SPC Guiding Case No. 233: Changzhou Hong [X] Petrochemical Storage Co., Ltd. et al. v. Ningbo Tian [X] Shipping Co., Ltd. (Vessel Contact Damage Liability Dispute)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Keywords

Civil; vessel contact damage liability; limitation fund for maritime liability; restrictable claims; wharf operation losses; priority of compensation

Holding

With respect to compensation claims for damage to wharf property caused by vessel contact and the corresponding losses such as wharf operation losses caused thereby, according to Article 207(1)(1) of the Maritime Law of the People's Republic of China, the responsible person may limit its liability. Among the above compensation claims, according to Article 210(1)(4) of the Maritime Law, only the compensation claims for damage to wharf property may enjoy priority of compensation, and the compensation claims for wharf operation losses caused thereby are not included.

Basic Facts

At around 8 p.m. on July 5, 2017, the vessel "Tian [X]18" operated by Ningbo Tian [X] Shipping Co., Ltd. (hereinafter "Ningbo Tian [X] Shipping Company") set sail from Jingtang Port, Hebei, carrying 48,810 tons of water slag, bound for Changzhou Port, Jiangsu. At around 10 p.m. on July 9, 2017, the bow of the "Tian [X]18" collided with the middle-rear part of the starboard side of the vessel "Shuang [X]hai" berthed at berth No. 3 of the Changzhou [X]run Chemical Yangtze River Wharf (hereinafter the "[X]run Wharf"). Under the squeezing of the "Shuang [X]hai", part of the [X]run Wharf owned by Changzhou Hong [X] Petrochemical Storage Co., Ltd. (hereinafter "Changzhou Hong [X] Storage Company") collapsed and pipelines were torn, causing gas and liquid in the pipelines to leak and deflagrate. On December 25, 2017, the Changzhou Maritime Safety Administration issued the Conclusion of Investigation into the Water Traffic Accident, determining that the "Tian [X]18" bore full responsibility for the accident. Due to the vessel contact accident, Changzhou Hong [X] Storage Company paid wharf repair costs of approximately RMB 69,247,776.87 (same currency hereinafter), incurred wharf operation losses of approximately 65,844,974 yuan, and paid emergency rescue and salvage fees and other expenses.

After the accident, Hua [X] Property Insurance Co., Ltd. Jiangsu Branch (hereinafter "Hua [X] Insurance Jiangsu Branch"), the insurer of the wharf involved, successively paid insurance compensation of 55,380,000 yuan to Changzhou Hong [X] Storage Company. Thereafter, Changzhou Hong [X] Storage Company agreed to transfer all rights and interests in the portion of the insured subject matter for which insurance compensation had been obtained to Hua [X] Insurance Jiangsu Branch.

On July 31, 2017, Ningbo Tian [X] Shipping Company applied to the Wuhan Maritime Court to establish a limitation fund for maritime liability. On September 28, 2017, Changzhou Hong [X] Storage Company applied to the Wuhan Maritime Court for registration of the claims involved. On December 27, 2017, the Wuhan Maritime Court rendered the civil ruling (2017) E 72 Min Te No. 39, granting Ningbo Tian [X] Shipping Company permission to establish a limitation fund for maritime liability in the amount of 2,442,041 Special Drawing Rights plus interest. Changzhou Hong [X] Storage Company was dissatisfied and appealed. On May 7, 2018, the Hubei Provincial High People's Court rendered the civil ruling (2018) E Min Zhong No. 619, affirming the civil ruling of the Wuhan Maritime Court. Subsequently, Ningbo Tian [X] Shipping Company

lawfully established the limitation fund for maritime liability with the Wuhan Maritime Court by providing cash and security. On July 27, 2018, the Wuhan Maritime Court rendered the civil ruling (2017) E 72 Min Te No. 59-2, granting Changzhou Hong [X] Storage Company's application for registration of its claims.

On August 24, 2017, Changzhou Hong [X] Storage Company and others filed a lawsuit with the Wuhan Maritime Court, requesting that Ningbo Tian [X] Shipping Company be ordered to compensate for the various losses caused by the accident, and that the damaged wharf repair costs and wharf operation losses enjoy priority of compensation within the amount of the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Company over other non-personal-injury claims. Hua [X] Insurance Jiangsu Branch applied to participate in the litigation as a co-plaintiff, requesting that Ningbo Tian [X] Shipping Company be ordered to compensate wharf damage repair costs of 55,380,000 yuan plus interest, and that the aforementioned claimed debt enjoy priority of compensation within the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Company over other non-personal-injury claims.

Judgment

On July 29, 2020, the Wuhan Maritime Court rendered the civil judgment (2017) E 72 Min Chu No. 1563: (1) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for wharf repair cost losses of RMB 13,867,776.87 plus interest; (2) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Hua [X] Property Insurance Co., Ltd. Jiangsu Branch for wharf repair cost losses of RMB 55,380,000 plus interest; (3) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for maritime salvage fee losses of RMB 1,468,480 plus interest; (4) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Hua [X] Property Insurance Co., Ltd. Jiangsu Branch for maritime salvage fee losses of RMB 3,700,000 plus interest; (5) the other claims of Changzhou Hong [X] Petrochemical Storage Co., Ltd. are dismissed; and (6) the other claims of Hua [X] Property Insurance Co., Ltd. Jiangsu Branch are dismissed. The above compensation shall be paid in full within ten days after the judgment takes effect, distributed from the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Co., Ltd., among which the first and second items of compensation shall enjoy priority of compensation in the process of fund distribution.

After the first-instance judgment was pronounced, Changzhou Hong [X] Petrochemical Storage Co., Ltd. was dissatisfied and appealed, requesting that the first-instance judgment be revoked in accordance with law, and that Ningbo Tian [X] Shipping Co., Ltd. be ordered to compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for wharf operation losses of 65,844,974 yuan plus interest, and that this claim enjoy priority of compensation in the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Co., Ltd. The Hubei Provincial High People's Court held upon hearing that Changzhou Hong [X] Petrochemical Storage Co., Ltd.'s claim for wharf operation losses and interest had factual and legal basis and should be supported; however, its claim that this debt should enjoy priority of compensation in the limitation fund for maritime liability had no legal basis and was not supported. Accordingly, on August 11, 2021, the Hubei Provincial High People's Court rendered the civil judgment (2021) E Min Zhong No. 15: (1) revoking the civil judgment (2017) E 72 Min Chu No. 1563 of the Wuhan Maritime Court; (2) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for wharf repair cost losses of RMB 13,867,776.87 plus interest; (3) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Hua [X] Property Insurance Co., Ltd. Jiangsu Branch for wharf repair cost losses of RMB 55,380,000 plus interest; (4) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for maritime salvage fee losses of RMB 1,468,480 plus interest; (5) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Hua [X] Property Insurance Co., Ltd. Jiangsu Branch for maritime salvage fee losses of RMB 3,700,000 plus interest; (6) Ningbo Tian [X] Shipping Co., Ltd. shall compensate Changzhou Hong [X] Petrochemical Storage Co., Ltd. for wharf operation losses of RMB 65,844,974 plus interest; (7) the other claims of Changzhou Hong [X] Petrochemical Storage Co., Ltd. are dismissed; and (8) the other claims of Hua [X] Property Insurance Co., Ltd. Jiangsu Branch are dismissed. The above

compensation shall be distributed from the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Co., Ltd., among which the second and third items of compensation shall enjoy priority of compensation in the process of fund distribution.

Reasoning

Limitation of maritime liability is one of the legal systems unique to maritime law, referring to the compensation system under which, when a maritime accident causes property damage or personal injury to others, the ship owner, operator, charterer and other responsible persons may, in accordance with the provisions of law, limit their compensation liability to a certain amount. Article 207 of the Maritime Law expressly prescribes the scope of restrictable claims for which the responsible person may limit liability. Article 207(1)(1) provides that with respect to compensation claims for personal injury or property loss or damage occurring on board the vessel or directly related to the operation or salvage of the vessel, including damage to port works, harbor basins, waterways and aids to navigation, and the corresponding losses caused thereby, the responsible person may limit its liability. In this case, the vessel contact accident caused losses to Changzhou Hong [X] Storage Company, which had the right to require the responsible person to bear compensation liability. Hua [X] Insurance Jiangsu Branch, as the insurer of the wharf involved, after performing the corresponding insurance compensation obligations to Changzhou Hong [X] Storage Company, also had the right to require the responsible person to bear compensation liability within the scope of the insurance compensation. The compensation claims of Changzhou Hong [X] Storage Company and Hua [X] Insurance Jiangsu Branch included wharf repair costs, emergency rescue and salvage fees, and wharf operation losses caused by the severe damage to the wharf preventing normal operation, all of which fell within the restrictable claims prescribed by the above law. Therefore, the responsible person Ningbo Tian [X] Shipping Company had the right to limit its liability in accordance with the provisions of that article.

The maritime liability limit is the maximum amount of compensation that the responsible subject bears in accordance with law for all restrictable claims such as personal injury and non-personal-injury claims. Article 210 of the Maritime Law prescribes the calculation standards for the maritime liability limit and the order of compensation of various restrictable claims. Article 210(1)(4) provides: "Without prejudice to the compensation claims for personal injury in item (3), compensation claims for damage to port works, harbor basins, waterways and aids to navigation shall enjoy priority of compensation over the other compensation claims in item (2)." According to the above provisions, among non-personal-injury restrictable compensation claims, compensation claims for damage to port works, harbor basins, waterways and aids to navigation may enjoy priority of compensation over other compensation claims. The "damage" in that article refers only to the direct property damage to port works, harbor basins, waterways and aids to navigation caused by the accident, and does not include other corresponding losses caused by the accident. Accordingly, in this case, the compensation claim for wharf repair costs caused by the contact accident could enjoy priority of compensation, while the compensation claim for wharf operation losses caused by the accident could not enjoy priority of compensation.

In summary, the wharf operation losses claimed by Changzhou Hong [X] Storage Company in this case should be compensated from the limitation fund for maritime liability established by Ningbo Tian [X] Shipping Company, but could not enjoy priority of compensation over other non-personal-injury compensation claims.

Relevant Legal Provisions

Articles 207 and 210 of the Maritime Law of the People's Republic of China

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.