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Maritime and Shipping Law

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This edition contains a summary of some of the maritime and shipping law decisions taken by the Argentine courts during 2018.

Case 913/2013: Cargo v. Stadt Bremen. The National Court of Appeals in Federal Civil and Commercial Matters decided that the carrier had to compensate the shipper because it lost the goods for not declaring them before the Brazilian customs authorities.

Case 6475/2004/CA5: Pedro Moscuzza e Hijos v. MAPFRE. The National Court of Appeals in Federal Civil and Commercial Matters ordered the insurer to pay the amount of the policy, plus compensation for loss of profits, for the wreck of a ship.

Case 1811/2006: La Meridional v. Murchison y Loginter. The National Court of Appeals in Federal Civil and Commercial Matters concluded that the obligation to transport the cargo and deliver it in good condition was an obligation of result (*obligación de resultado*) and its breach creates the presumption of the carrier's fault.

Case 4571/2010/CA1: Americantec v. Craft Argentina. The National Court of Appeals in Federal Civil and Commercial Matters determined that the freight forwarder was responsible for the loss of goods.

Case 55929/2018: Zoppetti v. Risler. The Federal Court of Appeals of Rosario ordered the seizure and arrest of a vessel for a salary-related credit the plaintiff had against the shipowner.

Case 6663/2011/CA1: Epson Argentina v. Monte Tamaro. The National Court of Appeals in Federal Civil and Commercial Matters concluded that a two-hour strike was not a force majeure event that justified a breach of the carrier.

Case 5623/2010/CA1: Zurich Argentina v. Cec Fantasy. The National Court of Appeals in Federal Civil and Commercial Matters held that there is a presumption that the goods are received in the state and conditions described in the bill of lading, and that, unless proven otherwise, the contracting and the actual carriers are jointly and severally liable.

Case 39235/2013/CS1-CA1: Mayorga Vidal v. Prefectura Naval Argentina. The National Supreme Court of Justice held that the Argentine Coast Guard cannot impose a fine on a foreign ship for failing to comply with a local ordinance while in the exclusive economic zone of Argentina and that article 56 of the UN Convention on the Law of the Sea does not confer it such power.

Case 913/2013: Cargo v. Stadt Bremen

Cargo S.A. hired CMA CGM to transport a yacht from Miami to Buenos Aires. The ship 'Stadt Bremen' transported the yacht from Miami to Kingston, and then the ship 'Stadt Wismar' transported it from Kingston to Santos. The yacht was unloaded in the customs territory of Brazil while 'Stadt Wismar' was docked in the port of Santos. Although the Brazilian law required all maritime carriers crossing Brazilian ports to declare the goods in transit or subject to transshipment, CMA CGM did not declare the yacht. Upon noting the existence of the yacht, the Brazilian customs authority began an investigation that culminated in the definitive loss of the vessel.

As the yacht never reached its destination, Cargo filed a claim for damages against the captain, shipowner, proprietor, charterer and agent of 'Stadt Bremen', whose representative in Buenos Aires was the shipowner CMA CGM. The latter denied having any responsibility and argued that, in any event, the judge should apply the per-package limitation of liability contained for in the 1924 Brussels Convention.

The judge ordered CMA CGM to compensate Cargo. CMA CGM appealed the decision arguing, among other things, that the judge did not apply the limitation of liability contained in the Brussels Convention. On 6 February 2018, the National Court of Appeals in Federal Civil and Commercial Matters upheld the ruling.

It considered that the carrier was reckless because it could not ignore the consequences derived from the failure to declare the cargo before the Brazilian customs authorities and that the failure to deliver the yacht was sufficient evidence of the carrier's non-compliance.

In this regard, it pointed out that, pursuant to the Brussels Convention, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried. The carrier that violates this obligation shall be liable for the loss or damage of the cargo. Therefore, if the carrier received the goods without reservations or objections, and the goods were delivered damaged to the consignee, or not delivered in whole or in part, there is a presumption that the carrier received the goods in good conditions and that the damage or loss occurred because of its fault.

Case 6475/2004/CA5: Pedro Moscuzza e Hijos v. MAPFRE

Pedro Moscuzza e Hijos S.A. was the owner of a ship that wrecked after leaving the port of Mar del Plata. The vessel was covered by an insurance policy issued by *MAPFRE Aconcagua Compañía de Seguros S.A.*

The policy established that (i) the insurer would indemnify the insured for the total loss suffered by the ship due to wrecking or sinking; (ii) the right of the insured to be compensated would not be affected by the captain, officers, crew members, and pilots' negligence; and (iii) the insurer would not indemnify the insured when the total loss had occurred due to the vessel's unseaworthiness because it was unduly manned, armed or loaded, provided that the insured had or should have known of that unseaworthiness at the beginning of the trip.

After the chief engineer of the ship testified, the insurer refused coverage of the incident because it understood that the crew lacked professional competence, as the chief engineer ignored several issues related to the ship's safety. It argued that the exception mentioned in point (iii) above was applicable because the proprietor of the vessel should have been aware of the lack of competence of the chief engineer.

The plaintiff filed a lawsuit against the insurer. The judge dismissed the claim because he considered that the chief engineer was negligent when the incident started, and therefore the incident was excluded from coverage.

On March 27, 2018, the National Court of Appeals in Federal Civil and Commercial Matters reversed the ruling. After analyzing the evidence, it concluded that the vessel was well manned at the beginning of the trip and, therefore, the plaintiff had acted with due diligence in hiring the crew. Consequently, it ordered the insurance company to pay the amount of the policy, as well as compensation for loss of profits.

Case 1811/2006: La Meridional v. Murchison and Loginter

The ship 'Paraguay Express' left the port of Miami to the port of Buenos Aires with a two liquid coolers shipment. *The vessel unloaded the containers in the terminal of Terminales Río de la Plata* ('TRP') in Buenos Aires. Subsequently, TRP hired Murchison S.A. for the transfer of the containers to La Rioja, and the latter subcontracted the transfer services with Loginter S.A.

When removing the containers from the TRP deposit, Loginter made no reservations. When the containers entered the Murchison deposit, a reservation was made. Then, when the containers entered the final deposit in La Rioja, it was noticed that one of the equipment could not be used because it had breakdowns.

As a result of these breakdowns, *Allianz Ras Seguros Generales* ('Allianz') paid the damages caused to the goods and then sued TRP for the reimbursement of the amount paid. The judge concluded that the damages occurred after the containers were placed in TRP's deposit and before they arrived in La Rioja. Therefore, he ordered TRP to reimburse Allianz for the payment.

La Meridional Compañía Argentina de Seguros S.A. ('La Meridional'), TRP insurer, filed a lawsuit against Murchison and Loginter, alleging that the damage occurred after the containers were removed from TRP's deposit. The judge dismissed the claim because La Meridional did not prove that the damage did not occur when the containers were in TRP's deposit.

On August 1, 2018, the National Court of Appeals in Federal Civil and Commercial Matters reversed the decision. It noted that the judge reversed the burden of proof, thus pretending that the plaintiff would prove a negative. It considered that the obligation to transport the cargo and deliver it in good condition was an obligation of result (*obligación de resultado*) and its breach created the presumption of the carrier's fault. Consequently, it concluded that the defendants were the ones who had to prove the existence of a cause excluding their responsibility, and they did not.

Case 4571/2010/CA1: Americantec v. Craft Argentina

Americantec S.R.L. contracted with *Craft Argentina S.A.* the transport of goods from Miami to Rosario. As part of the goods did not arrive at the destination, Americantec filed a claim for damages against Craft in its capacity as contracting carrier and issuer of the bills of lading.

The judge ordered Craft to compensate Americantec. He stated that a freight forwarder is a person who, without transporting the goods by itself, organizes a logistics chain or structure, promising the result of the transfer to a principal, and, in this case, Craft had intervened as a freight forwarder. Therefore, Craft had to compensate Americantec for the loss of the goods, since it had chosen the means and subcontractors used for transportation.

Craft appealed the decision. It argued, among other things, that it was not sued as a freight forwarder. It claimed that it was a cargo agent and that it was in charge of the deconsolidation, but it was not a contracting carrier.

On August 2, 2018, the National Court of Appeals in Federal Civil and Commercial Matters upheld the decision. It stated that it is not necessary for the person issuing the bill of lading to carry out the actual transportation to be bound as a carrier. Article 267 of law 20,094 defines a carrier as a person who contracts with the shipper to transport goods, whether it is the 'proprietor, shipowner or charterer or who is responsible for the ship', excluding the 'maritime agent or intermediary'. Therefore, the freight forwarder fell within the definition of carrier provided in article 267 and, when issuing a bill of lading assuming the obligation to deliver the goods at destination, the freight forwarder became a contractual carrier.

It also noted that the main function of a freight forwarder is the contracting of the international transport of goods. The shipper or recipient generally has no direct contact with the carrier because the contracting and issuing of transport documents is done through, or with the participation, of the freight forwarder. By acting only as traditional cargo agent, the responsibility is limited to the correct execution of those tasks and does not respond for the damages or losses caused by the maritime transporter.

However, nowadays, the freight forwarder provides additional services (e.g., consolidation and deconsolidation of goods, short-term storage, packaging, documentation preparation, etc.) and the consequence of assuming a more active role is a greater responsibility, being even jointly and severally liable with the contracting or actual carrier in case of loss or damage to the goods. In this case, the function of Craft consisted of the reception of the

goods in the place of origin, the packing, the pre-shipment control, the boarding, the contracting of the insurance, the maritime transport of the goods, the deconsolidation upon reaching Buenos Aires and the transfer of the goods to Rosario.

Case 55929/2018: Zoppetti v. Risler

Fernando Sebastián Zoppetti requested the seizure and arrest of the ship 'Kadriye Ana' as a result of a salary-related claim against the shipowner. The judge dismissed the request. He considered that the request did not comply with article 532(a) of law 20,094 because the worker had not proved the flag of the ship, nor the foreign legislation on maritime privileges.

The plaintiff appealed the decision, arguing, among other things, that his request complied with article 532(c) of law 20,094 because the debts resulting from the employment contract were debts arising from the activity of the ship.

On August 21, 2018, the Federal Court of Appeals of Rosario reversed the decision and ordered the seizure and arrest of the ship. It noted that article 532(c) of law 20,094 provides for the possibility of seizing a foreign vessel for debts originating in the activity of the vessel, or for other credits unrelated to it when they are enforceable before the courts of the country; and that article 231 of said law contemplates the possibility of seizing a national vessel for privileged credits and for other credits in the port where its proprietor has its domicile or principal establishment.

It considered that, regardless of whether the credit was privileged or not under the law of the flag of the ship, the plaintiff could request the seizure because the credit had originated in tasks rendered in the activity of the ship. It also stated that the proof of the nationality of the vessel and the legislation of its flag was unnecessary because, if it were an Argentine-flagged vessel, the request for a seizure would also proceed under the provisions of article 231.

Case 6663/2011/CA1: Epson Argentina v. Monte Tamaro

Epson Argentina S.R.L. initiated a lawsuit against *Hamburg Süd Sucursal Argentina,* as maritime agent and legal representative of the carrier, for the damages caused by the late delivery of four containers. Of the four containers, only three were timely unloaded. The fourth container was transferred to Santos, and then loaded on another ship, arriving in Buenos Aires fifteen days later. Hamburg Süd argued that the delay was due to a strike by port workers and, therefore, was justified by *force majeure.*

The judge dismissed the claim. Epson appealed the decision. It argued, among other things, that the carrier breached its obligations because the cargo was protected with a bill of lading and the single cargo manifest prepared for the four containers could not be used because only three them were unloaded. It also stated that the carrier's representative initiated the administrative file before the customs authorities after the legal term expired.

On September 20, 2019, the National Court of Appeals in Federal Civil and Commercial Matters reversed the decision. It stated that the carrier breached its obligation to deliver the goods at the destination in accordance with the agreed terms. The four containers formed an inseparable package because they traveled covered by a single bill of lading backed by a single commercial invoice and a single cargo manifest. Therefore, the decision of the carrier regarding the fourth container required the obtention of a rectification of the customs documents for the entry and dispatch of the entire lot.

It also noted that Hamburg Süd did not prove that the strike had prevented it from fulfilling its obligation. The strike affected the service only two hours, and Hamburg Süd did not prove that the fourth container could not have been unloaded that same day two hours later than the rest of the goods covered by the single bill of lading, instead of being sent to a port in Brazil and re-embarked, arriving fifteen days later.

Case 5623/2010/CA1: Zurich Argentina v. Cec Fantasy

Zurich Argentina Compañía de Seguros S.A. initiated a lawsuit against the captain, proprietor, and shipowner of the ship 'Cec Fantasy' and the contracting carrier BBC Chartering for damage to the goods.

The ship had received the cargo in good conditions because the reservations made to the bills of lading at the time of loading had no relation to the damage verified upon receiving the goods. Since the defendants did not prove that the damage was caused by poor packaging, the judge concluded that they occurred during shipping, when the cargo was in their custody. Therefore, he ordered the defendants to compensate Zurich.

The defendants appealed the judgment. They argued, among other things, that the damage had not occurred during shipping and that they could not be jointly and severally liable for it.

On October 11, 2018, the National Court of Appeals in Federal Civil and Commercial Matters upheld the decision. It stated that the bill of lading not only proves the existence of the transportation contract and the reception of the goods by the carrier but also creates the presumption that the goods are received in the state and conditions described therein. Therefore, the carrier that disagrees with the information contained in the bill of lading or that does not have the means to verify such information, must make a reservation. In this case, the reservations made were not related to the damages verified upon receiving the goods, and the defendants did not prove that the damage had occurred before loading.

It also concluded that the joint and several liability of the defendants was justified because none of them had demonstrated the non-existence of a cause-effect relationship between the damage and their conduct. Although the navigation law contains a legal loophole about this issue because it does not expressly contemplate the situation of a transport hired by a company and executed by another, this gap must be filled by using analogous laws. In this regard, it stated that article 153 of the Aviation Code establishes that the user may sue both the contracting and the actual carrier, and both will be jointly and severally liable for the damages that may have caused, without prejudice to the actions that one could initiate against the other.

Case 39235/2013/CS1-CA1: Mayorga Vidal v. Prefectura Naval Argentina

In 2009, the vessel 'Beagle', Chilean flag, was towing the vessel 'Polar Mist', also Chilean flag. 'Polar Mist' was carrying gold worth approximately USD 16.4 million and was adrift and unmanned. During the rescue operation, 'Polar Mist' began to have problems, and 'Beagle' stopped towing, which led to the sinking of 'Polar Mist'.

After investigating the facts, the Argentine Coast Guard *(Prefectura Naval Argentina* or 'PNA') fined the 'Beagle' captain for not having reported immediately that 'Polar Mist' was in trouble, in violation of a local ordinance. The captain alleged that the Argentine authorities lacked jurisdiction because the facts investigated did not take place in the Argentine territorial sea, but in the exclusive economic zone.

The National Court of Appeals in Federal Administrative Matters upheld the fine. It noted that article 56(1)(b) of the United Nations Convention on the Law of the Sea establishes that, within the exclusive economic zone, coastal states have jurisdiction for the protection and preservation of the marine environment. Therefore, the captain should have made a safety communication urgently, since he knew or should have known that the incident could put at risk the resources and riches of the sea.

The captain appealed the decision. He pointed out that the court of appeals misinterpreted article 56 of the Convention because, in the exclusive economic zone, the sovereignty of the coastal State is recognized for the sole purpose of the exploration and exploitation, conservation and management of natural resources of the waters, of the bed and the marine subsoil. Therefore, the PNA extraterritorially applied an administrative ordinance that expressly limits its scope of application to the territorial sea.

On October 11, 2018, the National Supreme Court of Justice reversed the decision. It stated that the events that gave rise to the fine occurred in the exclusive economic zone, and the PNA had no jurisdiction under the applicable regulations to impose sanctions on the personnel of a foreign-flagged vessel for events that occurred in that zone, as the communications provided by the local ordinance are mandatory for foreign-flagged vessels only when navigating the Argentine territorial sea, rivers or inland lakes. It also pointed out that the lack of jurisdiction of the PNA could not be superseded by invoking article 56 of the Convention because the article does not confer sanctioning powers on the PNA.

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