敬海律師事務所
WANG JING & CO.

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Newsletter | 202502

Content

Proud to be Ranked in Chambers Greater China Region 2025 Guide

16 January 2025 witnessed the official release of Chambers Greater China Region 2025 Guide by the global authoritative legal ranking agency Chambers & Partners. The rankings are the definitive mark of excellence across the legal industry, providing important reference for international clients who seek high-end legal services. In the latest edition, Wang Jing & Co. (WJNCO) stands out for its in-depth professional knowledge and excellent client feedback.

Adhering to the original aspiration for a brighter success, WJNCO, as one of the earliest law firms in China specializing in maritime and admiralty, has been remaining at the forefront of the industry. Offices in Southern China, Eastern China, and Northern China of the law firm are all listed in the rankings this time and secure a dominant and leading position, which is not only a testament to the firm's long-standing dedication to innovation and professionalism, but also underscores the full recognition and high regard from the industry and our clients.

Comments by Clients:

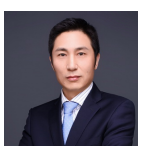
"*The team ensures detailed document reviews while delivering prompt and precise answers to clients.*"

"*The firm is good at handling complex cases and can also make these cases easy to understand for all parties.*"

"*They have a full understanding of the shipping industry, answer clients*"

Mr. Chen Xiangyong

Review:
Chen Xiangyong is a highly regarded maritime law specialist who is frequently mandated to handle shipping litigation. He is also the director and managing partner of the firm and splits his time between the firm's Shanghai and Guangzhou offices.



Mr. Yuan Hui

Review:
Yuan Hui is based in Qingdao and has a broad shipping practice which covers litigation, ship finance and maritime investigation. He also advises on issues concerning international trade. His clientele includes shipping companies and insurers.

Mr. John Wang

Comments by Clients:
"*John has a clear and professional approach to handling cases. He conducts in-depth research and analysis on similar cases, and is very effective at executing our decisions.*"

Mr. Xu Jun

Comments by Clients:
"*With a deep knowledge base, Xu Jun approaches different cases with creative ideas and unique solutions.*"

Being listed again in the rankings further affirms the firm's standing in the industry. Keeping professionalism and integrity in mind, WJNCO will continue to provide our clients with specialized and meticulous legal services in shipping and contribute to the development of the rule of law.

Named Again Maritime Law Firm of the Year: South China & Central China by ALB

The evening of 6 December sees the grand opening of awards ceremony of ALB China Regional Law Awards 2024: South China & Central China, with the winners being announced by Asian Legal Business (ALB) at The Ritz-Carlton, Shenzhen.

Wang Jing & Co. (WJNCO) has been honored with “Shipping Law Firm of the Year”, “Maritime Law Firm of the Year: East China”, and “Maritime Law Firm of the Year: The Coastal Areas” by ALB for several times. With its solid foundation built over years and outstanding performance in the legal service market in South and Central China, WJNCO continues to win the fierce competition fair and square for the award “Maritime Law Firm of the Year: South China & Central China”. Lawyer Peng Ruizhe, the talented young lawyer from WJNCO and a member of Chinese Communist Party, attended the gala ceremony by ALB and accepted the honor on behalf of WJNCO.

Maritime Law Firm of the Year: South China & Central China - Local
年度华南华中地区海事海商律师事务所大奖 – 本地

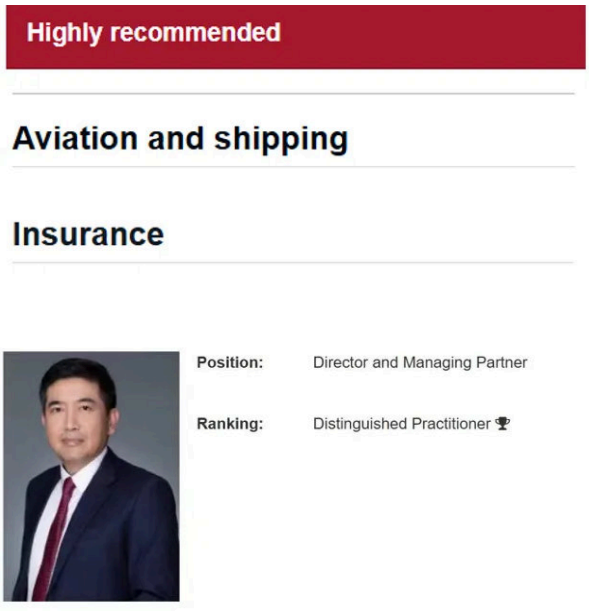
Wang Jing & Co. Law Firm
敬海律师事务所

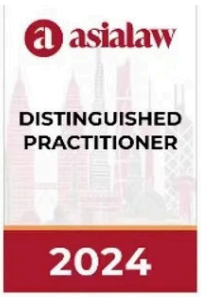
WJNCO Continues to be Listed in Asialaw 2024 Rankings

On 12 September 2024, the authoritative Asian legal media Asialaw Profiles released the asialaw 2024 rankings, the definitive guide to Asia's leading law firms and lawyers.

WJNCO was again recognized as a “Highly Recommended” law firm in “Aviation and Shipping” and “Insurance”, and Mr. Chen Xiangyong, Director and Managing Partner of WJNCO, was named “Distinguished Practitioner” in both the “Shipping” and the “Insurance” practice areas.

WJNCO has been consistently listed in asialaw rankings since 2016, highlighting our outstanding market performance and leadership in “Aviation and Shipping” and “Insurance”. We will continue to provide the market and our clients with professional, high-quality, and efficient legal services with international vision.





Two Cases Selected as Guiding Cases of Maritime Adjudication First Released by SPC

On the occasion marking the 40th anniversary of the establishment of maritime courts in China, the Supreme People's Court (SPC) released the 41st batch of guiding cases (Cases No. 230 - No. 236), marking the first time the SPC has dedicated a special issue to guiding cases in the maritime adjudication. This batch contains seven cases covering a range of sectors, including contract of carriage of goods by sea, maritime rescue, liability for ship collision damage, establishment of a limitation fund for maritime compensation liability, the application for recognition of civil judgments by foreign courts, and the application of foreign-related laws, providing more authoritative and precise guidance on making judgments and rulings for similar cases.

Two cases handled by lawyers of Wang Jing & Co. (WJNCO) are selected in the batch, representing two out of the seven cases, which further demonstrates WJNCO lawyers' professional expertise in handling complex and difficult maritime and admiralty cases. The two cases are: "Case No. 232 - Dispute over Contract of Carriage of Goods by Sea between XX Animal Husbandry Industry Co., Ltd. and XX Maritime Inc." represented by WJNCO Director Chen Xiangyong and lawyer Lv Junfei, and "Case No. 234 - Case of Application by Nanjing XX Shipping Co., Ltd. for the Establishment of a Limitation Fund for Maritime Compensation Liability" represented by WJNCO Executive Managing Partner John Wang and Partner Li Lan. The former case clarifies the criteria for determining whether the carrier makes true remarks about the appearance of the cargo, which is crucial for regulating the carrier's issuance of bills of lading and ensuring the security of maritime cargo transportation transactions; while the latter one aims to be clear about the application of principle "favoring the higher limit rather than the lower one" for the vessels involved in the same maritime accident, thus ensuring equal protection for the parties of the same incident.

As of November 2024, a total of 17 maritime and admiralty cases have been selected as guiding cases by the SPC (10 prior cases plus seven cases in the 41st batch), six of which were represented by WJNCO lawyers, namely Cases No. 31, No. 52, No. 112, No. 127, No. 232, and No. 234, accounting for an impressive 35% of the total. The outstanding achievement is the best recognition for WJNCO lawyers' dedication and devotion in the maritime and admiralty area. Details of the two selected cases are as follows:

Case No. 232: XX Animal Husbandry Industry Co., Ltd. v. XX Maritime Inc. (Case of Dispute over Contract of Carriage of Goods by Sea)

Key Words Civil Litigation / Contract of Carriage of Goods by Sea / Burden of Proof for Cargo Damage / Remarks on Bills of Lading

[Key Point of Judgment]

According to Article 76 of the Maritime Law of the People's Republic of China (hereinafter referred to as "Maritime Code"), if the carrier issues a bill of lading without noting the poor surface condition of the loaded cargo, he shall bear the unfavorable consequences resulting therefrom. However, whether the carrier makes true remarks about the appearance of the cargo should be assessed comprehensively based on objective conditions for observing the appearance of the cargo at the time of issuing the bill of lading, as well as whether the judgment made by the carrier conforms to usual standards.

[Case Summary]

The plaintiff XX Animal Husbandry Industry Co., Ltd. (hereinafter referred to as "XAHIC") claimed that it imported a batch of corn distiller's dried grains with solubles (hereinafter referred to as "DDGS") from the United States. The cargo was carried by M/V "XXBA" bareboat chartered by XX Maritime Inc., who issued the bill of lading for the cargo, indicating the cargo weight as 54,999.642 tons. Upon the arrival of cargo at Guangzhou Xinsha Port, it was discovered during discharg that cargo in some holds severely discolored, caked, and had a burnt smell. After investigation and inspection by an entrusted inspection agency, the Hunter color L value (hereinafter referred to as "Hunter L value") and crude protein were found to be grossly inconsistent with the original ones of the cargo, with 20,931.98 tons determined to be damaged. Therefore, the plaintiff requested to order XX Maritime Inc. to compensate for the losses together with interest and bear litigation fees.

The defendant XX Maritime Inc. argued that there was no discoloration or damage to the cargo. The Hunter L value needs to be measured by professional laboratory equipment, so neither the Master nor the carrier is obligated to conduct such testing or make remarks on the bill of lading. The cargo involved in the case showed different colors at the time of loading, and the crew members had fulfilled their duty to handle the cargo reasonably and prudently, without causing further discoloring or deepening the color of the cargo during transportation. The losses claimed by XAHIC lacked factual basis, and therefore should be dismissed.

Upon examination, the court ascertained that XAHIC had signed a sales contract with XX Grain (U.S.) Co., Ltd. to purchase 50,000 tons of DDGS with Hunter L value of 50 or higher. On 26 August 2015, XX Agent Company issued the bill of lading on behalf of the Master of M/V "XXBA", which was titled "North American Grain Bill of Lading," used alongside the North American Grain Charter Party 1973. The cargo was loaded by XX Trade Group Corporation on behalf of XX Grain (U.S.) Co., Ltd., and the appearance of the cargo was good upon loading. The consignee was "to order", and the notify party was XAHIC. The bill of lading described the cargo as DDGS, 54,999.642 tons, loaded into holds No. 1 to No. 7, clean on board, freight payable as per charter party, charter party

dated 11 March 2015, for conditions of carriage see overleaf, and the weight, quality, quantity unknown. The bareboat charterer of M/V "XXBA" was XX Maritime Inc. . On 28 August 2015, XX Marine Group issued a quality report for the batch of DDGS, noting that sampling at the port of loading, which showed the Hunter L value of the cargo was 50.8.

On 14 October 2015, M/V "XXBA" arrived at Guangzhou Xinsha Port and began discharging, during which XAHIC believed there was cargo damage and filed a claim to the shipowner. Under the circumstances, XAHIC applied to China XX Inspection Group Guangdong Co., Ltd. (hereinafter referred to as "CXIC") for inspecting the 20,931.98 tons of DDGS stored in warehouses 6-2B and 7-4B. On 14 March 2016, CXIC issued an inspection report, stating that their inspectors headed to the Guangzhou Xinsha Port warehouses on 24 October 2015 for the inspection of DDGS stored in warehouses 6-2B and 7-4B declared by XAHIC and collected representative samples, which showed that the Hunter L value of the cargo was 42.5.

From 16 October to 24 October 2015, Dalian XX Sea Insurance Surveyors and Loss Adjusters Co., Ltd. was entrusted to go on board the M/V "XXBA" and inspect and investigate on behalf of the shipowner, with SXS-CSTC Standards Technical Services Co., Ltd. (hereinafter referred to as "SSTC") supervising the whole process of cargo discharging, condition checking and sampling. During the inspection, no abnormal conditions that would affect the vessel's seaworthiness and cargoworthiness was found, and the watertight integrity of cargo holds was sound and good. SSTC issued an inspection report, stating that their inspectors supervised the discharging of cargo of the case at Guangzhou Xinsha Port and systematically sampled in the warehouses, which identified the Hunter L value of composite samples of cargo on board was 48.66.

Additionally, in accordance with the inspection report at the loading port, loading records, and loading photos of August 2015, part of the cargo involved in the case was loaded via conveyor belts at the terminal, and the rest was loaded on barges by grabs. During loading, 42 barges carried cargo with varying colors, and the abovementioned cargo was distributed across different holds of M/V "XXBA".

[Court Judgment]

On 29 December 2018, Guangzhou Maritime Court made the Civil Judgment (2016) Yue 72 Min Chu No. 705, ordering XX Maritime Inc.to compensate XX Animal Husbandry Industry Co., Ltd. for cargo damage at the total amount of CNY 9,862,112.57 plus interest, and dismissing others claims raised by XX Animal Husbandry Industry Co., Ltd. After the first instance, XX Maritime Inc. was dissatisfied with the judgment and lodged an appeal. On 8 April 2020, Guangdong High People's Court made the Civil Judgment (2019) Yue Min Zhong No. 807, which rejected the appeal and upheld the original judgment. After the second instance, XX Maritime Inc. applied for a retrial. The SPC reviewed the case and made the Civil Judgment (2022) Zui Gao Fa Min Zai No. 14 on 21 June 2023, deciding to revoke the Civil Judgment (2019) Yue Min Zhong No. 807 made by Guangdong High People's Court and the Civil Judgment (2016) Yue 72 Min Chu No. 705 by Guangzhou Maritime Court, as well as to dismiss all the requests raised by XX Animal Husbandry Industry Co., Ltd.

[Grounds for Judgment]

The case concerns a dispute over contract of carriage of goods by sea, and two disputable issues are as follows: (1) whether the cargo involved in the case sustained damage during the carrier's period of liability; (2) whether XX Maritime Inc. should be held liable for not making true remarks on the bill of lading.

1. Whether the Cargo Involved in the Case Sustained Damage During the Carrier's Period of Liability

XAHIC failed to provide sufficient evidence to prove that the color and quality of the cargo of the case changed during the carrier XX Maritime Inc.'s period of liability and resulted in damage. To be specific:

(1) There is not a globally unified grading system or quality standard for DDGS, and the Hunter L value only represents lightness of color, which can be influenced by raw materials, production process, temperature, etc. Heat from the heating resources during transportation and excessive amount of moisture can also darken the color of the cargo. Therefore, the difference in color does not necessarily indicate a quality problem.

(2) The inspection ranges of cargo, sampling methods, and testing standards used by CXIC and XX Marine Group are different, thus their conclusions are not perfectly comparable. Inspection report issued by CXIC cannot sufficiently prove that the color of cargo involved in the case changed during the transportation and therefore led to cargo damage.

(3) Evidence submitted by XX Maritime Inc. can prove that the cargo of the case was already of different colors upon loading on board and was placed in different cargo holds. Moreover, the condition of the cargo at the discharge port is basically consistent with that at the loading port.

(4) There is no evidence shows that the vessel involved in the case had any defects that affect the vessel's cargoworthiness, nor is there evidence that the carrier improperly handled the cargo and therefore the color of cargo got darkened due to heat from the heating resources and excessive amount of moisture.

2. Whether XX Maritime Inc. Should be Held Liable for not Making True Remarks on the Bill of Lading

XAHIC argued that XX Maritime Inc. did not prudently verify the appearance of the cargo or make true remarks on the bill of lading, stating the poor cargo condition of mixed color upon loading on board. Thus, XX Maritime Inc. should be liable for the losses sustained by XAHIC. According to Article 76 of the Maritime Code, which stipulates that "where the appearance of the cargo is not

annotated on the bill of lading by the carrier or by the person who signed the bill of lading on the carrier's behalf, the appearance of the cargo shall be deemed to have been good", the carrier is entitled to annotate the perceived poor appearance of cargo. If no remark is made, the carrier will bear the unfavorable consequences arising therefrom. To this end, the carrier should annotate properly and prudently. In this case, whether XX Maritime Inc. should bear compensation liability for failing to make true remarks about the appearance of the cargo on the bill of lading should be assessed comprehensively based on objective conditions for observing the appearance of the cargo, as well as whether the judgment made conforms to usual standards.

First, the cargo involved in the case are in bulk, which was loaded via conveyor belts and grabs as per loading port records. During the loading process, cargo holds were dusty, so staff at the terminal covered the hatches with canvas to prevent pollution. In this situation, it was hard for crew members to observe the appearance of the cargo comprehensively and clearly since objective conditions to figure out abnormal appearance were not satisfied.

Second, the Master and crew members are not experts in DDGS, without professional knowledge about identifying color lightness. In addition, the Hunter L value needs to be tested by sophisticated instruments in laboratories, so it is difficult to see the difference with the naked eye when the values are close. Therefore, it is reasonable for the carrier to determine that the appearance of the cargo was good based on common sense and usual standards, and it is not improper for the carrier to sign and issue the bill of lading stating that "appearance of the cargo is good upon loading".

Third, the color of DDGS can vary due to factors such as raw materials and processing methods, so different colors indicate varied internal qualities instead of damage to the cargo or poor appearance. The law does not impose an obligation on the carrier to annotate the internal quality of the carried cargo, so the carrier is not obliged to annotate the color of DDGS. Furthermore, the shipper did not specifically declare any color requirements for the cargo when booking the cargo holds. Even if the cargo presented different colors at the loading port, it was not inappropriate for XX Maritime Inc. and its agent to receive the goods and sign and issue a clean bill of lading stating that "the appearance of the cargo is good upon loading".

In conclusion, the claim raised by XAHIC that XX Maritime Inc. should bear liability for failing to make a true remark lacks both factual and legal basis. XX Maritime Inc. should not be held liable for compensation in this case.

Case No. 234: Case of Application by Nanjing XX Shipping Co., Ltd. for the Establishment of a Limitation Fund for Maritime Compensation Liability

Key Words Civil Litigation / Application for Establishment of a Limitation Fund for Maritime Compensation Liability / Fund Amount / Ocean Shipping Vessel / Coastal Shipping Vessel

[Key Point of Ruling]

The limitation amount of maritime compensation for the vessels involved in the same maritime incident should be calculated in accordance with Paragraph 1, Article 210 of the Maritime Code or Article 3 of the Regulations on the Limited Amount of Maritime Compensation for Vessels under 300 Tons Gross Tonnage and Those Engaging in Coastal Shipping and Operation. Whether any vessel involved in the incident applies for setting up a limitation fund for maritime compensation liability or claiming a limitation of maritime compensation liability or not, the other vessels involved in the same accident cannot calculate the limited amount of maritime compensation as per Article 4 of the Regulations on the Limited Amount of Maritime Compensation for Vessels under 300 Tons Gross Tonnage and Those Engaging in Coastal Shipping and Operation.

[Case Summary]

M/V "HUA XX ZHOU" (2,986 GT), owned by Nanjing XX Shipping Co., Ltd. (hereinafter referred to as "Nanjing XX Shipping Company"), is a general cargo ship operating in coastal areas and the middle-lower Yangtze River in China. On 21 November 2020, it collided with the Singaporean M/V "XX CHUN" (27,800 GT), owned by Wan XX Lines (Singapore) Pte. Ltd., near the 32# anchorage in the Pearl River estuary, causing partial damage to both vessels and some containers and cargo on board the M/V "XX CHUN" to fall into the water.

On 28 December 2020, Nanjing XX Shipping Company applied to the Guangzhou Maritime Court for the establishment of a limitation fund for maritime compensation liability at the amount of 291,081 special drawing rights (50% of the limited amount of compensation) for compensation liabilities not relating to personnel injury or death arising from the collision incident between M/V "HUA XX ZHOU" and M/V "XX CHUN" according to Article 4 of the Regulations on the Limited Amount of Maritime Compensation for Vessels under 300 Tons Gross Tonnage and Those Engaging in Coastal Shipping and Operation (hereinafter referred to as "Regulations on the Limited Liability Amount"). Wan XX Lines (Singapore) Pte. Ltd. did not apply for constituting a limitation fund for maritime compensation liability.

Guangzhou Maritime Safety Administration and Wan XX Lines (Singapore) Pte. Ltd. did not raise objections regarding the legal standing of Nanjing XX Shipping Company or the nature of the claims involved in the accident. However, they did not agree on the amount of the limitation fund for maritime compensation liability. Since M/V "XX CHUN", one of the vessels of the case, is a Singaporean vessel on a voyage from Singapore to Guangzhou Nansha Port in China, as per Article 5 of Regulations on the Limited Liability Amount, M/V "HUA XX ZHOU" should apply standards stipulated in Paragraph 1, Article 210 of the Maritime Code to calculate the amount of the limitation fund for maritime compensation liability, instead of having it halved by following Article 4 of Regulations on the Limited Liability Amount. Thus, the amount of the limitation fund for maritime compensation liability set up by Nanjing XX Shipping Company should

be 582,162 special drawing rights plus the corresponding interest.

[Court Ruling]

On 2 April 2021, Guangzhou Maritime Court made the Civil Ruling (2021) Yue 72 Min Te No. 5, stating that: (1) the application by Nanjing XX Shipping Co., Ltd. for the establishment of a limitation fund for maritime compensation liability is approved; (2) the amount of the limitation fund for maritime compensation liability is 582,162 special drawing rights plus the corresponding interest; (3) the applicant Nanjing XX Shipping Co., Ltd. shall constitute the limitation fund for maritime compensation liability with Chinese Yuan or a guarantee approved by the Court within three days upon the execution of the ruling. If the fund is not set up within the prescribed period, the application will be treated as automatically withdrawn. After the ruling was made, none of the parties appealed, so the ruling has become legally effective.

[Grounds for Ruling]

The case concerns the application for the establishment of a limitation fund for maritime compensation liability, and the disputable issue lies on whether the amount of fund set up for M/V "HUA XX ZHOU" should be halved in accordance with regulations on the limited amount of maritime compensation liability stipulated in Paragraph 1, Article 210 of the Maritime Code.

The limitation amount of maritime compensation liability refers to the maximum amount of compensation that a liable party shall pay for all claims subject to limitation in relation to personnel injury and death and those not relating to personnel injury and death. Paragraph 1, Article 210 of the Maritime Code clearly stipulates the calculation methods of the limited amount of maritime compensation for vessels of over 300 tons gross tonnage engaging in ocean shipping, with different standards applicable to different tonnages. On this basis, Paragraph 2, Article 210 of the Maritime Code further provides: "vessels of less than 300 tons gross tonnage engaging in transport between ports within the territory of the People's Republic of China and vessels engaging in coastal operations shall have their amounts of limited liability for compensation determined by the departments in charge of communications under the State Council, and implementation shall occur after approval by the State Council".

Accordingly, with the approval of the State Council, the former Ministry of Communications (now the Ministry of Transport) issued the Regulations on the Limited Liability Amount in November 1993, which set forth the calculation methods of limited amount of compensation for ocean shipping vessels with a gross tonnage of less than 300 tons. Article 4 of the Regulations specifically stipulates a rule for vessels engaging in transport between ports within the territory of the People's Republic of China and vessels engaging in coastal operations, whose limited amount of maritime compensation liability should be calculated at 50% of that for ocean shipping vessels.

Moreover, for accidents involving both ocean shipping vessels and coastal shipping vessels, Article 5 of the Regulations on the Limited Liability Amount states that "where Article 210 of the Maritime Code or Article 3 of the Regulations is applicable to any vessel involved in the accident for calculating the limited amount of maritime compensation liability, the same standards shall apply to other vessels of the same incident." This provision effectively establishes the principle of "favoring the higher limit rather than the lower one", aiming at ensuring equal protection for all parties involved in the same accident.

Therefore, as long as Article 210 of the Maritime Code or Article 3 of the Regulations on the Limited Liability Amount is applicable to any vessel involved in the same accident regarding the calculation of the amount of limited liability, whether it applies for constituting a limitation fund for maritime compensation liability or claiming a limitation of maritime compensation liability or not, the same standards, namely different standards applicable to different tonnages, shall be applied by other vessels engaging in transport between ports within the territory of the People's Republic of China and vessels engaging in coastal operations involved in the same incident, instead of the Article 4 of the Regulations on the Limited Liability Amount to have the limited amount of compensation calculated at 50%.

In this case, the maritime accident involved a collision between M/V "HUA XX ZHOU" and M/V "XX CHUN". M/V "HUA XX ZHOU" is a general cargo ship operating in coastal areas and the middle-lower Yangtze River in China, and M/V "XX CHUN" is registered in Singapore and on a voyage from Singapore to Guangzhou Nansha Port in China. M/V "XX CHUN" is an ocean shipping vessel with a gross tonnage of over 300 tons, whose limited amount of compensation should be determined as per Paragraph 1, Article 210 of the Maritime Code. Therefore, whether M/V "XX CHUN" applies for constituting a limitation fund for maritime compensation liability or claiming a limitation of maritime compensation liability as defense or not, the limited amount of maritime compensation liability for M/V "HUA XX ZHOU" shall be calculated based on its tonnage instead of being halved. On this basis, since M/V "HUA XX ZHOU" is a vessel with a gross tonnage exceeding 300 tons, Paragraph 1, Article 210 of the Maritime Code shall also be applicable to its calculation of limited amount of maritime compensation.

In conclusion, the People's Court supports the objection raised by the Guangzhou Maritime Safety Administration and Wan XX Lines (Singapore) Pte. Ltd. that Nanjing Hua Mou Shipping Company is not entitled to calculate the limited amount of liability according to Article 4 of the Regulations on the Limited Liability Amount.

The selection of these two cases once again proves WJNCO lawyers' exceptional ability and extensive experience in handling maritime and admiralty cases, as well as their high-level capability and professionalism in providing foreign-related legal services. WJNCO lawyers will continue to uphold the values of "professionalism, efficiency, sharing, and inheritance", and remain committed to the trust placed by their clients and all sectors of society.

Does Shipper Lose the Right to Claim for Cargo Damage after Delivery?

Auther: WANG Kai LI Tiejing

Case summary

On 6 August 2021, ZH, acting as the NVOCC, accepted a booking request from LT and issued a telex release B/L, specifying the following details: the shipper was LT, the consignee was YD, the port of loading was Qingdao, China, the port of discharge was Nhava Sheva, India. The cargo consisted of 14 boxes of steel balls weighing a total of 9,538kg, loaded aboard the vessel M/V "TS MUMBAI". On the same day, TS issued a corresponding telex release B/L for the same shipment, designating ZH as the shipper. AS Insurance Company provided coverage for the cargo under an all-risk insurance policy.

On 26 August 2021, the cargo was discharged at the port of destination. The consignee, YD, received the cargo the next day and subsequently reported wet damage.

After the damage occurred, the shipper, LT, claimed that the payment for the cargo had not been received. AS Insurance Company indemnified LT for the damage claim and subsequently filed a subrogation litigation against ZH and TS before the Qingdao Maritime Court.

Disputable issue: Whether LT, as the shipper and subrogated by AS Insurance Company, retained the right to claim cargo damage against the carrier.

Key Point of the First-Instance Judgement (2022) Lu 72 Min Chu No. 1697

The court ruled that, upon delivery of the cargo at the port of destination, the rights and obligations under the contract of carriage of goods by sea, including the right to claim for cargo damage against the carrier, transferred from the shipper to the consignee. As the shipper, LT lost its title to claim for the cargo damage and had no legal grounds to hold the carrier liable.

Key Point of the Second-Instance Judgement (2023) Lu Min Zhong No. 854

Pursuant to Article 829 of the Civil Code of the People's Republic of China (hereinafter referred to as Civil Code), the shipper has the right to request the carrier to suspend the carriage or return the cargo as long as the cargo has not yet been delivered to the consignee. The shipper's right to claim for cargo damage, in turn, is derived from the right to request the return of the cargo. Once the cargo has been delivered to the consignee at the destination port, the right of LT as the shipper to claim for the cargo damage has been transferred.

Pursuant to Article 81 of the Maritime Code of the People's Republic of China (hereinafter referred to as Maritime Code), when cargo damage occurs during the carrier's period of responsibility, YD, as the consignee, was entitled to claim compensation for the cargo damage against the carrier. However, AS Insurance Company failed to provide sufficient evidence to prove that the consignee had transferred the right to claim to LT. Therefore, AS Insurance Company's subrogation claim on behalf of LT against the carrier lacked both factual and legal basis.

Articles Referred by the Court of Second Instance:

Article 829 of the Civil Code
Before the carrier delivers the goods to the consignee, the shipper may request the carrier to stop transportation, return the goods, change the place of destination, or deliver the goods to another consignee. Provided that the shipper shall compensate for the losses thus caused to the carrier.

Article 81 of the Maritime Code
Unless notice of loss or damage is given in writing by the consignee to the carrier at the time of delivery of the goods by the carrier to the consignee, such delivery shall be deemed to be prima facie evidence of the delivery of the goods by the carrier as described in the transport documents and of the apparent good order and condition of such goods.

Where the loss of or damage to the goods is not apparent, the provisions of the preceding paragraph shall apply if the consignee has not given the notice in writing within 7 consecutive days from the next day of the delivery of the goods, or, in the case of containerized goods, within 15 days from the next day of the delivery thereof.

The notice in writing regarding the loss or damage need not be given if the state of the goods has, at the time of delivery, been the subject of a joint survey or inspection by the carrier and the consignee.

Comments

The concept of "shipper" under the Maritime Code is borrowed from Hamburg Rules (United Nations Convention on the Carriage of Goods by Sea, 1978). However, the Hamburg Rules do not clearly specify whether the shipper still has the right to sue after transferring the B/L or after the consignee takes delivery of the goods, leaving this issue to be resolved by the domestic laws of the contracting states. However, Chinese domestic laws, including the previous General Rules of the Civil Law , Contract Law, and the current Civil Code, do not define precisely on this issue, leading to varied interpretations and applications in both academic and practical contexts.

There are two main viewpoints regarding whether the shipper retains the right to sue after transferring the B/L. The first viewpoint holds that once the shipper transfers the B/L, the associated right to sue under the B/L is also transferred, and therefore, the shipper loses the right to sue against the carrier. The second view believes that there are two contractual legal relationships between the shipper and the carrier and the shipper maintains a contractual relationship with the carrier under the contract of carriage of goods by sea, even if the shipper loses the right to sue under the B/L after it is transferred, and the shipper therefore can still file a lawsuit based on the contract of

carriage.

The two viewpoints have been in long-lasting debate. The first view was supported in the case "Hainan Tonglian Shipping Company v. Minmetals International Nonferrous Metals Trading Company (Retrial Case of Dispute over Carriage of Goods by Sea)" published in SPC Gazette (Gazette of the Supreme People's Court of the People's Republic of China, Vol. 6, 1999), where the shipper was considered to have lost the title to sue under the B/L after transferring it to the consignee.

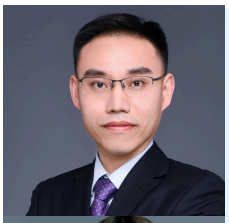
However, in the present case, although the B/L was a telex release B/L involving no physical transfer to the carrier, the first-instance court still adjudicated based on the legal relationship under the contract of carriage of goods by sea, which is consistent with the Supreme Court's precedent, negating the shipper's right to claim since the same under the B/L was transferred to the consignee after the consignee takes delivery of the cargo (though by telex release).

The second-instance court also held that the right to claim is transferred from the shipper to the consignee once the cargo is delivered to the consignee at the destination port. However, the second-instance court introduced a new reasoning by analyzing the issue from the perspective of real rights and creditor's rights, holding that this transfer is not due to the transfer of rights and obligations under the contract of carriage of goods by sea but because "the right to claim cargo damage stems from the right to request the return of cargo".

To be specific, the court of second instance referenced Article 829 of PRC Civil Code, which is the one and only provision governing the rights of the shipper under Section 3 Freight Transport Contracts, Chapter XIX Transport Contracts, Part One General Provisions, Book Three Contracts of the PRC Civil Code. This provision stipulates that the shipper has right to request the carrier to return the cargo, provided that the carrier has not delivered the cargo to the consignee yet. Consequently, the shipper's real rights, i.e. the right to request the return of the original object, exists only before delivery to the consignee. Once the carrier delivers the cargo to the consignee, this right transfers to the consignee. If the cargo is subsequently damaged or lost and cannot be returned in the "original condition", a claim for compensation based on the protection of real rights arises. As the second-instance court concluded, "the right to claim compensation for cargo damage arises from the right to request the return of the cargo".

The court of second instance further cited Article 81 of the Maritime Code to support the above reasoning. This provision stipulates that only the consignee, not the shipper, is entitled to notify the carrier and file a claim for the loss of or damage to the cargo after delivery. This is because, under the general legal principles, the shipper loses the right to request the return of the cargo once delivery has been completed, let alone the right to claim for the cargo damage.

While both courts agreed that the shipper has lost the right to claim against the carrier after transferring the B/L, their reasons are not entirely the same. In previous related cases, when dealing with issues on whether the shipper retains the title to sue after transferring the bill of lading or after the consignee takes delivery of the cargo, Chinese courts typically referred to Articles 71 and 78 of the Maritime Code or reasoned based on the rights and obligations under the contract of carriage of goods by sea. However, in this case, the court of second instance adopted an innovative approach by analyzing the sources of rights for real rights and creditor's rights. This creative viewpoint provides a mode of reasoning under general law for the idea of the shipper's loss of right to claim after the consignee takes delivery of cargoes. Nonetheless, in practice, the consignee can still transfer the right to claim to the shipper through the assignment of right scheme so as to avoid the legal risk of losing the right to claim.



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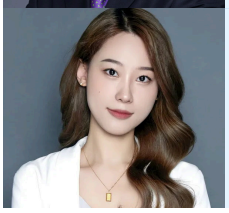

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Heavier Burden of Proof on Cargo Interests for Delayed Reports of Cargo Damage

Auther: WANG Kai

Case summary

In August 2021, a shipment of building materials was loaded on board the Vessel C for a voyage from Qingdao, China to an Indonesian port. The B/L, marked "SURRENDERED", was issued by the local agent and indicated "as agent for and on behalf of carrier: B". The consignee stated on the B/L was M.

The Vessel was under a time charter between the head owner A and the charterers B, and was voyage chartered by D for this voyage. There should be a sub-voyage charter between D and M, but the details of this voyage charter were not disclosed by M.

In September 2021, the Vessel arrived at the anchorage of the discharge port. The cargo was discharged onto barges and subsequently transported to the consignee's warehouse by inland transportation.

The "Daily Discharge Report" indicated that there was rain during the discharge, but it did not record any discharge operations took place when it was raining or report any cargo being wet. After the discharge, the Master, representatives of the consignee, the local agent, and the stevedores signed a "Notification", stating "We hereby inform that the Vessel, for which stevedores have completed the discharge of all cargo with quantity mentioned above, is not liable for any losses of cargo."

Around one month after delivery, M informed B in writing of the wet damage to the cargo, specifically the "magnesium bricks". Subsequent on-site surveys revealed that the cargo was not damaged by sea water as per the silver nitrate test results, and that the consignee's warehouse had no walls and may not be rainproof.

M, as the consignee, filed a lawsuit against A and B, claiming approximately USD 1 million for the wet damage to the cargo.

Wang Jing & Co. represented A (the head owner/actual carrier) in this case.

First-Instance Court's View on the Key Disputable Issue: Whether the cargo damage occurred within the carrier's period of responsibility

The first-instance Court held that if the cargo ("magnesium bricks") had been damaged by water during the voyage, such damage would have been apparent at the time of cargo discharge. Pursuant to Article 81 of the Chinese Maritime Code, the consignee is required to notify the carrier in writing of any damage to the cargo either at the time of delivery or within 7 days (for bulk cargo)/15 days (for containerized cargo) after delivery when the cargo damage is not obvious. Failure by the consignee to notify the carrier within the above time limits shall be regarded as prima facie evidence that the cargo has been delivered to the consignee as per the B/L and in apparent sound condition.

In this case, no cargo damage was reported by the consignee at the time of discharge or within 7 days after the cargo release, which preliminarily proved that the cargo was delivered in apparent sound condition. The notice of cargo damage was not presented to the carriers until one month after delivery, and such a delayed notification may not be deemed as a strong proof that the cargo damage occurred within the carrier's period of responsibility.

Furthermore, the cargo was first discharged onto barges at the anchorage and then transported to the consignee's warehouse, which did not appear to be rainproof. Under such circumstances, the possibility that the cargo was damaged during the inland transportation or while stored in the warehouse cannot be ruled out.

Based on the above, the first-instance Court held that the claimant had failed to prove that the cargo damage occurred within the carrier's period of responsibility and therefore dismissed the claim.

Our comments

In Chinese legal practice, if cargo damage under the B/L is reported by the cargo interests to the carrier within the time limits prescribed by the Maritime Code, the cargo interests are generally relieved of the burden of proof regarding the occurrence of cargo damage within the carrier's period of liability, as long as they can demonstrate a strong possibility of such an occurrence. However, if the damage is not reported within the prescribed time limits, the burden of

proof shifts significantly. In accordance with a rule set by the Supreme People's Court of China, the burden of proof on the cargo interests becomes heavier when the following conditions apply:

(1) The consignee fails to inform the carrier of the cargo damage at the time of cargo delivery or within 7 days (for bulk cargo)/15 days (for containerized cargo) after the cargo delivery, and;

(2) Other transportation sections are involved after the cargo was delivered to the consignee.

If the above conditions are met, the cargo interests shall not only prove that the cargo damage likely occurred within the carrier's period of responsibility, but also exclude the possibility of damage occurring outside this period. Otherwise, their claim may not be supported by the Court.

The first-instance Judgment of this case highlights the risk faced by cargo interests when cargo damage is not reported to the carrier in a timely manner (if the cargo damage did occur within the carrier's period of responsibility). While the absence of timely notification by the consignee serves as prima facie evidence that the cargo was delivered in sound condition, it is not conclusive. Cargo interests may still be able to establish that the cargo damage occurred within the carrier's period of responsibility if they can present sufficient evidence, even if they fail to meet the statutory notification requirements.

Please note this case is currently under appeal, and we will provide further comments if the appellate court rules differently on this matter.

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