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To: Transport Industry Operators

Container demurrage

The Shanghai Maritime Court issued a Judgment on 24/12/2009 to deal with the question whether a shipping company could charge the container demurrage based on the tariff published on its website.

On 5/12/2007, the shipping company shipped a laden 20' container GESU3159238 of wine, food, forks and knives from Genoa to Shanghai. The consignee under the shipping company's B/L was a forwarder. After the cargo arrival at Shanghai on 2/1/2008, the forwarder surrendered the B/L to the shipping company and obtained the Delivery Order. However, the cargoes remained uncollected since then because of the Customs declaration problem.

The shipping company sued the forwarder for the container demurrage of US\$14,010 and for the loss of the container of US\$2,000 (if the forwarder could not immediately return the empty container to the shipping company).

The forwarder argued that the shipping company's claims had been time barred according to the one year suit time limit as per the carriage of goods by sea contract, and that the container demurrage should not exceed the value of a similar container, and that the shipping company had not submitted evidence to prove the amount of US\$2,000 for the loss of the container.

According to the shipping company's website, the demurrage for a 20' container at Shanghai was: free of charge within 10 days from the vessel's discharge of the container, US\$5/day from 11 to 20 days, US\$10/day from 21 to 40 days, US\$20/day from 41 days onwards.

The shipping company and the forwarder both confirmed that the price of buying a 20' container in 2009 should be about US\$2,400.

According to the PRC law, the suit time limit for the carrier against the shipper or the consignee under the contract of carriage by sea is one year from the date the carrier knows or should have known its right has been infringed. The forwarder had not taken cargo delivery since the cargo arrival at Shanghai on 2/1/2008. The forwarder's misconduct had caused the container demurrage to continuously incur, and the infringement of the shipping company's right had been continuing as of the date of the Judgment. Accordingly, the Court held that the shipping company's claim for container demurrage had not yet exceeded the suit time limit.

The forwarder had obtained the Delivery Order from the shipping company, and should fulfill its contractual obligation to take cargo delivery and return the empty container to the shipping company. However, the forwarder failed to take cargo delivery, and thereby breached the contract of carriage and should be liable to compensate the shipping company for its losses. Due

to the uncollected cargo incident, the shipping company could not normally operate the containers for other shipments and thereby suffered losses. The shipping company would like the forwarder to pay the two-year demurrage of US\$14,010 for the period from 2/1/2008 to 31/12/2009 based on the tariff as published in the website. According to the PRC law, when one party suffers losses due to the other party's breach of contract, the party suffering losses should timely take measures to prevent the losses from becoming bigger and bigger. When the forwarder had not taken cargo delivery for a long time, the shipping company should take active measures to prevent the demurrage losses from becoming bigger and bigger. Accordingly, the Court held that it should be more appropriate to calculate the demurrage on the basis of the cost of buying a new container i.e. US\$2,400.

The container was leased from GE SEACO by the shipping company. Due to the uncollected cargo incident, the shipping company paid US\$2,000 to GE SEACO on 26/5/2009 as container total loss compensation and obtained the ownership of the container. As the forwarder had not taken the cargo delivery and thereby the container was still being used by the forwarder, the misconduct of the forwarder infringed the shipping company's ownership of the container and right of using the container and also breached the contract of carriage terms of taking cargo delivery and returning empty container. Accordingly, the Court opined that the forwarder should immediately return the empty container to the shipping company. The Court was of the further view that the forwarder should compensate the shipping company for US\$2,000 if the forwarder could not return the empty container to the shipping company.

The Court held that the forwarder should pay the container demurrage of US\$2,400 to the shipping company within 10 days from the effective date of the Judgment, and that the forwarder should return the empty container GESU3159238 to the shipping company within 10 days from the effective date of the Judgment, failing which the forwarder should pay the loss of the container US\$2,000 to the shipping company (the forwarder would obtain the ownership of the container GESU3159238 after paying the compensation). The Court did not support the balance of the shipping company's container demurrage claim US\$14,010 – US\$2,400 = US\$11,610.

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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