.N.Y. 2018).

102. *See Senator Linie*, 291 F.3d at 169.

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