

Customs Revisits Jones Act Contaminated Cargo Issues



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One recurring situation under the Jones Act, which requires use of qualified U.S.-flag vessels in U.S. domestic trade, is the issue of contaminated cargoes. The issue arises when a foreign vessel leaves the United States with a cargo that is later found to be contaminated and rejected by the importer. Bringing the cargo back to the United States, however, requires a Jones Act review since the cargo originated in the United States and would end up again in the United States. Pursuant to a long-established doctrine, Customs and Border Protection will consider the validated subsequent discovery of a contaminated cargo to be a break in the voyage continuity thereby permitting the cargo to be returned to the United States in a foreign vessel. In addition, any cargo leaving a U.S. port and returning to the exact same place can be transported on a foreign vessel. In a June 17, 2011 ruling, CBP determined that the facts supported on-board contamination after the start of the voyage and permitted return of the U.S. origin cargo to the United States in the foreign vessel. However, CBP also concluded that the discharge of the returning cargo into a barge for further transportation to a U.S. port could only be accomplished in a Jones Act qualified barge. Given CBP's finding that the voyage continuity was broken by the contamination, it is not clear why CBP insisted on the use of a Jones Act qualified barge for the last leg of the voyage.

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