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To: Transport Industry Operators

MOL Comfort - PRC Judgment

The Ningbo Maritime Court issued a Judgment on 25/5/2016, and dismissed a cargo insurer's (PICC Ningbo) recovery claim of USD25,238.40 against Mitsui O.S.K. Lines Ltd ("MOSK") in relation to the vessel MOL Comfort sinking into the Indian Ocean on 17/6/2013.

The Ningbo Maritime Court held that:

1. The clause in MOSK's B/L stipulating the Japanese law to govern the contract was invalid because (i) this was a formatted contract term drafted and repeatedly used by MOSK and (ii) there was no evidence to prove that MOSK had explained to and obtained consent from the shipper on this clause. This case was subject to the PRC law.
2. According to the investigation reports of the Japanese Classification Society, the Japanese Ministry of Transport and the expert witness Anthony John Bowman appointed by MOSK, the safety allowance of the MOL Comfort was insufficient and this latent defect would easily lead to the deformation of the ship bottom's outer plates. The investigation reports also showed that the breakage of the MOL Comfort into two halves originated at the middle of the ship bottom's outer plates. The design defect's consequence (i.e. the deformation and bending of the ship bottom's outer plates) coincided with the objective situation of this incident (i.e. the breakage of the MOL Comfort's outer hull plates led to the breakage of the MOL Comfort into two halves). Moreover, there was no fire, explosion, grounding or collision in this case of the MOL Comfort's sinking into the sea. Based on the evidence available, the Court considered that the latent design defect was the most probable reason for the sinking of the MOL Comfort.
3. MOSK had timely asked the Classification Society to carry out the normal inspections, and the Classification Society did not ever find the design defect of the MOL Comfort and did not ever notify MOSK of any latent defect. According to the ship maintenance records, MOSK did timely complete the normal maintenance and inspections. Accordingly, MOSK did exercise due diligence in the MOL Comfort's daily operations. Based on the cargo stowage plan and the declarations for commencing the voyage in question, there was no overloading of cargoes and MOSK did exercise due diligence in operating the vessel, and the MOL Comfort was in the seaworthy condition. Based on the above reasons, the Court regarded that MOSK did exercise due diligence in operating the MOL Comfort but still could not discover the latent defect, and that MOSK could accordingly be exempted from any liability and did not need to bear any legal liability to PICC Ningbo for the cargo losses.

If you have any questions or would like to have a copy of the Judgment, please feel free to contact us.

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