

INTERNATIONAL MARITIME LAW SEMINAR 2015

Recent Developments in Maritime Law Around the World – POLAND

*Bills' of lading law and jurisdiction clauses from the Polish
perspective*



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Last year

- jurisprudence on arrests of ships

Developments since last year

- low value of claim comparing to ship's value does not prevent arrest

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Bills' of lading law and jurisdiction clauses from the POLISH perspective

Chapter One Introduction

Imagine ...



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Chapter One Introduction

... that you are Happy Bunny*.

**lawful holder of a bill of lading.*



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Chapter One Introduction

Your bill of lading, on its face, provides:

Any claim or action against the carrier arising from or in connection with this bill of lading, whether in breach of contract or in tort or otherwise, shall be exclusively governed by Polish law and brought before the competent court in Szczecin, Poland.



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Chapter One Introduction

Simple! One would think.

Unfortunately not.



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Chapter Two **Law**



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Chapter Two Law

- *art. 28.1 of the Polish International Private Law: an applicable law to a contractual relationship establishes the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual relationships (Rome I)*
- *Art. 3.1 of Rome I: a contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case*



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Chapter Two **Law**

- art. 131.3 of the Polish Maritime Code: *a bill of lading constitutes about legal relationship between a carrier and a consignee*



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Chapter Two Law

- art. 31 of the Polish International Private Law: *an obligation resulting out of a negotiable instrument [...] is subject a law of a state, where the instrument has been issued*
- art. 32.1 of the Polish International Private Law: *an obligation resulting out of an unilateral legal act is subject a law chosen by a person performing the act*



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Chapter Two **Law**

- art. 119 of the Polish Civil Code: *time-bars cannot be shortened or extended by a legal act of parties*
- art. 8.1 of the Polish Maritime Code: *time-bars of claims resulting out of relationships governed by the Code can be extended by an agreement made in writing after occurrence of an event giving rise to the claim*



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Chapter Three Jurisdiction



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Chapter Three Jurisdiction

- *art. 1104.1 of the Polish Civil Procedure Code: the parties to a specific legal relationship may agree in writing that any cases arising from that relationship, involving property rights, shall fall under the jurisdiction of Polish courts*
- *art. 1105[1] of the Polish Civil Procedure Code: the obligation to conclude a written agreement according to art. 1104 is met if an agreement is recorded in a document signed by the parties or in letters exchanged between the parties, or in declarations made by means of remote communication enabling the content of the declarations to be recorded. Reference in the main agreement to a document which contains provisions corresponding to an agreement as referred to in art. 1104 meets the requirements concerning the form of that agreement if the main agreement is made in writing and the reference incorporates that agreement into the main agreement*



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Chapter Three Jurisdiction

➤ decisions of the Polish Supreme Court:

(i) dd. 09.01.1969 (I CZ 3/68);

(ii) dd. 06.10.1969 (I CZ 66/69):

bill of lading is not an agreement, thus contained therein jurisdiction agreement does not meet requirements provided for such agreement in the Polish Civil Procedure Code

➤ Ergo – such agreement is not binding



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Chapter Three Jurisdiction

- Art. 17 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention)
- Art. 23 of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- Art. 25 of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)



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Chapter Three Jurisdiction

- judgment of the European Court of Justice of 09 November 2000, *Coreck Maritime GmbH v Handelsveem BV and Others*, C-387/98: *a jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention [1968 Brussels Convention]*



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Chapter Four Developments

- Poland appointed the Codifying Commission with the task to write a new Maritime Code
- on jurisdiction clauses in bills of lading, the new law is drafted to provide that a lawful holder of a bill of lading will succeed rights and obligations of a shipper when acquiring the bill of lading (i.e. to follow the UK COGSA 1992 and European Court of Justice judgment in the Coreck Maritime case)



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**THANK YOU FOR ATTENTION AND
PATIENCE**

