

In the
United States Court of Appeals
For the Second Circuit

August Term, 2019

(Argued: May 15, 2020 Decided: June 30, 2023)

Docket Nos. 18-2974-cv(L), 18-3083-cv(CON)

IN RE: *M/V MSC FLAMINIA*

Stolt Tank Containers B.V., Stolt-Nielsen USA, Inc., Deltech Corporation,

Plaintiffs-Claimants-Appellants,

ArcelorMittal, SNF Holdings, Flomin, Inc., SNF Saint Avold, SNF SAS, Roam Global Logistics LLC, Tetra Technologies Norge, Milliken & Company, Ahlers EDC, Steinweg Handelsveem, CISC Liggett-Ducat, British American Tobacco PLC, LLC, Petroresurs, United Transport Tankcontainers BV, General Mills UK, Ayecue Internacional S.L.U., C.H. Robinson International Inc., C.H. Robinson Poland S.P ZO.O, Line X Acquisition LLC, Clariant Corporation, Panalpina, Inc., Potter Group, Ltd., Clariant Production, UK Ltd., Panalpina World Transport Ltd., Ecolab Inc., Nalco Company, Eastman Chemical Company, Rauan Nalco LLC, Mexpack International Movers S.A. deC., NSB Niederelbe Schiffahrtsgesellschaft MBH & Co KG, as operator, of the vessel MSC FLAMINIA, Mueller Water Products, Inc., Rim Logistics, Ltd., VCK Rotterdam BV, Protim Solignum Ltd., GP Cellulose GMBH, GP Harmon Recycling LLC, Eagle Paper International, Inc., Trouw Nutrition USA, LLC, Cheng Loong Corporation, Indemnity Insurance Company of North America, Ace European Group Ltd., Ace Seguros S.A., Alcan Automotive LLC, RLI Insurance Company, Senator International Ocean LLC, Plastic Omnium Automotive Exterior, Borbet, IAC Spartanburg, Behr Industries, Mubeca Inc., Carcoustics USA Inc., Lear Corporation, Magna Exteriors and Interiors, Proper Polymers, Excell USA Inc., TI Automotive, Draexlmaier Automotive America, BMW Group Plan 2.7, BMW AG Werk 2.7, Gulbrandsen Chemicals Inc.,

Novozymes, Newport Tank Containers Inc., Huntsman Petrochemical LLC, Graftech Switzerland S.A., Network America Lines, Graftech Mexico, Brokmak OU, Graftech France SNC, Huntsman Holland B.V., Deltech Corporation, Deltech Europe Ltd., Nuco Logistics, Inc., ARR-MAZ Custom Chemicals Inc., Triple F. Logistics B.V., Cray Valley USA Inc., CJ Hendricks B.V., The Lubrizoil Corporation, Lubrizoil France SA, Bercen Inc., Selluken AB, Hellas S.A., Bulkhaul (USA) Inc., ADPO NV, Bulkhaul Limited, National Union Fire Insurance Company of Pittsburgh, PA., Chartis Seguros Mexico, S.A. de C.V., AMI Trading (USA), Inc., Jewometaal Stainless Processing, Arubis AG, Shandong Jinsheng NonFerrous Group Co., Ltd., Armstrong World Industries Inc., Expeditors MCO, Expeditors International (UK) Ltd., Atlas Van Lines International, Oceanic Container Line, Inc., Oceanic Shipping & Transport GMBH, Lager, Cooper Tire & Rubber Company, Cooper Tire & Rubber Company Europe Ltd., Coty Geneva S.A., Coty US LLC, Cray Valley USA LLC, Kintetsu World Express (USA) Inc., Environmental Express Inc., Metlab Supplies Ltd., DHL Global Forwarding, Firestone Building Products Co., Wiehag GMBH, Bridgewell Resources LLC, Nippon Denko Company Ltd., Quiborax S.A., Special Metals Welding Products Company, Precision Castparts, Equipos Nucleares SA, Magnelec S.A. De C.V., Veitsch Radex GMBH & Co. OG, Viscofan USA Inc., OOO Procasing, Taminco, Inc., United Transport Tank Containers, 3M Belgium N.V., Interbulk (Tank Containers) Ltd., Nufarm UK Ltd., Butachimie, SKF De Mexico, S.A. De C.V., SKF GMBH, UAB Neo Group, Productora De Tereftalatos De Altamira S.A. De C.V., EPU Service Center, NEK, Schlumberger Technology Corporation, Terza S.A. De C.V., Galleon International Freight Service, Groupement Ivoirien D'Industrie ET, Total Petrochemicals & Refining USA, Inc., AGCS Marine Insurance Company, Rockwood Holdings, Inc., Rockwood Lithium, Inc., Bulkhaul UK Ltd., Chemtall GMBH, Volkswagen Group of America, Inc., Zenda Dienstleistungen GMBH, Rudolph Logistik Gruppe, GMBH, Volkswagenwerk AG, Baillie Lumber Sales Co, Baillie Lumber Co., Trinseo Materials Operating S.C.A., Styron, LLC, Styron Europe GMBH, Industrias John Deere SA De C.V., Wayand GMBH, John Deere International GMBH, DOSECC Exploration Services, LLC, Global Logistics Shipping Inc., Hydrobiological Institute-Ohrid, Rayonier, Inc., SE Tylose GMBH & Co. KG, Vopak Agencies Rotterdam B.V., Dow Chemical Company, DOW Europe Gmbh, BDP International NV, Angus Chemie GMBH, Amerchol Corporation, Estee Lauder, Inoac Polytec De Mexico, Suttons International, Centre Point JB Nagar, Unicharm Corporation, Procter & Gamble Company, Westerlund, Societe Industrielle De Papeterie, Farmeko, Liberty International Underwriters, Huntsman Corporation, Johann Haltermann Ltd., Monument Chemical BVBA, Copperweld Bimetallics LLC, Red Electrica De Espana, Continental Insurance Company, Toyo Cotton Co., Fiber Source International Corp., Asya Kagit Matbaa Gida Ve, Tekstil Santic AS, Stemaco USA Inc., SB Enterprises, JA Lacour Company, Giorgio Gori USA Inc., Danzer UK Ltd.,

CNA Metals Limited, Thai Nguyen Iron and Steel Joint Stock Corporation, Oceanic Logistics Inc., Exxonmobil Chemical Company, Advanced Elastomer Systems Ltd., Exxonmobil Specialty Elastomers, Exxonmobil Petroleum & Chemical Holdings Inc., Mobil Chemical Products International, Esso Societe Anonyme Francaise, Exxonmobil Chemical Films, Exxonmobil Chemical Films Europe, Emeraude International SAS, XL Specialty Insurance Company, Cabot Corporation, Kansai Nerolac Ltd. Bilakhia House, Tokio Marine & Nichido Fire Insurance Co. Ltd., Shintech, Inc., Klockner Pentaplast, Mitsubishi Corporation, Agrinorte S.A., Itochu Plastics PTE Ltd., Unitcargoo Container Line, Holzextroplast OOO, Aspen American Insurance Company, Inter-Trans Insurance, Raif Coskun Caglar, Rainier Overseas Movers Inc., Vinmar International Limited, Tricon Dry Chemicals LLC, MTS Logistics Inc., MTS Lojistik Ve tasimacilik Hizmetleri Tic A.S., Elite House LLP, Taloox Group LLC, Ocean World Lines Inc., Trinity Industries Inc., Allseas Global Logistics, Hill & Smith Ltd., Formosa Plastics Corporation, TCR Plastics, Apiexport S.A. De CV, Lamex Foods UK, Multienlaces De Transportes Internacionales SA De CV, Banks And Lloyd (Shipping) Ltd., Great American Insurance Company, Al Ahlia Insurance, Nipponkoa Insurance (Europe), Prosght Specialty Insurance, Classic American Hardwoods, Carolina Ocean Lines, Timber Connection, Palmer Timber, Naddi Motors, Link Lines Logistics, Inc., Golink Ltd., Hanna Motors, Society A-N Auto Import Export, JF Hillebrand Mexico SA, Bahrain Maritime & Mercantile International, Wisco Espanola SA, Ivan Luna Segura, Carolinas Cotton Growers Corp., Starr Indemnity & Liability Company, American Hardwood Industries, LLC. Tradelanes, Inc., Caterpillar Inc., Caterpillar SARL, Eneria S.A.S., Zeppelin Power System GMBH, Zeppelin Baumaschinen GMBH, Pon Power AS, Finning (UK) Ltd., Cargo Partner AG, Vinmar International Ltd., Caterpillar Marine Power (UK) Ltd., Esco Corporation, Kamin LLC, OMYA AB, Schuite & Schuite Druckfarben GMBH, OMYA GMBH, Kansai Altan Boya Sanayi Ve Ticaret AS, Prochem AG, OOO OMYA URAL, Blagden Specialty Chemicals Ltd., Stanley Black & Decker, Inc., Stanley Logistics Centre, Black & Decker Limited SARL, Expeditors International, DSV Air & Sea Inc., DSV Air & Sea Ltd., Weatherford International Inc., Sabic Innovative US, Sabic Innovative Plastics BV, Sabic Innovative Plastics India PVT Ltd., Sabic Innovative Plastics Mexico, Cummins Inc., Ceva Freight Management (Mexico), CWL Mexico S De RL, Ceva Freight (UK) LTD., Crane Worldwide (UK) Ltd., Whitman Laboratories Ltd., Unitrans P.R.A. Company, Inc., Grand Medical Group, Dart Containers FCA Bahamas, Polymers International Limited, Surrey Europe SARL, Red Square Corporation, Unitrans P.R.A. Company, Inc., FTT Consulting, Grand Medical Group, Dart Containers FCA Bahamas, Polymers International Limited, Nomad Brands, Inc. LLC TLC, NCR Nederland, NCR SDC, NCR Global Solutions, Gaylord Chemical Co. LLC, IMCD Benelux N.V., ICC Chemical Corporation, Fleur De Lis Worldwide, LLC, MTS Logistics, Inc., OOO Pioneer Trade, Pioneer Polyleathers PVT Ltd., Parmar

International PVT, Ltd., International Commodities, Arubis Belgium NVSA, Tyco International Ltd., Ocean World Lines Inc., OWL Belgium, Honeywell International Inc., E Rigas SA, Anheuser-Busch International Inc., Arkema Inc., Pfauth Logistiek Diensyverl, Arkema Vlissingen BV, PJ Lumber Company, Lathams Limited, Ramsay Timber, Junkers Industrier A/S, Danzer IK Ltd., Hardwood Dimensions Ltd., Timber Connections Ltd., Tzeng Long USA, Inc., Rocktenn CP, LLC, Helvetia Insurance S.A., Chevron Oronite Company LLC, Chevron Oronite SAS, Turk Ekonomi Bakasi, UAB "Jurvista", Stolt Tank Containers Germany GMBH,
Stolt Tank Containers France SAS,
Plaintiffs,

–v.–

NSB Niederelbe Schiffahrtsgesellschaft MBH & Co. KG, as operator, of the vessel MSC FLAMINIA, Conti 11 Container Schiffahrts-GmbH & Co. KG MS MSC Flaminia, MSC Mediterranean Shipping Company S.A., BDP International, Inc.,

Defendants-Appellees,

Rubicon LLC,

Third-Party-Defendant-Appellee,

Chemtura Europe GmbH, Chemtura Corporation, Chemtura Italy S.R.L.,

*Defendants-Counter-Claimants-Appellees.**

B e f o r e :

CHIN, CARNEY, and MENASHI, *Circuit Judges.*

Deltech Corp. ("Deltech"), a chemical manufacturer, joins here with Stolt-Nielsen USA, Inc., and Stolt Tank Containers B.V. (together, "Stolt"), a shipping concern, to challenge the district court's determination that they alone bear liability for damages

* The Clerk of the Court is directed to amend the caption to conform to the above.

caused by an explosion and fire that took place in June 2012 aboard the ocean-going vessel M/V MSC Flaminia. Two weeks into the Flaminia's trip from New Orleans Terminal across the Atlantic, three tanks of 80% grade divinylbenzene (DVB-80) manufactured by Deltech and shipped by Stolt exploded, and a fire then ignited, killing several members of the ship's crew, injuring others, and damaging the ship and its cargo.

In the first phase of a three-part proceeding in the United States District Court for the Southern District of New York (Forrest, J.), the district court addressed the causes of the explosion. It determined that the decision to ship DVB-80 from New Orleans Terminal rather than a northeastern port, the early filling of the DVB-80 containers and their early transport to New Orleans Terminal, the conditions in which the tanks of DVB-80 were kept at New Orleans Terminal, and their placement and stowage onboard the Flaminia were the primary causes of the explosion. These conditions resulted in the chemical undergoing runaway auto-polymerization, emitting a cloud of vapor that was ultimately ignited when the crew's firefighting efforts generated a spark. *See In re M/V MSC FLAMINIA*, No. 12-cv-8892 (KBF), 2018 WL 526549, at *30-31 (S.D.N.Y. Jan. 23, 2018) ("Phase I"). In the second phase, the district court addressed liability for cargo loss and damage. (Separately, claims for death and bodily injury had largely been settled.) It found Deltech and Stolt together wholly responsible for those losses: Deltech, at a 55% level, and Stolt, at 45%. *See In re M/V MSC FLAMINIA*, 339 F. Supp. 3d 185, 229–30 (S.D.N.Y. 2018) ("Phase II"). It exculpated other parties to the shipping transaction from legal liability. It is this decision that Deltech and Stolt challenge now in an interlocutory appeal. (In further proceedings, the court will make and apportion a damages award among those parties still pursuing claims. *Id.* at 191.)

On review, we affirm in part and reverse in part. We REVERSE the district court's determination that Deltech and Stolt are strictly liable under Section 4(6) of the Carriage of Goods at Sea Act ("COGSA"), 46 U.S.C. § 30701 (note), but we AFFIRM its ruling that Deltech and Stolt are liable under a failure-to-warn theory pursuant to Section 4(3) of COGSA. As to the other defendants, we AFFIRM the district court's conclusion that the carrier and related shipowner interests—MSC Mediterranean Shipping Company S.A. ("MSC"), Conti 11 Container Schiffahrts-GMBH & Co. KG MSC "FLAMINIA" ("Conti"), and NSB Niederelbe Schiffahrtsgesellschaft MBH & Co. KG ("NSB")—were not negligent in their treatment of the shipment, and that New Orleans Terminal too was not negligent. We also AFFIRM the district court's determination that Stolt has not stated a claim against its subcontractor, the documentation provider BDP International, Inc. ("BDP"), because we agree that Stolt failed to show that BDP's breach in processing the shipment's waybill was a contributing cause of the damages. Finally, we AFFIRM the district court's

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