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### Siderius, Inc. v. M/V Amilla United States Court of Appeals, Second Circuit, 19 July 1989 880 F.2d 662

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**SIDERIUS, INC. v. M/V AMILLA**  
**United States Court of Appeals, Second Circuit, 19 July 1989**  
**880 F.2d 662**

**Under the Inter-Club New York Produce Exchange Agreement, a finding of unseaworthiness based on circumstantial evidence is insufficient to place 100% liability for cargo damage on the vessel owner.**

**FACTS:** Amilla Compania Naviera, S.A. ("Amilla") is the owner of the M/V Amilla. On August 4, 1983, the M/V Amilla was chartered through Astramar Cansac B.S. A.S. ("Astramar"), whose performance was guaranteed by Canadian Forest Navigation Company, Ltd. ("Canadian") to Siderius, Inc., as per a New York Produce Exchange form timecharter party. According to the charter party, Amilla guaranteed that the M/V Amilla was "in every way fitted for ordinary cargo service." The ship was then voyage-chartered to Siderius to transport rolled steel sheets from Buitrago, Argentina to Detroit, Michigan and Chicago, Illinois. The cargo was encased in metal envelopes and was inspected before loading in Buitrago and upon arrival in Detroit. These metal envelopes were not opened.

The cargo inside the envelopes was reinspected later when a customer of Siderius rejected the steel sheets because of rust. Siderius gave the customer a credit and brought this action against Amilla and Canadian.

The district court held: first, that under the United States Carriage of Goods by Sea Act (COGSA), Amilla was the owner of the M/V Amilla and Canadian was her charterer; second, that Siderius had made a prima facie case by showing delivery of the steel in good condition to the carrier and damage after its transportation, that placed the burden on the defendants to come forward with proof that the rust damage did not occur during the voyage. This burden was not met. Third, the court held that the vessel carried no equipment to regulate the condensation or humidity level in the holds, making it unseaworthy to safely carry the steel cargo.

The district court awarded Siderius \$95,276.01 with interest plus taxable costs. To determine the apportionment of damages between defendants, the court relied upon and applied the New York Produce Exchange Inter-Club Agreement ("Inter-Club Agreement") which states that payment of condensation damage should be apportioned 50% to the owner and 50% to the charterer. The Inter-Club Agreement was incorporated into the charter party to the extent it was to govern the settlement of any disputes as to cargo damage. Both Amilla and Canadian have appealed.

**ISSUE:** Whether the Inter-Club Agreement was properly applied?

**ANALYSIS:** The Second Circuit affirmed the decision of the district court. The court first disposed of the appeal by Amilla. The court agreed with the district court that the plaintiff had made a prima facie case which the defendants had failed to rebut by a showing that the damage did not occur on the voyage. The ship did not have a hygrometer to measure moisture, the ventilation system was hand activated, and the "drip down" occurred during the voyage, causing the rust damage. Therefore, the ship was unseaworthy to carry the steel cargo.

Since Amilla had impliedly warranted through its charterer that the vessel was fit for ordinary cargo usage, the court agreed with the district court that Siderius may recover directly from Amilla. The Second Circuit has long held that "when the charterer of a ship is liable to a cargo owner" and that liability

results because the vessel owner has violated its warranty of seaworthiness, the "cargo owner may hold the shipowner on his warranty to the charterer." *New York Cent. R.R. v. New York, N.H. & H.R.R.*, 275 F.2d 865, 866 (2d Cir. 1960).

Canadian claimed, on appeal, that the use of the Inter-Club Agreement was unfair. The clause in question as it applies to the apportionment and cargo claims provides:

In all cases where the Agreement applies cargo claims shall be apportioned as hereunder:

Claims for loss of or damage to cargo due to unseaworthiness -- 100% Owners

Claims for damage (including slackage/ullage) due to bad stowage or handling -- 100% Charterers

Except as provided in the succeeding paragraphs of this clause, short delivery claims (including pilferage), claims for overcarriage, and claims for condensation damage

-- 50% Owners, 50% Charterers

Inter-Club New York Produce Exchange Agreement  
(as amended May 1984)

Canadian argues that it had expert testimony which it would have used had the Agreement been introduced into evidence. Canadian moved for reconsideration by the district court of the indemnification issue claiming it had not been given a chance to present its evidence and that the district court may have been unaware of the first part of the clause placing full liability on the owner where unseaworthiness is found. The district court denied the motion for reconsideration.

The court found that since the Inter-Club Agreement was incorporated in the charter party, it did not need to be judicially noticed, or separately introduced into evidence. Since Federal Rule of Evidence 201(a) "deals only with judicial notice of adjudicative facts," it does not apply. Even if the Agreement were an adjudicative fact, the rule is satisfied because it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)

The Inter-Club Agreement was properly applied. In order to hold the owner 100% liable, the Agreement requires clear evidence that the unseaworthiness caused the damage. The Second Circuit affirmed the district court's finding that there was only circumstantial evidence that the poor ventilation caused the damage. The court agreed with the district court that Canadian should indemnify Amilla for 50% of the damages.

**DISSENT:** Judge Pratt concurred in the disposal of Amilla's claim, but dissented from the decision as to Canadian. Noting that Canadian was denied a fair opportunity to present its full case on the indemnity issue, Judge Pratt discussed the unique position of Canadian in defending against both Siderius and Amilla. In an effort to defeat the overall claim, Canadian had to sacrifice its expert evidence as to the unseaworthiness of the vessel. The circuit court's reliance on the Inter-Club Agreement to determine the indemnification issue without notice to the parties effectively denied Canadian the chance to present "clear" evidence of unseaworthiness.

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