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THIRD DIVISION

[G.R. No. 168402. August 6, 2008]

ABOITIZ SHIPPING CORPORATION, *petitioner, vs.* **INSURANCE COMPANY OF NORTH AMERICA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; FOREIGN CORPORATION NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES; RULE ON FILING SUIT IN LOCAL COURTS; CASE AT BAR. — A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits. It may, however, bring suits on isolated business transactions, which is not prohibited under Philippine law. Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license *per se*, which bars a foreign corporation from access to our courts. In any case, We uphold the CA observation that while it was the ICNA UK Limited which issued the subject marine policy, the present suit was filed by the said company's authorized agent in Manila. It was the domestic corporation that brought the suit and not the foreign company. Its authority is expressly provided for in the open policy which includes the ICNA office in the Philippines as one of the foreign company's agents.

2. ID.; INSURANCE LAW; POLICY MAY BE FRAMED THAT IT WILL INURE TO THE BENEFIT OF WHOSOEVER MAY BECOME THE OWNER OF THE INTEREST INSURED; CASE AT BAR. — The terms of the Open Policy authorize the filing of any claim on the insured goods, to be brought against ICNA UK, the company who issued the insurance, or against any of its listed agents worldwide. MSAS

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accepted said provision when it signed and accepted the policy. The acceptance operated as an acceptance of the authority of the agents. A formal indorsement of the policy to the agent in the Philippines was unnecessary for the latter to exercise the rights of the insurer. The Open Policy expressly provides that: The Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure MSAS Cargo International Limited &/or Associates &/or Subsidiary Companies in behalf of the title holder: — Loss, if any, payable to the Assured or Order. The policy benefits any subsequent assignee, or holder, including the consignee, who may file claims on behalf of the assured. This is in keeping with Section 57 of the Insurance Code which states: A policy may be so framed that it *will inure to the benefit of whosoever*, during the continuance of the risk, *may become the owner of the interest insured*.

3. ID.; ID.; ID.; RIGHT OF SUBROGATION; LIMITATIONS. — Respondent's cause of action is founded on it being subrogated to the rights of the consignee of the damaged shipment. The right of subrogation springs from Article 2207 of the Civil Code, which states: Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. As this Court held in the case of *Pan Malayan Insurance Corporation v. Court of Appeals,* payment by the insurer to the assured operates as an equitable assignment of all remedies the assured may have against the third party who caused the damage. Subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer. Upon payment to the consignee of indemnity for damage to the insured goods, ICNA's entitlement to subrogation equipped it with a cause of action against petitioner in case of a contractual breach or negligence. This right of subrogation, however, has its limitations. First,

both the insurer and the consignee are bound by the contractual stipulations under the bill of lading. Second, the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. If by its own acts after receiving payment from the insurer, the insured releases the wrongdoer who caused the loss from liability, the insurer loses its claim against the latter.

4. ID.; ID.; NOTICE OF LOSS, A CONDITION PRECEDENT TO ACTION FOR LOSS OR THE RIGHT TO ENFORCE CARRIER'S LIABILITY; CASE AT BAR. — The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Circumstances peculiar to this case lead Us to conclude that the notice requirement was complied with. As held in the case of *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, this notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

5. ID.; CODE OF COMMERCE; NOTICE OF CLAIM; PERIOD. — Under the Code of Commerce, the notice of claim must be made within twenty four (24) hours from receipt of the cargo if the damage is not apparent from the outside of the package. For damages that are visible from the outside of the package, the claim must be made immediately. The law provides: Article 366. *Within twenty four hours* following the receipt of the merchandise, the claim against the carrier for damages or average which may be found therein upon opening the packages, may be made, *provided that the indications of the damage or average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.* After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. The periods above, as well as the manner of giving notice may be modified in the terms of the bill of lading, which is the contract between the parties. Stipulations requiring notice of loss or claim for damage as a condition precedent to the right of recovery from a carrier

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must be given a reasonable and practical construction, adapted to the circumstances of the case under adjudication, and their application is limited to cases falling fairly within their object and purpose.

6. ID.; ID.; ID.; ID.; REASONABLE CONSTRUCTION, ALLOWED; CASE AT BAR. — Provisions specifying a time to give notice of damage to common carriers are ordinarily to be given a reasonable and practical, rather than a strict construction. We give due consideration to the fact that the final destination of the damaged cargo was a school institution where authorities are bound by rules and regulations governing their actions. Understandably, when the goods were delivered, the necessary clearance had to be made before the package was opened. Upon opening and discovery of the damaged condition of the goods, a report to this effect had to pass through the proper channels before it could be finalized and endorsed by the institution to the claims department of the shipping company. The call to petitioner was made two days from delivery, a reasonable period considering that the goods could not have corroded instantly overnight such that it could only have sustained the damage during transit. Moreover, petitioner was able to immediately inspect the damage while the matter was still fresh. In so doing, the main objective of the prescribed time period was fulfilled. Thus, there was substantial compliance with the notice requirement in this case.

7. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; EXTRAORDINARY DILIGENCE, REQUIRED; WANTING IN CASE AT BAR. — As to petitioner's liability for the damages sustained by the shipment: **The rule as stated in Article 1735 of the Civil Code is that in cases where the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence required by law.** Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property rights. This standard is intended to grant favor to the shipper who is at the mercy of the common carrier once the goods have been entrusted to the latter for shipment. Here, the shipment delivered to the consignee sustained water damage. The shipment arrived in the port of Manila and was received

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by petitioner for carriage on July 26, 1993. On the same day, it was stripped from the container van. Five days later, on July 31, 1993, it was re-stuffed inside another container van. On August 1, 1993, it was loaded onto another vessel bound for Cebu. During the period between July 26 to 31, 1993, the shipment was outside a container van and kept in storage by petitioner. The bill of lading issued by petitioner on July 31, 1993 contains the notation "grounded outside warehouse," suggesting that from July 26 to 31, the goods were kept outside the warehouse. And since evidence showed that rain fell over Manila during the same period, we can conclude that this was when the shipment sustained water damage. To prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of the goods tendered for transport and that it exercised due care in handling them. Extraordinary diligence must include safeguarding the shipment from damage coming from natural elements such as rainfall. Aside from denying that the "grounded outside warehouse" notation referred not to the crate for shipment but only to the carrier van, petitioner failed to mention where exactly the goods were stored during the period in question. It failed to show that the crate was properly stored indoors during the time when it exercised custody before shipment to Cebu.

APPEARANCES OF COUNSEL

Libarios Jalandoni Dimayuga & Magtanong (Libra Law) for petitioner.

Astorga & Repol Law Offices for respondent.

D E C I S I O N

REYES, R.T., *J.*:

THE RIGHT of subrogation attaches upon payment by the insurer of the insurance claims by the assured. As subrogee, the insurer steps into the shoes of the assured and may exercise only those rights that the assured may have against the wrongdoer who caused the damage.

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Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) which reversed the Decision[2] of the Regional Trial Court (RTC). The CA ordered petitioner Aboitiz Shipping Corporation to pay the sum of ₱280,176.92 plus interest and attorney's fees in favor of respondent Insurance Company of North America (ICNA).

The Facts

Culled from the records, the facts are as follows:

On June 20, 1993, MSAS Cargo International Limited and/or Associated and/or Subsidiary Companies (MSAS) procured a marine insurance policy from respondent ICNA UK Limited of London. The insurance was for a transshipment of certain wooden work tools and workbenches purchased for the consignee Science Teaching Improvement Project (STIP), Ecotech Center, Sudlon Lahug, Cebu City, Philippines.[3] ICNA issued an "all-risk" open marine policy,[4] stating:

> This Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure for MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies on behalf of the title holder: — Loss, if any, payable to the Assured or order.[5]

The cargo, packed inside one container van, was shipped "freight prepaid" from Hamburg, Germany on board M/S Katsuragi. A clean bill of lading[6] was issued by Hapag-Lloyd

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[1] *Rollo*, pp. 43-60. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring. CA-G.R. CV No. 81684, decision dated March 29, 2005.

[2] *Id.* at 212-218. Penned by Judge Romeo F. Barza. Civil Case No. 94-1590, decision dated November 14, 2003.

[3] Covered by a commercial invoice from Rainer Fux German Asia Trade.

[4] Records, pp. 348-349. Open Marine Policy No. 87GB 4475.

[5] *Id.* at 348.

[6] *Id.* at 381-382. Bill of Lading No. 33-006402.

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which stated the consignee to be STIP, Ecotech Center, Sudlon Lahug, Cebu City.

The container van was then off-loaded at Singapore and transshipped on board M/S Vigour Singapore. On July 18, 1993, the ship arrived and docked at the Manila International Container Port where the container van was again off-loaded. On July 26, 1993, the cargo was received by petitioner Aboitiz Shipping Corporation (Aboitiz) through its duly authorized booking representative, Aboitiz Transport System. The bill of lading[7] issued by Aboitiz contained the notation "grounded outside warehouse."

The container van was stripped and transferred to another crate/container van without any notation on the condition of the cargo on the Stuffing/Stripping Report.[8] On August 1, 1993, the container van was loaded on board petitioner's vessel, MV Super Concarrier I. The vessel left Manila *en route* to Cebu City on August 2, 1993.

On August 3, 1993, the shipment arrived in Cebu City and discharged onto a receiving apron of the Cebu International Port. It was then brought to the Cebu Bonded Warehousing Corporation pending clearance from the Customs authorities. In the Stripping Report[9] dated August 5, 1993, petitioner's checker noted that the crates were slightly broken or cracked at the bottom.

On August 11, 1993, the cargo was withdrawn by the representative of the consignee, Science Teaching Improvement Project (STIP) and delivered to Don Bosco Technical High School, Punta Princesa, Cebu City. It was received by Mr. Bernhard Willig. On August 13, 1993, Mayo B. Perez, then Claims Head of petitioner, received a telephone call from Willig informing him that the cargo sustained water damage. Perez, upon receiving the call, immediately went to the bonded

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[7] *Id.* at 346-347. Bill of Lading Nos. 02-4519072 and INA-02.

[8] *Id.* at 350. Dated July 31, 1993.

[9] *Rollo,* p. 127.

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warehouse and checked the condition of the container and other cargoes stuffed in the same container. He found that the container van and other cargoes stuffed there were completely dry and showed no sign of wetness.[10]

Perez found that except for the bottom of the crate which was slightly broken, the crate itself appeared to be completely dry and had no water marks. But he confirmed that the tools which were stored inside the crate were already corroded. He further explained that the "grounded outside warehouse" notation in the bill of lading referred only to the container van bearing the cargo.[11]

In a letter dated August 15, 1993, Willig informed Aboitiz of the damage noticed upon opening of the cargo.[12] The letter stated that the crate was broken at its bottom part such that the contents were exposed. The work tools and workbenches were found to have been completely soaked in water with most of the packing cartons already disintegrating. The crate was properly sealed off from the inside with tarpaper sheets. On the outside, galvanized metal bands were nailed onto all the edges. The letter concluded that apparently, the damage was caused by water entering through the broken parts of the crate.

The consignee contacted the Philippine office of ICNA for insurance claims. On August 21, 1993, the Claimsmen Adjustment Corporation (CAC) conducted an ocular inspection and survey of the damage. CAC reported to ICNA that the goods sustained water damage, molds, and corrosion which were discovered upon delivery to consignee.[13]

On September 21, 1993, the consignee filed a formal claim[14] with Aboitiz in the amount of ₱276,540.00 for the damaged condition of the following goods:

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[10] Records, pp. 536-539; TSN, October 16, 2001, pp. 6-9.

[11] *Id.*

[12] *Id.* at 375-376.

[13] *Id.* at 356-359. Report dated September 18, 1993.

[14] *Id.* at 377.

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ten (10) wooden workbenches
three (3) carbide-tipped saw blades
one (1) set of ball-bearing guides
one (1) set of overarm router bits
twenty (20) rolls of sandpaper for stroke sander

In a Supplemental Report dated October 20, 1993,[15] CAC reported to ICNA that based on official weather report from the Philippine Atmospheric, Geophysical and Astronomical Services Administration, it would appear that heavy rains on July 28 and 29, 1993 caused water damage to the shipment. CAC noted that the shipment was placed outside the warehouse of Pier No. 4, North Harbor, Manila when it was delivered on July 26, 1993. The shipment was placed outside the warehouse as can be gleaned from the bill of lading issued by Aboitiz which contained the notation "grounded outside warehouse." It was only on July 31, 1993 when the shipment was stuffed inside another container van for shipment to Cebu.

Aboitiz refused to settle the claim. On October 4, 1993, ICNA paid the amount of ₱280,176.92 to consignee. A subrogation receipt was duly signed by Willig. ICNA formally advised Aboitiz of the claim and subrogation receipt executed in its favor. Despite follow-ups, however, no reply was received from Aboitiz.

RTC Disposition

ICNA filed a civil complaint against Aboitiz for collection of actual damages in the sum of ₱280,176.92, plus interest and attorney's fees.[16] ICNA alleged that the damage sustained by the shipment was exclusively and solely brought about by the fault and negligence of Aboitiz when the shipment was left grounded outside its warehouse prior to delivery.

Aboitiz disavowed any liability and asserted that the claim had no factual and legal bases. It countered that the complaint stated no cause of action, plaintiff ICNA had no personality to

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[15] *Id.* at 373-374.

[16] Docketed as Civil Case No. 94-1590, RTC-Makati, Branch 61.

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institute the suit, the cause of action was barred, and the suit was premature there being no claim made upon Aboitiz.

On November 14, 2003, the RTC rendered judgment against ICNA. The dispositive portion of the decision[17] states:

> WHEREFORE, premises considered, the court holds that plaintiff is not entitled to the relief claimed in the complaint for being baseless and without merit. The complaint is hereby DISMISSED. The defendant's counterclaims are, likewise, DISMISSED for lack of basis.[18]

The RTC ruled that ICNA failed to prove that it is the real party-in-interest to pursue the claim against Aboitiz. The trial court noted that Marine Policy No. 87GB 4475 was issued by ICNA UK Limited with address at Cigna House, 8 Lime Street, London EC3M 7NA. However, complainant ICNA Phils. did not present any evidence to show that ICNA UK is its predecessor-in-interest, or that ICNA UK assigned the insurance policy to ICNA Phils. Moreover, ICNA Phils.' claim that it had been subrogated to the rights of the consignee must fail because the subrogation receipt had no probative value for being hearsay evidence. The RTC reasoned:

> While it is clear that Marine Policy No. 87GB 4475 was issued by Insurance Company of North America (U.K.) Limited (ICNA UK) with address at Cigna House, 8 Lime Street, London EC3M 7NA, *no evidence has been adduced which would show that ICNA UK is the same as or the predecessor-in-interest of plaintiff Insurance Company of North America ICNA with office address at Cigna-Monarch Bldg., dela Rosa cor. Herrera Sts., Legaspi Village, Makati, Metro Manila or that ICNA UK assigned the Marine Policy to ICNA.* Second, the assured in the Marine Policy appears to be MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies. Plaintiff's witness, Francisco B. Francisco, claims that the signature below the name MSAS Cargo International is an endorsement of the marine policy in favor of Science Teaching Improvement Project. *Plaintiff's witness, however, failed to identify whose signature it was and plaintiff did not present on the witness*

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[17] *Rollo,* pp. 212-218.

[18] *Id.* at 218.

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stand or took (sic) the deposition of the person who made that signature. Hence, the claim that there was an endorsement of the marine policy has no probative value as it is hearsay.

Plaintiff, further, claims that it has been subrogated to the rights and interest of Science Teaching Improvement Project as shown by the Subrogation Form (Exhibit "K") allegedly signed by a representative of Science Teaching Improvement Project. Such representative, however, was not presented on the witness stand. Hence, the Subrogation Form is self-serving and has no probative value.[19] (Emphasis supplied)

The trial court also found that ICNA failed to produce evidence that it was a foreign corporation duly licensed to do business in the Philippines. Thus, it lacked the capacity to sue before Philippine Courts, to wit:

Prescinding from the foregoing, ***plaintiff alleged in its complaint that it is a foreign insurance company duly authorized to do business in the Philippines.*** This allegation was, however, denied by the defendant. In fact, in the Pre-Trial Order of 12 March 1996, one of the issues defined by the court is whether or not the plaintiff has legal capacity to sue and be sued. ***Under Philippine law, the condition is that a foreign insurance company must obtain licenses/authority to do business in the Philippines. These licenses/authority are obtained from the Securities and Exchange Commission, the Board of Investments and the Insurance Commission. If it fails to obtain these licenses/authority, such foreign corporation doing business in the Philippines cannot sue before Philippine courts.*** *Mentholatum Co., Inc. v. Mangaliman,* 72 Phil. 524. (Emphasis supplied)

CA Disposition

ICNA appealed to the CA. It contended that the trial court failed to consider that its cause of action is anchored on the right of subrogation under Article 2207 of the Civil Code. ICNA said it is one and the same as the ICNA UK Limited as made known in the dorsal portion of the Open Policy.[20]

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[19] *Id.* at 216-217.

[20] The dorsal portion contained the provision stating that all claims shall be submitted to the office of the Company or to one (1) of the "Agents" or

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On the other hand, Aboitiz reiterated that ICNA lacked a cause of action. It argued that the formal claim was not filed within the period required under Article 366 of the Code of Commerce; that ICNA had no right of subrogation because the subrogation receipt should have been signed by MSAS, the assured in the open policy, and not Willig, who is merely the representative of the consignee.

On March 29, 2005, the CA reversed and set aside the RTC ruling, disposing as follows:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed decision of the Regional Trial Court of Makati City in Civil Case No. 94-1590 is hereby REVERSED and SET ASIDE. A new judgment is hereby rendered ordering defendant-appellee Aboitiz Shipping Corporation to pay the plaintiff-appellant Insurance Company of North America the sum of ₱280,176.92 with interest thereon at the legal rate from the date of the institution of this case until fully paid, and attorney's fees in the sum of ₱50,000, plus the costs of suit.[21]

The CA opined that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. As subrogee, ICNA is entitled to reimbursement from Aboitiz, even assuming that it is an unlicensed foreign corporation. The CA ruled:

> At any rate, We find the ground invoked for the dismissal of the complaint as legally untenable. Even assuming *arguendo* that the plaintiff-insurer in this case is an unlicensed foreign corporation, such circumstance will not bar it from claiming reimbursement from the defendant carrier by virtue of subrogation under the contract of insurance and as recognized by Philippine courts. x x x
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> Plaintiff insurer, whether the foreign company or its duly authorized Agent/Representative in the country, as subrogee of the

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"Representatives," as per list which included "Manila, Philippines, Insurance Co. of North America, Legaspi Village, Makati CCPO Box 482."

[21] *Rollo,* p. 59.

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claim of the insured under the subject marine policy, is therefore the real party in interest to bring this suit and recover the full amount of loss of the subject cargo shipped by it from Manila to the consignee in Cebu City. x x x[22]

The CA ruled that the presumption that the carrier was at fault or that it acted negligently was not overcome by any countervailing evidence. Hence, the trial court erred in dismissing the complaint and in not finding that based on the evidence on record and relevant provisions of law, Aboitiz is liable for the loss or damage sustained by the subject cargo.

Issues

The following issues are up for Our consideration:

(1) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT ICNA HAS A CAUSE OF ACTION AGAINST ABOITIZ BY VIRTUE OF THE RIGHT OF SUBROGATION BUT WITHOUT CONSIDERING THE ISSUE CONSISTENTLY RAISED BY ABOITIZ THAT THE FORMAL CLAIM OF STIP WAS NOT MADE WITHIN THE PERIOD PRESCRIBED BY ARTICLE 366 OF THE CODE OF COMMERCE; AND, MORE SO, THAT THE CLAIM WAS MADE BY A WRONG CLAIMANT.

(2) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE SUIT FOR REIMBURSEMENT AGAINST ABOITIZ WAS PROPERLY FILED BY ICNA AS THE LATTER WAS AN AUTHORIZED AGENT OF THE INSURANCE COMPANY OF NORTH AMERICA (U.K.) ("ICNA UK").

(3) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THERE WAS PROPER INDORSEMENT OF THE INSURANCE POLICY FROM THE ORIGINAL ASSURED MSAS CARGO INTERNATIONAL LIMITED ("MSAS") IN FAVOR OF THE CONSIGNEE STIP, AND THAT THE SUBROGATION

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[22] *Id.* at 52-53.

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RECEIPT ISSUED BY STIP IN FAVOR OF ICNA IS VALID NOTWITHSTANDING THE FACT THAT IT HAS NO PROBATIVE VALUE AND IS MERELY HEARSAY AND A SELF-SERVING DOCUMENT FOR FAILURE OF ICNA TO PRESENT A REPRESENTATIVE OF STIP TO IDENTIFY AND AUTHENTICATE THE SAME.

(4) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE EXTENT AND KIND OF DAMAGE SUSTAINED BY THE SUBJECT CARGO WAS CAUSED BY THE FAULT OR NEGLIGENCE OF ABOITIZ.[23] (Underscoring supplied)

Elsewise stated, the controversy rotates on three (3) central questions: (a) Is respondent ICNA the real party-in-interest that possesses the right of subrogation to claim reimbursement from petitioner Aboitiz? (b) Was there a timely filing of the notice of claim as required under Article 366 of the Code of Commerce? (c) If so, can petitioner be held liable on the claim for damages?

Our Ruling

We answer the triple questions in the affirmative.

A foreign corporation not licensed to do business in the Philippines is not absolutely incapacitated from filing a suit in local courts. Only when that foreign corporation is "transacting" or "doing business" in the country will a license be necessary before it can institute suits.[24] It may, however, bring suits on isolated business transactions, which is not prohibited

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[23] *Id.* at 20-21.

[24] Corporation Code, Sec. 133. *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines, but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. See also *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte*, G.R. No. 159586, July 26, 2004, 435 SCRA 246, 255.

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under Philippine law.[25] Thus, this Court has held that a foreign insurance company may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country. It is the act of engaging in business without the prescribed license, and not the lack of license *per se*, which bars a foreign corporation from access to our courts.[26]

In any case, We uphold the CA observation that while it was the ICNA UK Limited which issued the subject marine policy, the present suit was filed by the said company's authorized agent in Manila. It was the domestic corporation that brought the suit and not the foreign company. Its authority is expressly provided for in the open policy which includes the ICNA office in the Philippines as one of the foreign company's agents.

As found by the CA, the RTC erred when it ruled that there was no proper indorsement of the insurance policy by MSAS, the shipper, in favor of STIP of Don Bosco Technical High School, the consignee.

The terms of the Open Policy authorize the filing of any claim on the insured goods, to be brought against ICNA UK, the company who issued the insurance, or against any of its listed agents worldwide.[27] MSAS accepted said provision when it signed and accepted the policy. The acceptance operated as an acceptance of the authority of the agents. Hence, a formal indorsement of the policy to the agent in the Philippines was unnecessary for the latter to exercise the rights of the insurer.

Likewise, the Open Policy expressly provides that:

The Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure MSAS Cargo

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[25] *Bulakhidas v. Navarro*, G.R. No. L-49695, April 7, 1986, 142 SCRA 1, 2-3.

[26] *Universal Shipping Lines v. Intermediate Appellate Court*, G.R. No. 74125, July 31, 1990, 188 SCRA 170, 173.

[27] See note 20.

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International Limited &/or Associates &/or Subsidiary Companies in behalf of the title holder: — Loss, if any, payable to the Assured or Order.

The policy benefits any subsequent assignee, or holder, including the consignee, who may file claims on behalf of the assured. This is in keeping with Section 57 of the Insurance Code which states:

A policy may be so framed that it *will inure to the benefit of whosoever*, during the continuance of the risk, *may become the owner of the interest insured*. (Emphasis added)

Respondent's cause of action is founded on it being subrogated to the rights of the consignee of the damaged shipment. The right of subrogation springs from Article 2207 of the Civil Code, which states:

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, *the insurance company shall be subrogated to the rights of the insured* against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis added)

As this Court held in the case of *Pan Malayan Insurance Corporation v. Court of Appeals*,[28] payment by the insurer to the assured operates as an equitable assignment of all remedies the assured may have against the third party who caused the damage. Subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.[29]

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[28] G.R. No. 81026, April 3, 1990, 184 SCRA 54; see also *Philippine American General Insurance Co., Inc. v. Court of Appeals*, G.R. No. 116940, June 11, 1997, 273 SCRA 262, 274.

[29] *Pan Malayan Insurance Corporation v. Court of Appeals, id.* at 58.

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Upon payment to the consignee of indemnity for damage to the insured goods, ICNA's entitlement to subrogation equipped it with a cause of action against petitioner in case of a contractual breach or negligence.[30] This right of subrogation, however, has its limitations. First, both the insurer and the consignee are bound by the contractual stipulations under the bill of lading.[31] Second, the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. If by its own acts after receiving payment from the insurer, the insured releases the wrongdoer who caused the loss from liability, the insurer loses its claim against the latter.[32]

The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Circumstances peculiar to this case lead Us to conclude that the notice requirement was complied with. As held in the case of *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*,[33] this notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

Under the Code of Commerce, the notice of claim must be made within twenty four (24) hours from receipt of the cargo if the damage is not apparent from the outside of the package. For damages that are visible from the outside of the package, the claim must be made immediately. The law provides:

Article 366. *Within twenty four hours* following the receipt of the merchandise, the claim against the carrier for damages or average which may be found therein upon opening the packages, may be made,

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[30] *Federal Express Corporation v. American Home Assurance Company*, G.R. No. 150094, August 18, 2004, 437 SCRA 50, 56.

[31] *Id.* at 56-57.

[32] *Manila Mahogany Manufacturing Corporation v. Court of Appeals*, G.R. No. 52756, October 12, 1987, 154 SCRA 650, 656.

[33] G.R. No. 87434, August 5, 1992, 212 SCRA 194.

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provided that the indications of the damage or average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.

After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. (Emphasis supplied)

The periods above, as well as the manner of giving notice may be modified in the terms of the bill of lading, which is the contract between the parties. Notably, neither of the parties in this case presented the terms for giving notices of claim under the bill of lading issued by petitioner for the goods.

The shipment was delivered on August 11, 1993. Although the letter informing the carrier of the damage was dated August 15, 1993, that letter, together with the notice of claim, was received by petitioner only on September 21, 1993. But petitioner admits that even before it received the written notice of claim, Mr. Mayo B. Perez, Claims Head of the company, was informed by telephone sometime in August 13, 1993. Mr. Perez then immediately went to the warehouse and to the delivery site to inspect the goods in behalf of petitioner.[34]

In the case of *Philippine Charter Insurance Corporation (PCIC) v. Chemoil Lighterage Corporation*,[35] the notice was allegedly made by the consignee through telephone. The claim for damages was denied. This Court ruled that such a notice did not comply with the notice requirement under the law. There was no evidence presented that the notice was timely given. Neither was there evidence presented that the notice was relayed to the responsible authority of the carrier.

As adverted to earlier, there are peculiar circumstances in the instant case that constrain Us to rule differently from the

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[34] Records, pp. 536-539; TSN, October 16, 2001, pp. 6-9.

[35] G.R. No. 136888, June 29, 2005, 462 SCRA 77.

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PCIC case, albeit this ruling is being made *pro hac vice,* not to be made a precedent for other cases.

Stipulations requiring notice of loss or claim for damage as a condition precedent to the right of recovery from a carrier must be given a reasonable and practical construction, adapted to the circumstances of the case under adjudication, and their application is limited to cases falling fairly within their object and purpose.[36]

Bernhard Willig, the representative of consignee who received the shipment, relayed the information that the delivered goods were discovered to have sustained water damage to no less than the Claims Head of petitioner, Mayo B. Perez. Immediately, Perez was able to investigate the claims himself and he confirmed that the goods were, indeed, already corroded.

Provisions specifying a time to give notice of damage to common carriers are ordinarily to be given a reasonable and practical, rather than a strict construction.[37] We give due consideration to the fact that the final destination of the damaged cargo was a school institution where authorities are bound by rules and regulations governing their actions. Understandably, when the goods were delivered, the necessary clearance had to be made before the package was opened. Upon opening and discovery of the damaged condition of the goods, a report to this effect had to pass through the proper channels before it could be finalized and endorsed by the institution to the claims department of the shipping company.

The call to petitioner was made two days from delivery, a reasonable period considering that the goods could not have corroded instantly overnight such that it could only have sustained the damage during transit. Moreover, petitioner was able to immediately inspect the damage while the matter was still fresh. In so doing, the main objective of the prescribed time period was fulfilled. Thus, there was substantial compliance with the notice requirement in this case.

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[36] 14 Am. Jur. 2d 581.

[37] 14 Am. Jur. 2d 585.

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To recapitulate, We have found that respondent, as subrogee of the consignee, is the real party in interest to institute the claim for damages against petitioner; and *pro hac vice*, that a valid notice of claim was made by respondent.

We now discuss petitioner's liability for the damages sustained by the shipment. **The rule as stated in Article 1735 of the Civil Code is that in cases where the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence required by law.**[38] Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property rights.[39] This standard is intended to grant favor to the shipper who is at the mercy of the common carrier once the goods have been entrusted to the latter for shipment.[40]

Here, the shipment delivered to the consignee sustained water damage. We agree with the findings of the CA that petitioner failed to overturn this presumption:

> x x x upon delivery of the cargo to the consignee Don Bosco Technical High School by a representative from Trabajo Arrastre, and the crates opened, it was discovered that the workbenches and work tools suffered damage due to "wettage" although by then they were already physically dry. *Appellee carrier having failed to discharge the burden of proving that it exercised extraordinary diligence in the vigilance over such goods it contracted for carriage, the presumption of fault or negligence on its part from the time the goods were unconditionally placed in its possession (July 26, 1993) up to the time the same were delivered to the consignee (August 11, 1993), therefore stands.* The presumption

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[38] Civil Code, Art. 1735.

[39] *Republic v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 556, citing Black's *Law Dictionary*, 5th ed. 1979, 411.

[40] *Id.*

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that the carrier was at fault or that it acted negligently was not overcome by any countervailing evidence. x x x[41] (Emphasis added)

The shipment arrived in the port of Manila and was received by petitioner for carriage on July 26, 1993. On the same day, it was stripped from the container van. Five days later, on July 31, 1993, it was re-stuffed inside another container van. On August 1, 1993, it was loaded onto another vessel bound for Cebu. During the period between July 26 to 31, 1993, the shipment was outside a container van and kept in storage by petitioner.

The bill of lading issued by petitioner on July 31, 1993 contains the notation "grounded outside warehouse," suggesting that from July 26 to 31, the goods were kept outside the warehouse. And since evidence showed that rain fell over Manila during the same period, We can conclude that this was when the shipment sustained water damage.

To prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of the goods tendered for transport and that it exercised due care in handling them.[42] Extraordinary diligence must include safeguarding the shipment from damage coming from natural elements such as rainfall.

Aside from denying that the "grounded outside warehouse" notation referred not to the crate for shipment but only to the carrier van, petitioner failed to mention where exactly the goods were stored during the period in question. It failed to show that the crate was properly stored indoors during the time when it exercised custody before shipment to Cebu. As amply explained by the CA:

On the other hand, the supplemental report submitted by the surveyor has confirmed that it was rainwater that seeped into the cargo based

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[41] *Rollo,* p. 58.

[42] *Calvo v. UCPB General Insurance, Inc.*, 429 Phil. 244 (2002).

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on official data from the PAGASA that there was, indeed, rainfall in the Port Area of Manila from July 26 to 31, 1993. The Surveyor specifically noted that the subject cargo was under the custody of appellee carrier from the time it was delivered by the shipper on July 26, 1993 until it was stuffed inside Container No. ACCU-213798-4 on July 31, 1993. *No other inevitable conclusion can be deduced from the foregoing established facts that damage from "wettage" suffered by the subject cargo was caused by the negligence of appellee carrier in grounding the shipment outside causing rainwater to seep into the cargoes.*

Appellee's witness, Mr. Mayo tried to disavow any responsibility for causing "wettage" to the subject goods by claiming that the notation "GROUNDED OUTSIDE WHSE." actually refers to the container *and not the contents thereof or the cargoes. And yet it presented no evidence to explain where did they place or store the subject goods from the time it accepted the same for shipment on July 26, 1993 up to the time the goods were stripped or transferred from the container van to another container and loaded into the vessel M/V Supercon Carrier I on August 1, 1993 and left Manila for Cebu City on August 2, 1993.* x x x If the subject cargo was not grounded outside prior to shipment to Cebu City, appellee provided no explanation as to where said cargo was stored from July 26, 1993 to July 31, 1993. What the records showed is that the subject cargo was stripped from the container van of the shipper and transferred to the container on August 1, 1993 and finally loaded into the appellee's vessel bound for Cebu City on August 2, 1993. The Stuffing/ Stripping Report (Exhibit "D") at the Manila port did not indicate any such defect or damage, but when the container was stripped upon arrival in Cebu City port after being discharged from appellee's vessel, it was noted that only one (1) slab was slightly broken at the bottom allegedly hit by a forklift blade (Exhibit "F").[43] (Emphasis added)

Petitioner is thus liable for the water damage sustained by the goods due to its failure to satisfactorily prove that it exercised the extraordinary diligence required of common carriers.

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*.

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[43] *Rollo,* pp. 57-58.

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SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172029. August 6, 2008]

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., in its own behalf and in representation of its members: AMERICAN TRANSPORT LINES, INC., AUSTRALIAN NATIONAL LINE, FLEET TRANS INTERNATIONAL AND UNITED ARAB SHIPPING CO., DONGNAMA SHIPPING CO., HANJIN SHIPPING COMPANY, LTD., HAPAG-LLOYD A/G, KNUTSEN LINE, KYOWA LINE, NEPTUNE ORIENT LINE, ORIENT OVERSEAS CONTAINER LINE, P & O CONTAINERS, LTD., P & O SWIRE CONTAINERS AND WILH WILHELMSEN LINE A/S, REGIONAL CONTAINERS LINES (PTE), LTD., SENATOR LINE BREMEN GERMANY, TOKYO SENPAKU KAISHA, LTD., UNIGLORY LINE, WAN HAI LINES, LTD., WESTWIND LINE, ZIM ISRAEL NAVIGATION CO., LTD., COMPANIA SUD AMERICANA DE VAPORES S.A., DEUTSCHE SEEREEDEREI ROSTOCK (DSR) GERMANY AND ARIMURA SANGYO COMPANY, LTD., PACIFIC INTERNATIONAL LINES (PTE), LTD., COMPAGNIE MARITIME D' AFFRETEMENT (CMA), YANGMING MARINE TRANSPORT CORP., NIPON YUSEN KAISHA, HYUNDAI MERCHANT MARINE CO., LTD., MALAYSIAN INTERNATIONAL SHIPPING CORPORATION BERHAD, BOLT ORIENT LINE, MITSUI O.S.K. LINES, LTD., PHILS.