



## SHIPPERS' LAW

By CHRIS DUPIN

### Left flat by abandoned tires

**A**bandoned cargo can be a problem for carriers, intermediaries, and other businesses. Two lawsuits from last year revolving around abandoned containers filled

with used tires were discussed by Vincent M. DeOrchis, a partner at the New York office of Montgomery McCracken, in an article on his law firm's website.

In the first, (*Mediterranean Shipping Co. v. Best Tire Recycling Inc.* U.S. District Court Puerto Rico. No. 13-1644. Nov. 2, 2015) MSC carried 40 containers of used tires from San Juan, Puerto Rico to Hai Phong, Vietnam in 2012, loading the cargo in April and May 2012 on several ships.

The consignee refused to accept delivery, allegedly because the shipment arrived late. Unpaid freight, demurrage, and other charges mounted.

Best, in court papers, explained in Puerto Rico recyclers that collect used tires are paid for their services by an Environmental Quality Board. They are then authorized to dispose of the tires "in whichever way that person can." Best said it provided the 40 containers of tires at no cost to a company called Armstrong International, which shipped them to a Vietnamese buyer.

While it was contracted to transport the containers from its storage facility in Rincon, Puerto Rico, to the Port of San Juan, Best said it never contracted with MSC to transport the tires overseas.

*The problem of abandoned containers is a persistent one, resulting from both legitimate and illicit activities.*

The tire company contended it could not be held liable for the freight charges, even though it was named as the shipper on the bill of lading because Armstrong was the party which negotiated the freight charges.

DeOrchis said Best "argued that it had booked the transportation through a forwarder, and that the parties intended only that the consignee should pay the freight under the 'freight collect' arrangement. The District Court disagreed, noting that the 'Merchant' clause in the bill of lading clearly identified the named shipper as a party to the contract, that the defendant had been copied on emails concerning the rate quotes, and that the defendant did not dispute that it was the party who delivered the cargo of used tires to the carrier. The District Court went on to say that the defendant's signature was not required under maritime law to bind the defendant to the maritime contract."

The court granted MSC summary judgment, stating Best was required to pay \$460,053—including \$353,083 in demurrage, \$36,780 for port storage, and \$69,915 on unpaid ocean freight invoices. MSC was also entitled to administrative and legal fees.

The decision has been appealed to the 1st Circuit.

In another case (*CMA CGM v. Deckwell Sky (USA) Inc. d/b/a Monarch Container Line*. E.D. Virginia. No. 2:14cv135. March 16, 2015.), the court held the ocean carrier could recover its demurrage charges from a non-vessel-operating common carrier whose consignee had abandoned 13 containers of used tires shipped from Oakland, Calif. to Tianjin, China. The NVO was also held liable for detention and destruction damages pursuant to the service contract

it had with the carrier.

Used tire imports are illegal in China, but the shipper mis-described the cargo as auto parts.

The court found the plaintiff was entitled to \$438,910—\$210,909 in demurrage, \$213,408 for destruction of the tires, \$4,268 for inspections, and \$1,505 for storage fees after the cargo was abandoned.

The problem of abandoned containers is a persistent one. Sometimes they arise out of legitimate business operations—DeOrchis recalled a case involving a U.S. woman's clothing chain that went out of business.

But they can also occur from illegal activities, such as when companies try to smuggle waste into a country, and DeOrchis said he has seen scams involving cargo shipped both from and into the United States.

"Typically you will find tires, but I have one now in the Philippines that is just garbage," said Ed Greenberg of GKG Law in Washington, who has handled cases in-

volving shipments to China, Vietnam and India, as well.

"We end up representing the NVOs who get stuck because the containers are not picked up by the consignee. Carriers want their containers back, but Customs won't let them go,"

Greenberg said. "They will sit on them for two, three, four years... The shipper is gone or is a deadbeat and can't be sued. So you may have detention and demurrage charges that are in the millions of dollars."

An article in Vietnam's *Thahn Nien Daily* last November said there were more than 5,400 containers at eight Vietnam ports, "with many dating back to 2012-13 and containing used tires and scrap and steel." Some of these shipments "had been imported for re-export, but were abandoned because businesses realized there was no chance of shipping them out of Vietnam."

Customs officials in Ho Chi Minh City estimate 20 percent of the 1,054 abandoned containers contained illegal goods.

A 2010 *China Daily* article also discussed the seizure of 366 un-cleared containers at Dongjiangkou port.

Jim Puckett, executive director and co-founder of the Basel Action Network in Seattle, said a couple years ago, while investigating the electronic waste trade on the border between Móng Cái, Vietnam and Dongxing, China, he saw tires being smuggled across the border in small sampan boats.

The tires can be burned in small boilers in place of coal, but "the pollution is immense," he said. However, there has been a huge crackdown on illegal smuggling, at least on e-waste, in China since then. ■

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