[Title]
International Jurisdiction in Claim for Damages in Shipping Accident

[Deciding Court]
Supreme Court

[Date of Decision]
31 October 2006

[Case No.]
Case No. 22285(wa) of 2005

[Case Name]
Claim for Damages

[Source]
Hanrei Taimuzu No. 1241: 338

[Party Names]

Final Appellant	X	Nippon Yusen Kabushiki Kaisha (NYK Line)
Vs.		
Final Appellee	Y	Northern Endeavour Shipping Private Ltd. The London Steam Ship Owners' Mutual Insurance Association Limited

[Summary of Facts]
X (Plaintiff) was a shipping company in Japan. Y (Defendant) was a shipping company in Singapore, and the owner of the "Northern Endeavour" (hereinafter referred to as the "Vessel"). The Vessel was a special-purpose vessel for containers registered in Singapore. At the time of the accident, the Vessel was time-chartered by Y to A (non-party), a shipping company in Taiwan, and X had entered into a contract with A to sub-charter part of the freight space on the Vessel through a 'slot agreement.' At the time of the accident, the Vessel had been placed in service for a regular run transporting containers from the Far East to South America. It left Nagoya Port on 24 February 2003. After stopping at the ports of Yokohama, Chi-lung, Hong Kong, and Singapore, it left Durban Port in South Africa on 21 March, and headed for Santos in Brazil. In early morning on 23 March, however, in international waters west of South Africa, the Vessel encountered stormy weather with high waves, and rolled from side to side. When this happened, eleven containers stowed in Bay 22 of the Vessel fell into the water and were lost. Some other containers on deck were damaged, including by collapsing or leaning against other containers. Sixteen of the containers lost were in use by X, and carried goods which X had undertaken to transport by issuing a bill of lading. According to X, Insurance Companies B and C, which had paid on the cargo insurance for the losses, filed a lawsuit in Brazil to claim damages based on the bill of lading issued by X. Accordingly, X filed a suit in Tokyo District Court claiming damages as well as damages for delay against Y in the amount of approximately 200 million yen (200,000,000 yen). (The underwriter for the Vessel's protection and indemnity insurance was also a Defendant, but that aspect of the case is omitted in this commentary.)

Y asserted that Japan did not have international jurisdiction over this case. In response, X asserted that the containers were improperly stowed, that the Master of the Vessel and others had a duty to give appropriate instructions at each port in Nagoya, Yokohama, Singapore and Durban, which they neglected to do, that the causation for the tort in this case arose in these ports, and that Japan's jurisdiction should be recognized.

[Summary of Decision]
Final appeal dismissed.

"Since there are no generally internationally accepted principles with regard to in what kind of cases Japan's international jurisdiction should be affirmed, and the relevant customary law is also not fully developed, it is appropriate to decide the matter logically, in accordance with the principles of fairness as between the parties, and achieving a proper and speedy trial (Malaysia Airlines Case, Second Petty Bench of the Supreme Court decision, 16 October 1981, Case No. 130 (o) of 1980, *Minshu* Vol. 35 No. 7: 1224; German Divorce Case, Second Petty Bench of the Supreme Court decision, 24 June 1996, Case No. 764 (o) of 1993, *Minshu* Vol. 50 No. 7: 1451). In principle, if any of venues provided for by the laws of Japan is within Japan, it is appropriate to subject Y to the jurisdiction of Japan in relation to actions filed in the courts of Japan. However, where it is recognized that conducting the trial in Japan involves special circumstances contrary to the principles of fairness as between the parties, and the expectation of a proper and speedy trial, Japan's international jurisdiction should be denied (Family Case, Third Petty Bench of the Supreme Court decision, 11 November 1997, *Minshu* Vol. 51 No. 10: 4055)."

"Article 5(9) of the *Code of Civil Procedure* recognizes a venue in the place of the tortious act in a tort action. In order to recognize the Japanese courts' international jurisdiction in reliance on the legal provisions regarding the venue of the place of the tortious act in a suit claiming damages pursuant to tort against Y, who has no domicile in Japan, it will, in principle, be sufficient to prove an objective factual relationships between Y's acts in Japan and the damage to X's legal interests ('Ultraman' Case, Second Petty Bench of the Supreme Court decision, 8 June 2001, *Minshu* Vol. 55 No. 4: 727)."

"X asserted that, when stowing containers at Nagoya Port, the Master and the Chief Mate of the Vessel gave instructions to fill the middle section of Bay 22 of the Vessel with some containers, and to divide the rest of the containers and stow them in the bottom layer of containers to port and starboard. At Yokohama Port, they should have given instructions to move the containers stowed at Nagoya to the middle section of Bay 22, and to stow the containers loaded at Yokohama on top of the containers from Nagoya, which they neglected to do. X asserted that such neglect constituted the tortious cause of action." "X's assertion is tantamount to equating an omission on the part of the Master and the Chief Mate of the Vessel with a harmful act. In order for an omission to constitute a tortious act, it is a prerequisite, that from the viewpoint of the illegality of the act, the existence of a duty to act must be recognized. Also, in order to acknowledge the existence of a duty to act, the occurrence of the result must be foreseeable, and it must be possible to avoid the result. It follows that, in order to affirm the Japanese courts' international jurisdiction based on the place of a tort of omission, it is necessary to prove, as evidence of the objective factual relationships described above, that at the time of the omission,

those who did harm caused the result to occur through an omission, even though they could have foreseen the occurrence of the result, and the result could have been avoided."

"However, the maximum number of layers of containers permitted for Bay 22 of the Vessel at the time the Vessel left the ports of Nagoya and Yokohama was four, and we did not find the stowage to be in violation of the Vessel's stowage manual, or to be inappropriate, such as due to the stowing of heavy containers in a high position." "The Vessel had initially planned to discharge four rows of the containers loaded at Yokohama in the middle section of Bay 22 in Durban, and to fill the middle section by stowing 54 empty containers there. However, it was confirmed after the Vessel arrived in Durban that the empty containers were not to be stowed... Despite this, the Vessel did not reorganize her stowage, and left Durban Port leaving the middle section of Bay 22 empty. We could not find any facts that indicated that the Master and the Chief Mate of the Vessel could have foreseen that the Vessel would be leaving Durban in such circumstances by the time the Vessel left Yokohama Port."

"We therefore conclude that we cannot affirm the international jurisdiction of the Japanese courts based on a tort of omission on the part of the Master and the Chief Mate of the Vessel at the ports of Nagoya and Yokohama."