Case 447: CISG [1(1)(a)]; 4(b); [8(2)]; 9(2); 67(1)
United States: U.S. [Federal] District Court for the Southern District of New York, No. 00 CIV. 9344(SHS)
St. Paul Guardian Insurance Co. & Travelers Insurance Co. v. Neuromed Medical Systems & Support, GmbH
26 March 2002
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http://cisgw3.law.pace.edu/cases/020326u1.html (English language text)
Abstract prepared by Peter Winship, National Correspondent

A German company, defendant, sold a mobile magnetic resonance imaging system to a United States company. The delivery term provided "CIF New York Seaport, the buyer will arrange and pay for customs clearance as well as transport to Calmut City [the ultimate destination in the United States]." Preceding the payment term was a handwritten note stating that "acceptance subject to inspection" followed by the initials of a representative of the buyer. The seller and buyer agreed that the equipment was in good working order when loaded at the port of shipment but was damaged when it arrived at its ultimate destination. Two United States insurance companies reimbursed the buyer and brought suit against the defendant as subrogees to the buyer's claim.

The court granted the defendant's motion to dismiss the suit for failure to state a cause of action.

The parties' contract designated German law as the applicable law. The court applied the CISG as the relevant German law. The parties had their places of business in two different Contracting States and had not agreed to exclude application of the CISG. The court noted that on similar facts German courts apply the Convention as applicable German law.

The court concluded that the risk of loss passed to the buyer upon delivery to the port of shipment by virtue of the CIF delivery term. The court found that the International Chamber of Commerce's 1990 CIF incoterm governed by virtue of article 9(2) CISG. The court also noted that German courts apply the incoterm as a commercial practice with the force of law.

The court rejected plaintiffs' argument that the risk of loss could not have passed because the seller had retained title to the equipment. Citing articles 4(b) and 67(1) CISG, the court stated that the Convention distinguished between the risk of loss, which it deals with in chapter IV of part III, and the transfer of title, which is beyond the scope of the Convention.

The court also rejected arguments based on the typed and handwritten terms of the contract. A clause allocating the responsibility for customs clearance deals with a matter not addressed by the CIF incoterm. A clause providing for a final payment after the equipment arrives at its destination is not inconsistent with the passing of the risk of loss. Moreover, a reasonable recipient would understand the handwritten term to mean that receipt of the equipment was not to be construed as an admission that the equipment was free of defects and performed according to contract specifications.