

**AMERICAN INTERNATIONAL  
KNITTERS CORPORATION,  
et al.**

**vs.  
KAWASAKI KISEN KAISHA,  
LTD., dba "K" Line, et al.**

**Civil Action No. 87-0005  
District Court NMI**

**Decided July 24, 1987**

**1. Courts - Citation of Cases**

Where party directed the Court to cases not available in the court's library, without supplying the text of the cases, in the interest of fairness, the court will not consider cited authority which has not been verified.

**2. Civil Procedure - Motions -  
Opposition**

Where local rules of the Court require that opposition memoranda, briefs, declarations, affidavits, or other filings be submitted seven days before the date of hearing, a motion to strike an affidavit filed one day before the hearing would be granted. NMI Dist.C.Local R.Pro. 220-3.

**3. Jurisdiction - Personal -  
Service of Process**

When defendant's assertion that its only notice of suit came when another defendant telefaxed it a copy of the summons and complaint was uncontroverted, personal jurisdiction over the defendant was lacking.

**4. Federal Laws - Carriage of  
Goods at Sea Act**

Federal court may entertain jurisdiction under the Carriage of Goods by Sea Act where statute applies to territories of the United States, of which Guam is one, and it therefore applies in the CNMI through the Covenant to Establish a Commonwealth of the Northern Mariana

Islands in Political Union with the United States. 46 U.S.C. §1300 et seq.; Covenant, §502(a)(2).

**5. Civil Procedure - Forum  
Selection**

Foreign forum selection clauses should be enforced unless the party objecting to enforcement can clearly show that enforcement would be unreasonable, unjust, or invalid because there is fraud, undue influence or overweening bargaining power.

**6. Civil Procedure - Forum  
Selection**

Where other than counsel's unsworn assertion that it would be unjust to have the matter tried in a Tokyo court, there was nothing properly in the record to persuade the Court that it would be inappropriate to enforce the forum selection clause, court found that under the facts properly before it the foreign forum selection clause is valid and enforceable and declines to exercise jurisdiction to try this matter.

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IN THE DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

AMERICAN INTERNATIONAL )  
KNITTERS CORPORATION and )  
AMERICAN INVESTMENT )  
CORPORATION, )

Plaintiffs, )

vs. )

KAWASAKI KISEN KAISHA, LTD., )  
dba "K" Line, and )  
ISLAND SHIPPING LINES, INC., )

Defendants. )

CIVIL ACTION NO. 87-0005

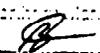
DECISION

FILED

Clerk  
District Court

JUL 24 1987

For The Northern Mariana Islands

By: 

THIS MATTER came before the Court on June 26, 1987, for hearing of defendants' separate motions for dismissal and/or summary judgment, pursuant to Federal Rules of Civil Procedure 12 and, through 12(b)(6), Rule 56. Although the issues raised in each motion are nearly identical, they will be considered in turn for purposes of clarity.

The only facts before the Court which are pertinent to this decision are these:

Plaintiffs and defendants have, on at least five occasions prior to that leading to this litigation, entered into agreements in which K-Line brought goods from foreign ports to Tokyo or Yokohama, from where they were trans-shipped to Saipan via Island Shipping. All shipments, including the instant one, were undertaken using the long form bill of lading provided by K-Line. All bills of lading contained the following clause on the reverse:

1           28. GOVERNING LAW AND JURISDICTION.

2           The contract evidenced by or contained in  
3           this Bill of Lading shall be governed by  
4           Japanese law except as may be otherwise  
            provided for herein, and any action  
            thereunder shall be brought before the Tokyo  
            District Court in Japan.

5           This clause was never varied, either orally or in  
6           writing, by the parties, throughout the course of their business  
7           dealings.

8           [1]           Plaintiffs have directed the Court to cases not  
9           available in the Court's library, without supplying the text of  
10          the cases. In the interest of fairness, the Court will not  
11          consider cited authority which has not been verified.

12          [2]           Defendant Island Shipping has moved to strike the  
13          affidavit of Willie Tan, which was filed June 25, 1987, one day  
14          prior to the hearing. Rule 220-3 of the Local Rules of this  
15          Court requires that opposition memoranda, briefs, declarations,  
16          affidavits, or other filings be submitted seven days prior to the  
17          date of hearing. Therefore, the motion to strike is well-taken  
18          and will be granted.

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20          1. Kawasaki Kisen Kaisha, Ltd. (K-Line)

21          [3]           K-Line argues that this Court lacks personal  
22          jurisdiction over it because of plaintiffs' failure to properly  
23          effect service of process. Plaintiffs reply that any defects  
24          were not timely made or have been waived by K-Line's appearance.  
25          A thorough reading of Rule 12 should disabuse plaintiffs of this  
26          notion. K-Line's assertion that its only notice of suit came  
27          when defendant Island Shipping telefaxed it a copy of the summons  
28          and complaint is uncontroverted.

1 Prior to removal to this Court, plaintiffs were  
2 required to serve K-Line as directed by 7 C.M.C §1104 and Rule 4  
3 of the Commonwealth Trial Court Rules of Civil Procedure. The  
4 record before the Court is devoid of any indication that such was  
5 done. Therefore, K-Line's argument that jurisdiction over it is  
6 lacking is correct and it shall be dismissed without prejudice as  
7 a party.

8 Dismissal on this ground makes it unnecessary to  
9 consider K-Line's other arguments.

## 10 11 2. Island Shipping

12 Island Shipping adopts K-Line's argument that the  
13 lawsuit should be dismissed because the bills of lading contain a  
14 "forum selection" clause directing the parties to litigate any  
15 dispute in the District Court at Tokyo, Japan. Island Shipping  
16 notes that plaintiffs are relying on the bills of lading in  
17 question as contracts of carriage between the parties and seeking  
18 to enforce their terms, except that they wish to avoid the "forum  
19 selection" clause.

20 [4] Defendants nowhere argue that this Court lacks  
21 jurisdiction; rather, they argue that the facts available  
22 militate toward a finding that the forum selection clause should  
23 be honored and that we should decline to exercise jurisdiction.  
24 The Court believes that it may entertain jurisdiction under the  
25 Carriage of Goods by Sea Act (COGSA), 46 U.S.C. §§1300 et. seq.  
26 (1976), which provides that "every bill of lading...which is  
27 evidence of a contract for the carriage of goods by sea to or  
28 from the ports of the United States, shall have effect subject to

1 the provisions of this chapter." 46 U.S.C. §1300. COGSA applies  
2 to territories of the United States, 46 U.S.C. §1312, of which  
3 Guam is one. It therefore applies in the CNMI through §502(a)(2)  
4 of the Covenant to Establish a Commonwealth of the Northern  
5 Mariana Islands in Political Union with the United States.

6 [5,6] The question of enforcement of a foreign selection  
7 clause was considered by the United States Supreme Court in The  
8 M/S BREMEN v. Zapata Off-Shore Co., 407 U.S. 1, 92 S.Ct. 1907  
9 (1972). The parties disagree about the import of The M/S BREMEN  
10 decision. There, the Supreme Court considered the validity and  
11 enforceability of a forum selection clause contained in a  
12 maritime towing contract. This Court reads the M/S BREMEN  
13 decision to mean, generally, that long-standing judicial  
14 reluctance to enforce such clauses has given way in light of the  
15 realities of current business practices. The modern view "is  
16 that such clauses are prima facie valid and should be enforced  
17 unless enforcement is shown by the resisting party to be  
18 'unreasonable' under the circumstances." Id., 92 S.Ct. at 1913.  
19 The Supreme Court further indicated that as a policy matter such  
20 clauses warrant enforcement unless there is fraud, undue  
21 influence, or overweening bargaining power. Id., 92 S.Ct. at  
22 1914-1915. The "correct approach" is to enforce such clauses  
23 unless the party objecting can clearly show that enforcement  
24 would be unreasonable, unjust, or invalid for the reasons  
25 mentioned above. Id., 92 S.Ct. at 1916. The Ninth Circuit will  
26 enforce such clauses. See, e.g. North River Ins. Co. v. FED  
27 SEA/FED PAC LINE, 647 F.2d 985 (1981); Tai Kien Industry Co.,  
28 Ltd. v. M/C HAMBURG 528 F.2d 835 (1976). Other than counsel's

1 unsworn assertion that it would be unjust to have this matter  
2 tried in the Tokyo court, there is nothing properly in the record  
3 to persuade the Court that it would be inappropriate to enforce  
4 the forum selection clause. Therefore, the Court finds that  
5 under the facts properly before it the forum selection clause is  
6 valid and enforceable and declines to exercise jurisdiction to  
7 try this matter. The complaint is dismissed without prejudice to  
8 Island Shipping. It is not necessary to consider K-Line's other  
9 arguments.

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11 DATED this 24<sup>th</sup> day of July, 1987.

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15 Alfred Laureta  
16 Judge  
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