

PRC MARITIME COURTS IN ADJUDICATION OF CASES RELATING TO CARRIAGE OF
GOODS BY SEA

Legal status of port operator

The allocation of responsibilities, exemption and limitation of liabilities when cargo damage or loss occurs during the control of port operator under the Chinese Maritime Code (“CMC”).

1 CMC would be applicable: This was decided in *Re Shenyang Mining Machinery Company* in Dalian Maritime Court [2001]

2 CMC would not be applicable: This was held by the Shanghai Maritime Court in the case of *Re Shanghai Transportation and Container Company* [2001]

3 General Principles of the Civil Law were applicable: This was decided in the case of *re Qingdao Port* by the Qingdao Maritime Court [2001]

We submit that port operator is not employee of carrier and CMC is not applicable.

We considered the following factors:

1 Port operator is an independent contractor in its contractual relationship with the carrier or shipowner.

2 Port Operation Rules provides that port operator has to take independent responsibility

Shipper's right to sue the carrier

Shipper's right to sue the carrier to recover his loss under bill of lading (hereafter referred to as B/L) after B/L is transferred under CMC

1 Shipper would not be entitled: This was decided in *re Guangzhou Ocean Transportation Company* in Shanghai Maritime Court [2001]

2 Shipper would be entitled: This was held by Xiamen Maritime Court in *re Dexing Food Company* [1999]

3 It would depend on the risk burden: This was decided in *re Dalian Xiaoze Technology Company* by Dalian Maritime Court [1998]

We submit that shipper does not have the right to sue the carrier.

We considered the following factors:

1 Shipper has the right to sue the carrier in the existing contract of carriage of goods by sea provided there is no transfer and endorsement of the B/L to a consignee or third party.

2 It would be consistent with the law and practice of Carriage of Goods by Sea in England. This is provided in the Carriage of Goods by Sea Act in England and it is also the law in other common law jurisdictions. The shipper has the right to sue the carrier if the consignee or Endorsee transfers back such rights arising under the B/L back to the shipper.

The validity of arbitration clause incorporated by B/L

Whether the valid arbitration clause can be applicable to holder of B/L under CMC is being disputed.

1 The arbitration clause would not be applicable: This was decided in *re Fujian PICC* in Xiamen Maritime Court [2003]

2 The arbitration clause would be applicable: This was held by Dalian Maritime Court in *re Dalian Huanong Company* [2001]

3 The arbitration clause would be conditionally applicable: This was decided in *re Fuzhou Tianheng Shipping Company* by Wuhan Maritime Court [2009]

We submit that the second decision is more consistent with English case law.

We considered the following factors:

1 The holder of the B/L ought to know the printed terms of the B/L which will include the arbitration clause.

2 If the arbitration clause were applicable, it would limit the responsibility of carrier, which is against the spirit of CMC

3 If the clause were applicable, it would affect the jurisdiction of Chinese maritime courts

Legal nature of B/L

1 it would be proprietary right: This was decided in *re Xingli Company* in Guangzhou Maritime Court [1991]

2 it would be possessive right: This was held by Guangzhou Maritime Court in *re KOTA AJU* [1993]

3 it would be considered as security interest: This was decided in *re Fujian Donghai Company* by Xiamen Maritime Court [1999]

We submit that it is possessive right.

We considered the following factors:

1 It is possessive right in terms of development trend of juridical practice.

2 It is possessive right, which is consistent with the logic of civil law system

The goods under lien of the carrier-CMC Art.87

Carrier has a lien on the goods. Is there a precondition is that debtor shall have ownership on the goods under lien is controversial ?

1 The goods under lien shall belong to debtor: This was decided in *re Guangzhou Dongfang Shipping Agent Company* in Guangzhou Maritime Court [2000]

2 Due to the view of Supreme People's Court, Chinese maritime courts mainly take the first view. A contrary position was adopted based on articles written by the maritime judges in Dalian, Guangzhou, Shanghai and Tianjin which can be found in the website of China Foreign-related Commercial and Maritime Trial to support this view.

We support the second view.

We considered the following factors:

1 The second view is reasonable due to the development of NVOCC.

2 Chinese Contract Law supports the second view.

3 The second view is reasonable due to the protection of carrier's interests and the safety of international trade.

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