ALCO

ANDREW LIU & CO LTD

Units 01-04, 19-24,18th Floor

41 Heung Yip Road,Wong Chuk Hang, Hong Kong

Circular Ref: 2017/0016

Date: 8 December 2017

Ransom Money in Piracy - Some Legal Clarifications

In the case of *Mitsui & Co Ltd and Others v Beteiligungsgesellschaft LPG Tankerflotte mbH & Co KG and Another (The "Longchamp") - Supreme Court (Lord Neuberger PSC, Lord Mance, Lord Clarke, Lord Sumption and Lord Hodge JJSC) [2017] UKSC 68 - 25 October 2017*, a few legal issues arising out of the ransom money associated with piracy were clarified by the Supreme Court in England. Most legal professionals were waiting for this clarification for a long time.

In this case, on 29 January 2009, Somali pirates forcibly took possession of the chemical carrier *Longchamp* in the Gulf of Aden. The vessel was carrying a cargo of vinyl chloride monomer in bulk. The pirates initially demanded a ransom of US$6 million. On 22 March 2009, a ransom payment of USD1.85 million was agreed by the shipowners (the owners) and was paid five days later. There was further Owners' operating expenses totalling USD 160,000 form the time was detained until the reduced ransom payment was agreed between the pirates and the negotiators.

The bill of lading provided that general average should be settled in accordance with the York-Antwerp Rules 1974 and its Rule A provides:

> There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule F provides:

> Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided [emphasis added].

The case reached all the way until the Supreme Court to decide these issues and the Honourable Court decided that US$1.85 million ransom payment itself was allowable under Rule A. According to the Court, the right analysis of the owners' claim of USD160,000 falls under Rule F, on the basis that the USD 160,000, as negotiation period expenses, represented "extra expense incurred in place of" the USD 4.15 million, the amount by which the ransom was reduced. On that basis, the incurring of the USD160,000 did represent an alternative course of action in mitigation from the payment of the USD 4.15 million.

FDD department of ALCO, now based in Singapore, advice for Andrew Liu's client is that:

ALCO Circulars are issued regularly and contain important information such as Loss Prevention article, News, and Case Studies. It is specially designed for the clients of Andrew Liu & Co., Ltd, with intention of providing the latest information from shipping insurance market. Recently issued circulars can also be found on our website www.andrewliu.com.hk. For further information, please contact our Marketing Department via 0086 21 60399288 or marketing@andrewliu.com.hk.

Andrew Liu & Co.Ltd

a) Chronological events and the records need to be maintained.
b) General average adjuster should be consulted at an early stage.
c) FDD department has successfully negotiated many maritime claims and if required manage such negotiations in the interests of its clients.

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

Andrew Liu & Co.Ltd