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Cargo Claims - Unrecoverable Legal Costs remain unrecoverable for Owners

In a recent London Arbitration 10/15, (2015) 929 LMLN 4, Owners commenced the arbitration proceedings against Charterers. One of the Owners' claims was for an indemnity in respect of any subsequent liability they might incur towards or in defending claims from third-party cargo interests. Cargo interests' cargo claim failed at first instance but was going to be appealed.

Following the exchange of submissions, the Owners and the Charterers concluded a settlement agreement for charterparty disputes that provided amongst other things:

In the event that cargo interests successfully appeal the Judgment at first instance in the Belgian proceedings, then the owners claim an indemnity from the Charterers...together with any further losses that the owners may have sustained in defending the same.

The Owners successfully defended the appeal on the basis that cargo was found insufficiently packed within its cases. Even though the owners did not pay any sum to the cargo interests, but they spent Euro 66,961 in litigating in Belgian courts that remain unrecovered.

The Owners wanted to recover the unrecoverable legal costs from the Charterers pursuant to the settlement. Alternatively, the Owners asserted the charterers are liable for such unrecovered costs pursuant to section 8(d) of the Inter-Club Agreement('the ICA'), which enables the cargo claims to be apportioned between the owners and charterers on a 50/50 basis in such cases.

The Charterers denied the liability on the basis that the settlement agreement was contingent upon a successful appeal by cargo interests and since cargo interests failed, therefore they argued they have no liability to pay under the settlement agreement. In addition, the Charterers argued that that for any recovery under ICA, the Owners needs to satisfy a pre-condition that there was some liability to third party (The pre-condition refer to the cargo claim actually paid to the cargo interests by the owner).

Tribunal rejected the Owners' claim. They further gave guidance that even though Owners can recover legal costs pursuant to the ICA, provided the cargo liability was there in first place. They further commented that the purpose of ICA is to resolve the quick and ready solution for cargo liability and is not concerned for hardships such as unrecoverable cost of Owners or Charterers in case where no such liability to cargo interests exists in the first place.

For Andrew Liu's clients, the FDD team based out of Shanghai recommends the following:

1. Any settlement agreement should specifically include unrecoverable legal cost that Owners / Charterers wish to recover even when there is no liability for cargo claims, which exist in the first place.
2. FDD department of the Andrew Liu can guide you as to the tactics to reach a quick settlement. FDD Department is of the view that the Owner's lawyer should have advised the Owners that it was best to settle the cargo claim for a token amount to possibly recover legal costs from the Charterers.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk