

RECENT INCIDENTS



Indain Coast Guard

MAERSK HONAM

15,226 TEU containership fire in Arabian Sea in March 2018

BIG SHIPS, BIG FIRES, BIG PROBLEMS



What's involved and lessons learned

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Midshipman Cameron Brunick, USMMA Class of 2021

YANTIAN EXPRESS

7,500 TEU containership fire off Canadian coast in January 2019

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US Coast Guard

SINCERITY ACE

5,200 vehicle car carrier fire 1,800 miles NW of Oahu in January

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Marine Traffic / Vietnamese Coast Guard

APL VANCOUVER

9,200 TEU containership fire off Vietnamese coast in January

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Marine National Defense

GRANDE AMERICA

RO/RO cargo ship fire in Bay of Biscay in March

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GRANDE EUROPA

RO/RO ship fire off Palma de Mallorca in May

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TNC The News Channel

KMTC HONG KONG

1,585 TEU feedership fire at Laem Chabang port in May

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FRONT ALTAIR

109,894 dwt tanker

Tankers damaged in the Gulf of Oman in June



KOKURA COURAGEOUS

27,000 dwt product tanker

Tankers damaged in the Gulf of Oman in June

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SYN ZANIA

4,007 cbm LPG carrier fire at Petkim Port, Turkey, in July

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Gujarat Dept. of Defense

APL LE HAVRE

10,106 TEU containership fire off Indian coast in August

WHAT IS INVOLVED?



MSC FLAMINIA

6,732 TEU containership fire in the Atlantic Ocean in July 2012

THE INCIDENT



- At the time of the incident, the MSC FLAMINIA was in the Atlantic Ocean approximately 700 NM from the southwest coast of the United Kingdom.
- Smoke was detected in cargo Hold No. 4.
- CO₂ gas was released to Hold No. 4.

THE INCIDENT



- Despite the release of CO₂ gas, there was an explosion and then fire in Hold No. 4
- The MSC FLAMINIA was loaded with 64,410 MT of cargo in 2,876 containers.
- This included 149 declared IMDG-classed cargo, 33 in Hold No. 4.

SALVAGE



- A Lloyds Open Form (LOF 2011) was awarded to Smit Salvage on 14 July and at 2345 hours that day, the FAIRMOUNT EXPEDITION departed Falmouth.
- On 17 July, the FAIRMOUNT EXPEDITION arrived at the MSC FLAMINIA and commenced fire-fighting and boundary cooling. SCOPIC clause was invoked.

SALVAGE



- On 19 July, the ANGLIAN SOVEREIGN arrived. A lot of water was used on the fire.

PORT OF REFUGE

- On 21 July, SMIT contacts the authorities in the UK and Ireland about a suitable port of refuge. Meetings with the UK MCA HQ continue to August.
- By 1 August, the UK and France were reluctant to allow the MSC FLAMINIA to approach their shores without confirming the structural integrity of the vessel.
- On 10 August, SMIT met with Dutch authorities.
- On 17 August, SMIT contacted authorities in Belgium. Concurrently, Owners contacted authorities in Germany about a Port of Refuge.
- Eventually, Germany allowed the German-flagged and classed vessel entry.

PORT OF REFUGE



- The MSC FLAMINIA arrived at the Port of Wilhelmshaven on 9 September 2012.
- 57 days passed from the time of the incident until the vessel could take refuge.

PORT OF REFUGE



- There was considerable damage to the cargo and certain cargo holds.

LIMITATION IN THE US

- In accordance with the terms of the MSC Bills of Lading, the various shippers and owners of over 1,700 containers of US outbound cargo aboard the MSC FLAMINIA filed legal actions in SDNY collectively claiming about \$120 million in damages.
- On 7 December 2012, Conti, as vessel owner, and NSB, as the technical manager, filed for exoneration and/or limitation of liability under the US Shipowners Limitation Act of 1851. This procedure consolidated known claims and prevented future ones in the US.

THE INVESTIGATION



- Meanwhile, in Europe, experts recovered a portion of the smoke detection system on the MSC FLAMINIA for testing and analysis.

THE INVESTIGATION

- Due to the operation of the CO2 gas releasing system, smoke detection system plastic tubing was isolated after the smoke was detected.
- As a result, the inside surface of the plastic tubing for Hold No. 4 included a residue that could be extracted and analyzed.
- Independent laboratories confirmed that one or more tank containers of the Divinylbenzene (DVB) cargo in Hold No. 4 had undergone runaway auto-polymerization resulting in venting of decomposition products of DVB polymer prior to the first introduction of CO2 into Hold No. 4.

KEY PARTIES IN THE US

- Based on the initial results of the lab testing in Europe and identification of DVB as a potentially responsible for the explosion, the number of parties in the New York litigation expanded from:
 - **Conti and NSB** – the owner and technical manager of the MSC FLAMINIA
 - **Mediterranean Shipping Company (“MSC”)**– the time charterer of the MSC FLAMINIA
 - **Cargo** – collectively the interests of hundreds of damaged containers

KEY PARTIES IN THE US

- To include:
 - **Deltech** – the producer and shipper of the DVB cargo
 - **Stolt Tank Containers BV**– the NVOCC for the DVB cargo
 - **Panalpina and BDP** – document specialists for the DVB cargo
- And, further include:
 - **Chemtura, Bulkhaul, Monsanto, BASF**, and various NVOCC claimants and defendants
 - Estate of the Chief Officer – claim for wrongful death

PRE TRIAL DISCOVERY

- From 2012 through 2016, the parties exchanged over 500,000 pages of documents in response to discovery obligations and requests.
- Over 300 samples, ranging in size from scrapings stored on slides to the remains of 20 foot ocean containers, were collected, tested, and analyzed by labs and experts.



PRE TRIAL DISCOVERY



- Some “samples” were in better condition than others. Here are the remains of the 3 DVB cargo tank containers, labeled I (top), J (bottom left), and K (bottom right).

PRE TRIAL DISCOVERY

- Between March 2014 and March 2016, the parties conducted **90 fact depositions** in the US and Europe.
- Subsequently, **49 expert reports** were disclosed, and corresponding depositions were conducted between October 2016 and February 2017. Experts covered a wide range of topics, including fire cause and origin, chemistry, metallurgy, heat transfer, cargo documentation, IMDG classification, marine firefighting and marine engineering.
- In total, the parties identified over **1,200 exhibits** during these depositions.

THE CLAIMS

- Conti, as the owner, still had a General Average claim against the parties.
- Conti and NSB asserted claims of negligence, indemnity, contribution, failure to warn, and breach of contract on the basis of the MSC service agreement and bill of lading against various parties.
- Total claims by Conti and NSB were over \$160 million plus interest for a share of the salvage expense, damage to the vessel, dealing with the sound cargo, the clean up of contaminated debris, and defense costs.

THE CLAIMS

- MSC had claims of about \$20 million plus interest for a salvage share, equipment loss, and legal and expert costs.
- Other parties had equipment claims, but on the order of \$1 million or less each.
- By the close of fact discovery, some claims had been resolved by motion and others were settled, including the wrongful death claim by the estate of the Chief Officer.
- Stolt had settled with the cargo claimants and obtained an assignment of their claims for \$80 million.

THE DEFENSES – LIMITATION ACT

- Conti, as the owner, and NSB, as the technical manager, of the MSC FLAMINIA may invoke as a defense the Limitation of Shipowner’s Liability Act (“The Limitation Act”).
- The Limitation Act’s “Fire Statute” specifically exonerates—rather than just limits—a shipowner and a ship manager from liability as to loss or damage to cargo caused by fire on board its vessel unless the fire was caused by the “design or neglect of the owner.”

THE DEFENSES – US COGSA

- Carriage of Goods by Sea Act (“COGSA”) is the exclusive remedy for a cargo claimant against a carrier.
- COGSA’s “Fire Exception”, COGSA § 4(2)(b), specifically exonerates—rather than just limits— a shipowner and a ship manager from liability as to “loss or damage arising or resulting from ... [f]ire, unless caused by the actual fault or privity of the carrier.”

THE DEFENSES – US COGSA

- COGSA applies to “all contracts for carriage of goods by sea to or from ports of the United States in foreign trade” and to all contracts for carriage (e.g., bills of lading) in which it is expressly incorporated (e.g., by a “Clause Paramount”).
- Furthermore, “the provisions of the bill of lading may contractually extend the defenses and limitations of liability provided to a carrier under COGSA to an agent of the carrier through what is known as a ‘Himalaya Clause.’”

PRE-TRIAL

- Prior to the first trial, the parties collectively filed about 30 motions on various issues for summary judgment, and to exclude certain evidence and expert opinion.
- Regarding the motions to exclude experts, Judge Forrest issued a 92-page Decision in July of 2017. The basic theme was that experts must “stay in their lane,” i.e., testify strictly within their field of expertise. As a result, the Judge excluded and/or limited the evidence of various experts on various subjects.
- By request of the parties in 2014, the trial was bifurcated between liability and damages.

THE TRIALS

- On the so ordered application of Conti, NSB, and MSC, the trial on liability was divided into two phases – (1) What blew up and why; and (2) Who was at fault?
- Just prior to the first trial, Deltech and Stolt conceded that the DVB cargo was responsible for the flammable atmosphere in Hold No. 4. This had been highly contested between competing experts, lab results, and analysis.

PHASE 1 TRIAL

- The first trial on Phase 1 – What blew up and why? was conducted over 7 days in September of 2017.
- 19 witnesses were presented; over 470 exhibits were introduced.
- Since the focus of the Phase 1 trial was on what physically happened in Hold No. 4, the trial was essentially a battle of the experts.
- A 78 page decision issued on 17 November 2017; a corrected opinion issued on 23 January 2018.

PHASE 1 TRIAL CONCLUSIONS

- Following the Phase 1 trial, the Court determined that the following were substantial contributing factors that led to the DVB auto-polymerization in Hold No. 4:
 1. The decision to ship the DVB out of New Orleans instead of Newark, which resulted in a longer voyage and exposed the DVB to undesirable conditions;
 2. The fact that the DVB was left still on the dock at New Orleans for 10 days in the sun, in hot weather, and next to a number of tanks of heated DPA;

PHASE 1 TRIAL CONCLUSIONS

3. The placement of the DVB in Hold 4, where it was stored next to containers of heated DPA and near the ship's heated fuel tanks; and
 4. The lack of proper ventilation, leading to hotter-than-typical ambient temperatures in Hold No. 4.
- The Court also found that “crew activity—through, *inter alia*, opening the access point to Hold 4—created a spark that ignited the fire.”

PHASE 2 TRIAL

- The second trial on Phase 2 – Who is at fault? Was conducted over 9 days in August of 2018
- 26 witnesses were presented; over 720 additional exhibits were introduced.
- A 122 page decision issued on 10 September 2018.

PHASE 2 TRIAL CONCLUSIONS

- Since there was no evidence of managerial-level negligence, Conti and NSB as well as MSC prevailed on their fire defenses against the cargo claims; no liability for cargo damage; and, the officers and crew were not found negligent.
- Deltech had failed to abide by its own carefully developed shipping safety protocols and allowed the DVB cargo to be loaded early in warm weather.
- Stolt knew that the exposure to heat would increase the risk of the DVB cargo auto-polymerizing, but failed to pass this information onward to the carrier.
- Thus, Deltech (55%) and Stolt (45%) were found liable to the vessel interests.

WHAT'S NEXT?

- Deltech and Stolt have commenced an interlocutory appeal of the Phase 1 and 2 decisions on liability. Briefs have been submitted to the Court, but oral argument has not yet been scheduled.
- Discovery on Phase 3 discovery on damages is proceeding forward.
- Court ordered mediation was held in March of 2019 but a settlement not achieved.

INDUSTRY LESSONS LEARNED

Ensure proper classification of dangerous goods

Prevent mis-declared / undeclared dangerous goods

Commercial penalties for mis-declaration / failure to declare dangerous goods

VESSEL INTEREST LESSONS LEARNED

Maintain key people throughout

Identify and retain experts quickly

Involve experienced lawyers from the beginning

THANK YOU



Timothy Semenero is a partner in the Litigation Department of Montgomery McCracken and primarily represents international companies, vessel owners, charterers, Protection and Indemnity (P&I) Clubs, Hull Clubs and insurers and insurers in complex, multiparty litigations; arbitrations; mediations; and appeals..

His practice includes maritime casualties, the U.S. Limitation of Liability Act (Limitation Act) and Fire Statute, the U.S. Carriage of Goods by Sea Act (COGSA), general average, insurance defense, charter party and contract disputes, environmental liability and damages, maritime arrest and attachment and general admiralty and maritime law.

He graduated from Webb Institute with a degree in Naval Architecture and Marine Engineering. He received his law degree from Tulane University School of Law with a concentration in Maritime Law.