

If a Yacht Is Damaged During Transport, Is the Freight Forwarder Liable?

Imagine this scenario. You want to transport your yacht from Palma de Majorca, Spain, to the Caribbean. You select a transportation company that touts itself as a one-stop shop. You contract with this company and watch as your vessel is loaded onto a ship bound for the Caribbean.

However, when the yacht arrives at its destination, disaster strikes. A strap breaks as the boat is being off-loaded from the ship, sending your precious cargo tumbling helplessly to its demise. The question now is who is liable?

ISSUE: Is a freight forwarder liable when a yacht carrier's negligence damages a yacht during transport?

RULE: Although it will depend on where you file your action, based on *Jumbo Navigation, N.V. v. Melchior*, 1991 U.S. Dist. LEXIS 21652 (S.D. Fla. 1991), a freight forwarder does not incur liability for damage to a yacht when that yacht is in the possession and control of an ocean carrier where there is no agency between the forwarder and the carrier.

ANALYSIS: In *Jumbo Navigation, N.V. v. Melchior*, yacht owner Melchior retained Cigisped, a freight forwarder, to arrange for shipment of his yacht, the VALIA, from Genoa, Italy to Miami, Fla. Melchior paid Cigisped \$75,000 for ocean freight and forwarded a letter authorizing the company to make the necessary arrangements.

Cigisped negotiated and contracted for the VALIA to be transported aboard the ship STELLA PRIMA. Pursuant to the freight agreement, Cigisped advanced the \$75,000 freight fee to the actual carrier, Jumbo, which issued a negotiable bill of lading, identifying itself as the ocean carrier and Cigisped as the shipper of the VALIA. The negotiable bill of lading was consigned "to order" of Cigisped.

On October 19, 1988, Cigisped forwarded its invoice to Melchior for the ocean freight and shipping charges. The STELLA PRIMA arrived at the Port of Miami on November 7, 1988, and in the course of being removed from the ship, the VALIA was damaged when it was dropped into the water.

Melchior refused to pay Cigisped's invoice for ocean freight, arguing that Cigisped agreed that it would not be reimbursed for freight and other shipping charges if the VALIA was not delivered to Miami in perfect order and condition. A lawsuit ensued but in the end, the Court disagreed with Melchior. It found that the freight

forwarder had no liability for the damages to the vessel, ruling that "a freight forwarder does not incur liability for cargo damage while such cargo is in the possession and control of an ocean carrier."

Melchior's action therefore was against the carrier, with whom the yacht owner was not in contractual "privity".

CONCLUSION: A real issue is impacting today's yacht transport market. With container and break-bulk shipments in decline, many freight forwarders are turning to shipping yachts as a means to generate more business. However, transporting a yacht is much different than transporting shipping containers. In order to perform the task safely, a carrier needs to have the far better resources and equipment than is required to handle simple containers. A yacht is a precious and delicate item. However, many freight forwarders rely on local carriers who often do not have the specifically engineered and tested equipment and/or knowledge needed to lift and transport yachts.

In addition, many freight forwarding companies now market themselves as yacht transport carriers that are deemed to be in control of the boats that ultimately transport these yachts. In reality, however, many of them are unrelated to the actual third party carriers they employ, meaning that when the third party carriers are negligent, the freight forwarder is not liable; absent some sort of agency.

This was exactly the scenario in *Jumbo Navigation, N.V. v. Melchior*, where the freight forwarder was found not to be liable for the negligence of a carrier. Whether an agency exists is dependent upon a factual analysis of the actual scenario, the freight forwarding contract, the representations made and the relationship between the freight forwarder and a third-party carrier. Absent an agency relationship, a freight forwarder is not liable for a damaged yacht even when the freight forwarder has selected and worked with the carrier, and promotes itself as a one-stop shop.

A seasoned maritime lawyer can help you review a transportation contract prior to selecting a freight forwarder for transporting a yacht.

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