

To: Transport Industry Operators

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Ref : Chans advice/15

Container detention charge

In his Judgment dated 12/2/2001, Judge William Stone of the High Court of the Hong Kong SAR held that a Korean shipping company could not recover the container detention charge of HK\$703,000 or alternatively the container rental of US\$10,545 resulted from a delay of returning 37 forty foot containers for 95 days (from 15/12/1997 to 20/3/1998).

This was a shipment of newsprint paper from Indonesia to Hong Kong. The vessel arrived in Hong Kong in April 1997. The cargo interests (the 1st defendant) took the delivery of the laden containers and signed a Guarantee to the shipping company that the containers would be returned within 10 days, failing which a container detention charge at the rate of HK\$200 per day would be paid. The cargo interests instructed the 2nd defendant to ship the goods to Nanhai. The goods were subsequently returned to Hong Kong due to Customs clearance problem in Nanhai. The 2nd defendant made arrangements with the 3rd defendant to store the laden containers on a barge. After lengthy negotiations among the parties, the 37 containers were finally released by the 3rd defendant on 21/3/1998.

Both the 1st and 2nd defendants did not appear in the proceedings and should have ceased business. Only the 3rd defendant appeared and was represented.

The Judge held that the shipping company had simply failed to prove any loss. Regarding the container detention charge of HK\$200 per container per day, there was no evidence proving such as a reasonable pre-estimate of loss. Actually, the very existence of the alternative claim for the container rental of US\$3 per container per day neatly suggested HK\$200 per day would not be genuine pre-estimate of loss.

Regarding the alternative claim for the hire of replacement containers at US\$3 per day, there was no evidence proving the alleged hire of 37 substitute containers as the result of these 37 containers being detained. The shipping company had at its disposal about 20,000 containers at any one time. There was no evidence as to whether there was any spare container capacity to be utilised at that time.

The Judge declined to find that the shipping company had discharged the burden of proof as to the causative loss suffered resulting from the delay in returning the 37 containers. He dismissed the shipping company's claim against the 3rd defendant.

Please feel free to contact us if you have any questions.

Simon Chan and Richard Chan

Have you ever thought why a cargo claim would not go away easily? You get the answer if you think from the cargo interests' perspective – THEY WANT FULL SETTLEMENT and YOU HAVE TO LIMIT YOUR LIABILITY.

Solution – actively advise your client to buy All Risks Cargo Insurance; arrange for yourself a good liability insurance for protection through a professional insurance brokers also provide third party claims handling assistance. Your insurance broker should be able to help.