SPC Guiding Case No. 16: The Freighter Company of China Shipping Development Co., Ltd. (Application to Establish a Maritime Liability Limitation Fund)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Maritime litigation; maritime liability limitation fund; calculation of maritime liability limitation.

Holding

1. Where an application is made to establish a maritime liability limitation fund, the court shall conduct only a procedural review of the applicant's subject qualification, the nature of the claims involved in the accident and the amount of the fund applied to be established. Issues such as whether the applicant is substantively entitled to limitation of maritime liability, and whether the claims involved in the accident include, in addition to claims subject to limitation, other claims not subject to limitation, shall not affect the court's ruling granting the establishment of the maritime liability limitation fund in accordance with the law.

2. "Vessels engaged in transport between the ports of the People's Republic of China" as prescribed in Article 210(2) of the Maritime Law of the People's Republic of China shall be understood as vessels that were engaged in transport between the ports of the People's Republic of China on the voyage on which the maritime accident occurred.

Basic Facts

The "Ning An 11" vessel owned by the Freighter Company of China Shipping Development Co., Ltd. (hereinafter referred to as the Freighter Company) transported thermal coal from Qinhuangdao to the Waigaoqiao Terminal in Shanghai on May 23, 2008. On May 26, while berthing at the terminal, the vessel collided with the No. 2 ship unloader at the terminal, causing damage to the terminal and machinery. On March 9, 2009, the Freighter Company applied to the Shanghai Maritime Court to establish a maritime liability limitation fund. The Freighter Company applied to establish a maritime liability limitation fund for non-personal injury and death, in the amount of 2,242,643 units of account (equivalent to RMB 25,442,784.84) plus interest from the date of the accident to the date of establishment of the fund.

Shanghai Waigaoqiao Power Generation Co., Ltd. and Shanghai Waigaoqiao No. 2 Power Generation Co., Ltd., as the first group of objectors, and seven objectors including PICC Property and Casualty Company Limited Shanghai Branch, China Continent Property & Casualty Insurance Company Ltd. Shanghai Branch, Ping An Property & Casualty Insurance Company of China, Ltd. Shanghai Branch, Ancheng Property & Casualty Insurance Co., Ltd. Shanghai Branch, China Pacific Property Insurance Co., Ltd. Shanghai Branch, China Continent Property & Casualty Insurance Company Ltd. Business Department and Yongcheng Property & Casualty Insurance Co., Ltd. Shanghai Branch, as the second group of objectors, respectively filed written objections with the Shanghai Maritime Court against the aforesaid application of the Freighter Company. On May 27, 2009, the Shanghai Maritime Court held a hearing on the application and the objections.

The first group of objectors claimed that the "Ning An 11" vessel's accident was caused by the captain's erroneous operation, that the vessel should bear full liability for the accident, and that the applicant was therefore not entitled to limitation of maritime liability. They further claimed that the "Ning An 11" vessel was

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a vessel capable of engaging in international ocean transport and was not a vessel engaged in the transport of goods between Chinese ports, and that it was not subject to the limitation prescribed in Article 4 of the Provisions of the Ministry of Transport on the Limits of Maritime Liability of Vessels Below 300 Gross Tons and Vessels Engaged in Coastal Transport and Coastal Operations (hereinafter referred to as the Vessel Liability Limit Provisions), but rather to the limitation prescribed in Article 210(1)(2) of the Maritime Law of the People's Republic of China (hereinafter referred to as the Maritime Law).

The second group of objectors claimed that although most of the claims involved in the accident were claims subject to limitation, the costs of removing the wreckage should be claims not subject to limitation, and that the applicant was not entitled to apply for limitation of liability in respect of such costs. Their other objections and reasons were the same as those of the first group of objectors.

Upon trial, the Shanghai Maritime Court found that the applicant was the registered owner of the "Ning An 11" vessel; that the damage to the terminal and machinery caused by the vessel contact accident in question constituted property loss directly related to the operation of the vessel; and that the "Ning An 11" vessel had a gross tonnage of 26,358 tons, with its business transport certificate stating that its approved scope of operation was "ordinary cargo transport between the ports of the domestic coastal areas and the middle and lower reaches of the Yangtze River."

Judgment

On June 10, 2009, the Shanghai Maritime Court rendered Civil Ruling No. 1 (2009) Hu Hai Fa Xian Zi, dismissing the objectors' objections and granting the applicant permission to establish a maritime liability limitation fund in the amount of RMB 25,442,784.84 plus bank interest on that sum from May 26, 2008 to the date of establishment of the fund. After the ruling was pronounced, the objector PICC Property and Casualty Company Limited Shanghai Branch appealed. On July 27, 2009, the Shanghai High People's Court rendered Civil Ruling No. 1 (2009) Hu Gao Min Si (Hai) Xian Zi, dismissing the appeal and affirming the original ruling.

Reasoning

The effective judgment held that, in accordance with Article 83 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Special Maritime Procedure Law of the People's Republic of China, an application to establish a maritime liability limitation fund shall be subject to review of the applicant's subject qualification, the nature of the claims involved in the accident and the amount of the fund applied to be established.

The Freighter Company was the registered owner of the "Ning An 11" vessel, and was a subject that may apply to establish a maritime liability limitation fund as prescribed in Article 204 of the Maritime Law and Article 101(1) of the Special Maritime Procedure Law of the People's Republic of China. The objectors' argument that the vessel owned by the applicant should bear full liability for the accident and that the applicant was not entitled to limitation of liability involved a determination of whether the applicant enjoyed the substantive right to limitation of liability, which should be resolved in the substantive trial of the case; therefore, the first group of objectors' objection was not addressed.

Given that the damage to the terminal and machinery caused by the vessel contact accident in question constituted property loss directly related to the operation of the vessel, the liable person could limit liability in accordance with Article 207 of the Maritime Law. Therefore, the second group of objectors' argument that the wreckage removal costs were claims not subject to limitation and that the applicant was not entitled to such limitation of liability did not affect the court's granting of the applicant's application to establish a maritime liability limitation fund in respect of the claims subject to limitation involved.

As to whether the "Ning An 11" vessel was a "vessel engaged in transport between the ports of the People's Republic of China" as prescribed in Article 210(2) of the Maritime Law, and by which standard the liability limitation should accordingly be calculated: given that the business transport certificate of the "Ning An 11"

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vessel stated that its approved scope of operation was "ordinary cargo transport between the ports of the domestic coastal areas and the middle and lower reaches of the Yangtze River", and that at the time of the accident the vessel was engaged in the operation of the voyage from Qinhuangdao Port to Shanghai Port, the vessel should be determined to be a "vessel engaged in transport between the ports of the People's Republic of China", and it was not appropriate to determine this on the basis of the navigable area recorded on the vessel's certificate of seaworthiness or the area the vessel was capable of navigating. Accordingly, the objectors' argument that the "Ning An 11" vessel was permitted to navigate in coastal waters and was a vessel capable of engaging in international ocean transport was not accepted. It was not improper for the applicant to apply, on this basis, for the calculation of the amount of the fund involved by the standard prescribed in Article 210(2) of the Maritime Law and Article 4 of the Vessel Liability Limit Provisions. The objectors' claim and reasons for calculating the amount of the fund involved by the provisions of Article 210(1)(2) of the Maritime Law lacked sufficient basis and were not accepted.

Given that the International Monetary Fund did not publish the conversion rate between special drawing rights and RMB on the date of the accident, the applicant calculated on the basis of the rate of 1:11.345 published on the following day, and the objectors raised no objection. The gross tonnage of the vessel involved was 26,358 tons. Therefore, the maritime liability limitation involved was [(26,358 − 500) × 167 + 167,000] × 50% = 2,242,643 special drawing rights, equivalent to RMB 25,442,784.84. The amount of the fund should be RMB 25,442,784.84 plus interest on that sum calculated at the current demand deposit interest rate of the People's Bank of China for the same period from the date of the accident to the date of establishment of the fund.

Relevant Legal Provisions

1. Article 106(2) of the Special Maritime Procedure Law of the People's Republic of China.

2. Article 210(2) of the Maritime Law of the People's Republic of China.

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