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court of appeals for federal circuit (cafc) issues decision in u.s. v. trek leather – corporate officer held liable

MSK Client Alert

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Yesterday, the CAFC issued its en banc decision in the U.S. v. Trek Leather case. The Court held the President of the company liable for gross negligence due to his own actions, even if he is an agent of the company.

By way of background, the case originated as a penalty action by Customs and Border Protection (CBP) against Trek Leather and Harish Shadadpuri, its President. When the full amount of the penalty was not paid, CBP initiated litigation. The Court of International Trade (CIT) found Shadadpuri liable for gross negligence. The CAFC overturned that decision. It held Shadadpuri could have been liable for fraud, or as an aider or abettor, or if the government had pierced the corporate veil, but since none of those theories were pursued, the government lost. CBP then sought a hearing before the entire court (called an en banc hearing), and based on the decision issued yesterday, CBP won.

The Court reached back to a Supreme Court case decided in 1913 – *United States v. 25 Packages of Panama Hats*, 231 U.S. 358 (1913) – which dealt with the question of "introduce" in the context of 19 U.S.C. 1592. In that case, the consignor shipped goods to the U.S. with invoices that "falsely and fraudulently" undervalued the merchandise. When the goods arrived in New York, no entry was filed. However, the Supreme Court held the 1592 statute as then worded covered the acts of the consignors in providing the false invoices. The language of the statute at the time read: "…if any consignor, seller, owner, importer, consignee, agent or other person or persons, shall enter or introduce, or attempt to enter or introduce, … any imported merchandise by means of any fraudulent or false invoice… (emphasis added)."

The current text of 19 U.S.C. 1592 reads: "… [No] person … may enter, introduce or attempt to enter or introduce any merchandise…. by means of (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false; or (ii) any omission which is material…(emphasis

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The CAFC began by saying it is quite obvious that Mr. Shadadpuri is a person and nothing in the way the law has changed over the years allows any other conclusion. The court went on to frame the question to be decided as: "What is critical is the defendant's conduct". It then examined that conduct. The facts cited by the court included:

1. Trek Leather imported 72 entries of men's suits;
2. Shadadpuri had provided fabric to the manufacturer of those suits which qualifies as an assist [An assist is anything the importer provides to the manufacturer that is used in production that the manufacturer received at a reduced cost or at no cost.];
3. The fabric assist was not added to the value of the suits at time of entry;
4. As a result, the value of the suits was underdeclared at time of entry;
5. The underdeclaration led to too little duty being paid;
6. Shadadpuri directed the customs broker to cause sales in transit to be made, meaning the manufacturer issued the invoices to one company which Shadadpuri controlled. He figured out which of the other companies he controlled had the funds to pay for the shipments and directed the customs broker to make the appropriate notations on the invoices to direct the shipments to that other company - Trek Leather – which acted as importer of record;
7. The invoices given to the customs broker did not include the value of the assist, and, in fact, made no reference to it;
8. Due to prior dealings with CBP, Shadadpuri knew the value of the fabric assist had to be declared at time of entry and be part of the dutiable value of the imported suits;
9. Shadadpuri himself, or others working for him and at his direction, would fax the invoices to the customs broker; and
10. After CBP began its investigation, Shadadpuri produced revised invoices which included the fabric assist and the broker submitted corrected entries accordingly.

During the CIT proceedings, Trek Leather admitted it was grossly negligent in the filing of its entries, so the only question left to decide was the liability, if any, of Mr. Shadadpuri. The CAFC looked at the broad meaning of the word "introduce" in light of the *Panama Hats* decision, and held, it did not need to deal with any of the other issues raised on appeal. "Under the rationale of *Panama Hats*, [introduce] covers actions that bring goods to the threshold of the process of entry by moving goods into CBP custody … and providing critical documents (such as invoices indicating value) for use in the filing of papers for a contemplated release into United States commerce even if no release ever occurs."

The court then looked to the Restatement (Second) of Agency §343 (1958) to point out the longstanding principal of agency law which is "an agent who actually commits a tort is generally liable for the tort along with the principal, even though the agent was acting for the principal". In short, whether or not Mr. Shadadpuri was the importer (and his lawyers had argued he could not be liable because he was not), the "introduce" language in 1592 certainly covered his misdeeds and so found him liable.

There is an old adage in the law about bad facts make bad law. It remains to be seen whether that is the case here and whether an appeal will follow. If not, we are left to wonder how CBP applies this holding. Certainly, in the past, it has assessed 1592 penalties against those employed by companies as managers, officers and directors on a joint and several basis, never quite articulating the misdeeds of the individual(s) named as distinct from those of the company. We know on the export enforcement side, those agencies have no trouble finding ways to charge, fine and debar individuals due to the language of the statutes they enforce. We are seeing much greater imposition of individual liability when it comes to anti-corruption violations. Exactly how this holding will influence the enforcement agencies is not clear, nor is the question of its impact on the language in future laws and regulations. Will this holding really turn things on their head? It is just too early to tell.