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To: Transport Industry Operators

Laytime & Demurrage

The Hong Kong High Court on 13/8/2013 held a shipper liable to a shipping company for paying demurrage of US\$1,645,286.74 plus interest and costs. [HCAJ 166/2011]

This was the hearing for the assessment of damages arising out of a breach of a Transport Agreement made between the shipping company and the shipper dated 14/12/2010. Pursuant to the Transport Agreement, the shipping company as the carrier agreed with the shipper to transport some fishery cargoes from South America to China for the period from 1/1/2011 to 31/12/2011. Clause 9 of the Transport Agreement provided that demurrage was fixed at US\$10,000 per day. Laytime was to be counted upon Notice of Readiness had been duly tendered. Payment of demurrage and dispatch was to be made within 15 days after completion of discharge. In accordance with the terms of the Transport Agreement, the shipping company had provided the shipper with vessels MV San Diego on the 11th voyage and MV Salvador on the 13th voyage for the carriage of the cargo. However, in breach of clause 9 of the Transport Agreement, the shipper had failed and/ or refused to pay the outstanding demurrage in the sum of US\$1,645,286.74.

On 30/11/2011, the shipping company commenced the legal proceedings against the shipper. As no defence had been filed by the shipper, on 17/7/2012, Interlocutory Judgment was entered against the shipper in favour of the shipping company with damages to be assessed. At the hearing on 20/5/2013 and 22/7/2013, the shipper had failed to attend court despite due notice had been given by the shipping company.

In *Islamic Republic of Iran Shipping Lines v Ierax Shipping Co* [1991] 1 Lloyd's Rep. 81, Hobhouse J explained that the liability for demurrage continues to accrue minute by minute as the failure to complete discharge continues. Hobhouse J stated:-

"A liability for demurrage is a liability for liquidated damages for breach of contract. The breach of contract is the failure to discharge (or load) within the permitted laytime. The obligation has two different aspects: the first is the obligation to discharge and the second is to do so within the limited time. There is no breach before that limited time has expired. Once the limited time has been exceeded there is a continuing breach for which the liability in liquidated damages (that is so say demurrage) continues to accrue minute by minute as the failure to complete discharge continues."

Having considered the evidence of the shipping company, the Court accepted that the shipper had failed to pay the shipping company the outstanding demurrage in the sum of US\$1,645,286.74. The full particulars of these outstanding payments were summarized below: -

MV San Diego – Voyage 11

- a) Loading Demurrage
 - i) MV San Diego arrived the fishing ground for loading on 12/1/2011. The allowed laytime for loading was 15 days 18 hours 9 minutes (at the loading rate of 200mt/day for loading 3150.122mt of cargo). The laytime commenced at 0800 hours on 12/1/2011 and ended at 0020 hours on 18/3/2011. The time used was 64 days 16 hours 20 minutes.
 - ii) the shipping company was therefore entitled to demurrage of US\$489,243.10 ie US\$10,000@ 48 days 22 hours 11 minutes (after taking into account of the laytime allowed).
- b) Discharging Demurrage at Zhoushan

- i) MV San Diego arrived at Zhoushan Port on 23/8/2011. The allowed laytime for discharging was 7 days 2 hours 16 minutes (at the discharging rate of 400mt/day for discharging 2,837.775mt of cargo). The laytime commenced at 0800 hours on 24/8/2011 and ended at 1600 hours on 19/10/2011. After deducting the time of 35 days 19 hours 45 minutes used for discharging cargo for a third party, the time used was 20 days 16 hours 20 minutes.
 - ii) the shipping company was therefore entitled to demurrage in the sum of US\$137,076.40 ie US\$10,000@ 13 days 16 hours 59 minutes (after taking into account of the laytime allowed)
- c) Discharging Demurrage at Qingdao
- i) MV San Diego arrived at Qingdao Port on 13/11/2011. The laytime commenced at 2345 hours on 13/11/2011 and ended at 1425 hours on 14/11/2011. The time used was 14 hours 40 minutes. The laytime allowed for discharging 150mt of cargo was 9 hours.
 - ii) the shipping company was therefore entitled to demurrage in the sum of US\$2,361.10 ie US\$10,000@ 5 hours 40 minutes (after taking into account of the allowed laytime of 9 hours)

MV Salvador – Voyage 13

- d) Loading Demurrage
- i) MV Salvador arrived the fishing ground in Peru on 20/5/2011. The allowed laytime for loading was 43 days 11 hours 39 minutes (at the loading rate of 200mt/day for loading 8,697.143mt of cargo). The laytime commenced at 1005 hours on 20/5/2011 and ended at 2030 hours on 30/8/2011. After deducting the time for bad weather and setting cargo gear, the time used was 81 days 20 hours 55 minutes.
 - ii) the shipping company was entitled to demurrage in the sum of US\$383,861.10 ie US \$10,000@ 38 days 9 hours 16 minutes (after taking into account of the laytime allowed).
- e) Discharging Demurrage
- i) MV Salvador arrived at Zhoushan Port on 4/10/2011. The allowed laytime for discharging was 21.7429 days (at the discharging rate of 400mt/day for discharging 8,697.143mt of cargo). The laytime commenced at 1940 hours on 4/10/2011 and ended at 1415 hours on 28/12/2011. After deducting the times affected by drizzle, the time used was 85.0174 days.
 - ii) the shipping company was therefore entitled to demurrage in the sum of US\$632,745.04 ie US\$10,000@ 63.2745 days (after taking into account of the laytime allowed).

The amount of damages awarded was summarized as follows: -

MV San Diego – Voyage 11

	US\$
(a) Loading demurrage at fishing ground	489,243.10
(b) Discharge demurrage at Zhoushan	137,076.40
(c) Discharge demurrage at Qingdao	2,361.10
	628,680.60

MV Salvador – Voyage 13

	US\$
(a) Loading demurrage at fishing ground	383,861.10
(b) Discharge demurrage at Zhoushan	632,745.04
	1,016,606.14
Total:	1,645,286.74

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

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