SPC Guiding Case No. 52: Hainan Fenghai Grain and Oil Industry Co., Ltd. v. the Hainan Branch of PICC Property and Casualty Company Limited (Marine Cargo Transportation Insurance Contract Dispute)

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Keywords

Civil / maritime / marine cargo transportation insurance contract / all risks / external cause

Holding

The "all risks" coverage in a marine cargo transportation insurance contract includes, in addition to the liabilities under free-from-particular-average (FPA) and with-average (WA) coverage, all total and partial losses of the insured cargo caused by external causes during transit. Where the insured has no intent or negligence, and the loss of the insured cargo is caused by a cause other than the circumstances listed in the exclusion clauses of the relevant insurance contract, this may be found to constitute an "external cause" leading to the loss of the insured cargo, and the insurer shall bear all losses caused by that external cause during transit.

Basic Facts

On November 28, 1995, Hainan Fenghai Grain and Oil Industry Co., Ltd. ("Fenghai") insured with the Hainan Branch of PICC Property and Casualty Company Limited ("Hainan PICC") 4,999.85 tons of barreled palm oil carried by the Indonesian vessel HAGAAG from Dumai Port, Indonesia to Yangpu Port, China, under "all risks" coverage, with a cargo value of USD 3,574,892.75, an insured amount of USD 3,951,258, and a premium of USD 18,966. After insuring, Fenghai paid the premium to Hainan PICC as agreed, and Hainan PICC issued a shipment notice to Fenghai, issued a marine cargo transportation insurance policy, and attached the marine cargo transportation insurance clauses to the policy. According to the insurance clauses, the coverage of all risks included, in addition to the liabilities under FPA and WA coverage, that Hainan PICC would "be liable for all total and partial losses of the insured cargo caused by external causes during transit." The clauses also specified five exclusion liabilities. The insured cargo was purchased by Fenghai at CNF price from Singapore Fengyi Private Co., Ltd. ("Fengyi"). According to the sales contract, the consignor Fengyi signed a charter party with the shipowner's agent Liang Guoji International Agency Co., Ltd. ("Liang Guoji"). The charter party agreed that the vessel HAGAAG would carry 5,000 tons of palm oil insured by Fenghai to Yangpu Port, China, and another 1,000 tons of palm oil to Hong Kong.

On November 29, 1995, the time charterer of the HAGAAG and the actual carrier of the cargo, Indonesia's PT. SAMUDERA INDRA ("PSI"), issued a shipped bill of lading No. DM/YPU/1490/95. The bill of lading stated that the vessel was the HAGAAG, the loading port was Dumai Port, Indonesia, the discharge port was Yangpu Port, China, the cargo mark was BATCH NO.80211/95, the loaded quantity was 4,999.85 tons, and it was clean and freight prepaid. It was found that the consignor Fengyi paid the freight to Liang Guoji, and Liang Guoji had paid the freight to PSI. On December 14, 1995, Fenghai paid its issuing bank to redeem the documents and obtained the full set (3 copies) of original bills of lading for the insured cargo. From November 23 to 29, 1995, after the HAGAAG loaded 31,623 barrels of Sihai-brand palm oil with a net weight of 5,999.82 tons at Dumai Port and set sail, because a dispute over vessel hire arose between the shipowner of the HAGAAG, Indonesia's PT. PERUSAHAAN PELAYARAN BAHTERA BINTANG SELATAN ("BBS"), and the time charterer PSI, the HAGAAG suspended the voyage stipulated in the bill of lading and withheld

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information on the vessel's movements from the outside.

To avoid loss of the insured cargo, Fengyi, Fenghai and Hainan PICC sent representatives on several occasions to participate in negotiations between the shipowner and the time charterer of the HAGAAG, but because the shipowner refused to disclose the whereabouts of the HAGAAG on the ground of not having received the hire, the multi-party talks came to nothing. Thereafter, Fengyi and Fenghai pursued the matter through various channels and made extensive efforts to locate the HAGAAG, and Hainan PICC also assisted in locating the HAGAAG through its overseas offices. It was not until April 1996 that the HAGAAG, having been smuggled into Shanwei, China, was seized by the Chinese coast guard. According to the determination in the Decision on Exemption from Prosecution, Sui Jian Xing Mian Zi (1996) No. 64, of the Guangzhou Municipal People's Procuratorate, from January to March 1996, the master of the HAGAAG, Eris Rumbak, acting on the instructions of BBS, directed the crew to transship 11,325 barrels, over 2,100 tons, of the palm oil onto the vessels IWANA and SARAHA belonging to the same ship company and carry them away for sale, and had the crew alter the name of the vessel HAGAAG to ELIZA II. In April 1996, the vessel, renamed ELIZA II, carried the remaining cargo of 20,298 barrels of palm oil and was smuggled into Shanwei, China, and was seized by the Chinese coast guard on April 16. The aforesaid 20,298 barrels of palm oil were confiscated by the Guangdong procuratorial organs as smuggled goods and turned over to the state treasury. On June 6, 1996, Fenghai submitted a claim report to Hainan PICC, and on August 20, Fenghai again submitted a written claim application to Hainan PICC, and Hainan PICC expressly refused to pay the claim. Fenghai then brought suit in the Haikou Maritime Court.

Fenghai was a Sino-foreign equity joint venture established on August 14, 1995 by Hainan Fengyuan Trading Development Co., Ltd. and Singapore Haiyuan International Co., Ltd. After its establishment, it established a business relationship with Hainan PICC. From October 1, 1995 to November 28 of the same year (before the insurance policy in this case was issued), four transactions of imported-palm-oil insurance business occurred, of which three were insured under all risks and one under "all risks plus war risk." Claims arose in all four of these insurance transactions, including compensation for shortage and leakage of goods within the scope of all risks.

Judgment

On December 25, 1996, the Haikou Maritime Court rendered Civil Judgment (1996) Hai Shang Chu Zi No. 096: (1) Hainan PICC shall compensate Fenghai for the loss of the insured value of USD 3,593,858.75; and (2) the other claims of Fenghai were dismissed. After the judgment was pronounced, Hainan PICC appealed. On October 27, 1997, the Higher People's Court of Hainan Province rendered Civil Judgment (1997) Qiong Jing Zhong Zi No. 44, revoking the first-instance judgment and dismissing Fenghai's claims. Fenghai applied to the Supreme People's Court for retrial. On August 11, 2003, the Supreme People's Court, by Civil Ruling (2003) Min Si Jian Zi No. 35, decided to take up the case for retrial, and on July 13, 2004 rendered Civil Judgment (2003) Min Si Ti Zi No. 5: (1) the Civil Judgment (1997) Qiong Jing Zhong Zi No. 44 of the Higher People's Court of Hainan Province was revoked; and (2) the Civil Judgment (1996) Hai Shang Chu Zi No. 096 of the Haikou Maritime Court was affirmed.

Reasoning

The Supreme People's Court held as follows. This case was an international marine cargo transportation insurance contract dispute; the insured and the port of destination of the insured cargo were all within the territory of the People's Republic of China, and the original trial's use of the law of the People's Republic of China as the governing law for resolving the dispute was correct, and both parties raised no objection.

The insurance contract concluded between Fenghai and Hainan PICC was lawful and valid, and the rights and obligations of both parties should be governed by the insurance policy and the attached insurance clauses. The subject matter of insurance in this case had already suffered an actual total loss; the consignor Fengyi was not at fault for this, and there was no evidence proving that the insured Fenghai had intent or

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negligence. The loss of the subject matter of insurance was caused by the dispute over hire between the shipowner BBS and the time charterer of the HAGAAG, and by the acts of carrying away the cargo for sale and smuggling. The focal point of dispute in this case lay in how to understand the scope of liability of all risks in the insurance clauses in issue.

In the second-instance trial, the Higher People's Court of Hainan Province held that, according to the insurance clauses attached to the policy and insurance industry practice, the scope of liability of all risks included FPA, WA and ordinary additional risks (namely, theft, pilferage and non-delivery risk, fresh-water and rain-damage risk, shortage risk, contamination risk, leakage risk, clashing and breakage risk, taint-of-odor risk, sweating and heating risk, hook damage risk, breakage-of-packing risk, and rust risk), and the Reply of the People's Bank of China on the Request for Interpretation of the "All Risks" Clause of Marine Cargo Transportation Insurance made the same express provision. It was thus evident that the loss of Fenghai's insured cargo did not fall within the scope of liability of all risks. In addition, given that Hainan PICC and Fenghai had a long-term insurance business relationship, that before the dispute in this case arose the two parties had concluded insurance contracts on several occasions, and that Hainan PICC had also made compensation within the scope of all risks, Fenghai should have been clear about the main content of the insurance contract in this case, the exclusion clauses and the scope of liability of all risks; therefore it was found that the first-instance judgment had erroneously applied the law.

According to the "Marine Cargo Transportation Insurance Clauses" in issue, all risks, in addition to including the liabilities under FPA and WA, also covered losses of the insured cargo caused by various external causes during transit. At the same time, the insurance clauses expressly listed five exclusions, namely: (1) losses caused by the intentional act or negligence of the insured; (2) losses caused by liability of the consignor; (3) losses caused by poor quality or short quantity of the insured cargo existing before the insurance liability commenced; (4) losses caused by natural wear and tear, inherent defects, and characteristics of the insured cargo, as well as market price decline and delay in transit; and (5) the scope of liability and exclusions stipulated in the company's marine cargo war risk clauses and cargo strike risk clauses. From the provisions of the aforesaid insurance clauses, the all-risks clause in the marine cargo transportation insurance clauses has the following characteristics:

1. All risks is not a named-risk but an unnamed-risk coverage. In the marine cargo transportation insurance clauses, FPA and WA are named risks, while all risks is FPA and WA plus unnamed losses of the subject matter of insurance caused by external causes during transit.

2. The loss of the subject matter of insurance must be caused by external causes. When claiming insurance compensation from the insurer, the insured must prove that the loss of the subject matter of insurance was caused by external causes during transit. External causes may be natural causes or man-made accidents. However, the risks covered by all risks are of an uncertain nature, and the requirement is that they be undetermined, accidental and unlistable covered risks. As for those anticipated, certain and normal risks, they do not fall within the scope of liability of external causes.

3. External causes should be limited to those occurring during transit, excluding accidents occurring before the commencement and after the end of transit. As long as the insured proves that the loss was not caused by its own reasons but by an accident during transit, the insurer shall bear the insurance compensation liability.

According to the provisions of the Insurance Law, where an insurance contract contains clauses on the insurer's exemption from liability, the insurer shall, when concluding the contract, expressly explain them to the applicant; if no express explanation is made, such clauses still cannot take effect. Accordingly, although the exclusions listed in the insurance clauses are not within the insurer's compensation, this should be premised on the insurer's having expressly informed the insured of the exclusion clauses at the time of concluding the insurance contract. Otherwise, the exclusion clauses cannot bind the insured.

As to the reply opinion of the People's Bank of China. Before the establishment of the insurance regulatory commission, the People's Bank of China was the administrative competent authority of the insurance industry. On May 1, 1997, in its Reply to the People's Insurance Company of China on the Request for Interpretation of the "All Risks" Clause of Marine Cargo Transportation Insurance, the People's Bank of China held that the scope covered by all risks was FPA, WA, and all total and partial losses of the insured cargo caused by external causes during transit, and further proposed that external causes referred only to theft, pilferage and non-delivery, fresh water and rain, and the like. On November 27, 1998, in its Reply to China Insurance Property Insurance Co., Ltd. on the Interpretation of the Marine Cargo Transportation Insurance Clauses, the People's Bank of China again expressly confirmed that the scope of liability of all risks included FPA, WA and all total and partial losses of the insured cargo caused by external causes during transit, and that all total and partial losses caused by external causes referred to eleven general additional risks. In view of the fact that the aforesaid replies of the People's Bank of China were neither laws nor regulations, nor administrative rules, and pursuant to the Legislation Law of the People's Republic of China, the ministries and commissions of the State Council, the People's Bank of China, the National Audit Office and the directly-affiliated institutions with administrative management functions may, based on laws and the administrative regulations, decisions and orders of the State Council, formulate rules within the limits of their respective authority, and matters provided in departmental rules should be matters implementing laws or the administrative regulations, decisions and orders of the State Council; therefore, the insurance clauses were likewise not within the scope of rules that the functional departments had the authority to formulate, and the interpretation of the insurance clauses by the People's Bank of China could not serve as the basis for binding the insured. In addition, the reply of the People's Bank of China on all risks was an interpretation of the clauses of an insurance contract. For an insurance contract concluded between equal subjects, only the people's courts and arbitration institutions have the authority under law to make an interpretation binding on the parties. For this reason, the aforesaid reply could not bind the insured. For the interpretation in the reply to become a contract clause binding on the insured, it could only be attached to the insurance policy as content of the insurance contract. The very fact that the People's Insurance Company of China requested the competent authority to interpret the scope of liability of all risks, and the competent authority gave a reply, precisely shows that there was a dispute over the understanding of all risks. And pursuant to Article 31 of the Insurance Law, where there is a dispute between the insurer and the applicant, the insured or the beneficiary over the clauses of an insurance contract, the people's court or arbitration organ shall make an interpretation favorable to the insured and the beneficiary. An interpretation made by the industry's competent authority favorable to its own industry cannot be applied to the parties to a contract outside that industry.

In conclusion, it should be found that the insured event in this case fell within the scope of liability of all risks. The second-instance court's holding that the loss of Fenghai's insured cargo did not fall within the scope of liability of all risks was erroneous and should be corrected. Fenghai's grounds for retrial application were well-founded and should be supported.

Relevant Legal Provisions

Article 30 of the Insurance Law of the People's Republic of China.

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