THE BOSPHORUS ONLINE

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1. TIME BARS FOR MARITIME AND INSURANCE CLAIMS UNDER TURKISH LAW

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Claim/Demand Types	**Time Bars**
Claims stemming from maritime law contracts: - Bareboat/Charter by Demise - Voyage Charter - Time Charter	1 year **Cargo claims under contracts for the carriage of goods are deemed extinguished in 1 year.*
Bill of Lading Claims	
General Average Contribution Claims	
Recourse Claims for the Cargo Loss/Damage or Late Delivery Claims	90 Days
Pollution Claims	5 Years
In Contracts of carriage for passengers: a) Claims for Death of or Personal Injury to a Passenger b) Other Claims Including Loss of or Damage to Luggage	10 Years 2 Years
Collusion Claims	2 Year
Salvage and Wreck Removal Claims	
Insurance Contract Claims	2 Years
Insurance Indemnity and Insured Sum Demands: - In Liability Insurances - In Other Insurance Types	10 Years 6 Years

2. TURKISH SUPREME COURT DECISION REGARDING THE LIABILITY OF THE CARRIER FOR THE DAMAGE TO CARGO SHIPPED AS FCL/FCL FULL CONTAINER LOAD

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11th Civil Chamber of Turkish Supreme Court (E. 2016/10471, K. 2018/4700); upheld the decision of the court of first instance on 31.5.2018 regarding an acceptance for damage claims. As claimed, the damages are caused by fresh water that got into containers and damaged 48 pieces of goods which were being carried as FCL/FCL Full Container Load. The importance of this decision is; despite the fact that the cargo in the containers were loaded by the shipper and under his responsibility, this matter weren't taken into consideration and the carrier was held liable for the damage of the cargo.

It is necessary to indicate Supreme Court's primary approach to the cases ragarding "FCL/FCL Full Container Load" clause by referring a recent decision of Supreme Court: 11th Civil Chamber of Turkish Supreme Court upheld the decision of court of first instance that rejects the claim for damages against the carrier based on the justifications of Court Of First Instance. The Court Of First Instance decided that the carrier won't be liable for the damages caused by in-container loading actions since;

-The bill of lading had the clause "Shipper's Load Stow Cont" and also the clause FCL/FCL and the cargo was delivered to the carrier by the shipper fully loaded and sealed and in this case the carrier had no responsiblity to open the container that is sealed and control the stowage,
-The loading and stacking of the containers were carried out by the shipper and the loading of the containers were not in accordance with the practices in the market,
-Three of the containers were taken in the carrying process loaded, sealed and passed the customs procedure and loading, stowing and fixing, in-container activities are in shippers responsibility due to the rule of "full container load",

As a conclusion we can say that it is accepted by Turkish practice that FCL/FCL Full Container Load clauses on bill of lading results in carriers nonliability of cargo damages as a rule.

So what is the reason of the exception in the first case that is mentioned, why the carrier was held liable? Even though the Turkish Supreme Court doesn't hold the carrier responsible for the cargo in the container (especially for stowage of the Cargo in the container), The Court holds the carrier responsible exclusively for having the container cargoworthy especially when the carrier provides containers to the shipper. Even though the shipper has the possibility to check the cargo before loading in to the container that carrier provided (which the shipper can demand replacement of the container if necessary), the shipper prefers to keep responsibilty on carrier when there is a sign about the damage caused by "uncargoworthy container". The Turkish Supreme Court uses the phrase "allonge of the vessel" when referring the container on most of their decisions. This means, if the container is uncargoworthy this will cause the vessel to be unseaworthy and as a result it will cause the carrier to be liable for the damage and loss. Furthermore; since this liability is originated from vessels unseaworthiness and uncargoworthiness, carrier will have unlimited liability according to Turkish Trade Act article 1141.

Examining the decision numbered E. 2016/10471, K 2018/4700 there wasn't any wording that indicates any damage found on container itself(for example a hole or deformation on container etc.). The court of first instance didn't explain what is cargoworthy in their decision yet the court uses theses expressions;

- Carrier is responsible for unseaworthiness, uncargoworthiness of the vessel from the beginning of the loading until the beginning of voyage,
- Uncargoworthiness covers the unworthiness of container, in this case the carrier is liable for all damages including the loss for the delay,
- Container being unworthy caused the damage and loss in cargo,

Existence of fresh water in the container is the only matter that is discussed. However from the content of the decision it is unclear when exactly the cargo got damaged which was also stated in defendant's statement. The container was loaded by the shipper and under his responsibility and there is a possibility that freshwater, which was dedected in the container, might got in before the loading and affected the goods. In our opinion, regarding these reasons; it is necessary to accept the "carriers liability of cargo" due to FCL/FCL Full Container Load clause if only the container itself is unworthy,and in this state there seems a misjudgement. In addition to this, based on the examined decision and the effect of considering container as vessels hold, it is possible to hold the carrier liable for any damage that can be related to unworthiness of container on Turkish Practice.

3. APPLICATION OF THE NEW (2012) LIMITS UNDER 1996 PROTOCOL TO LLMC 1976 IN TURKEY

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As mentioned in our newsletter no: 25 2018/5, the amendment which was made by the IMO on 19 April 2012 ("2012 Amendment") to increase the limits of liability in the 1996 Protocol ("96 Protocol") to the Convention on Limitation of Liability for Maritime Claims, 1976 ("LLMC") was not denounced by Turkey.

On the other hand, the amendment has neither been approved by the Council of Ministers or the Parliament nor been published in the official gazette, which is a necessity for the implementation of international treaties.

Accordingly, there were different opinions on whether the national procedure should be concluded for giving effect to the amendment or it should have a direct effect as per the 1996 protocol wording.

Upon a collision at the Bosphorus on 2018, the Owners applied to the Admiralty Court to limit their liability by constituting a fund as per LLMC and the question arose whether the limit of the Owners' liability should be calculated in accordance with the 96 Protocol or the 2012 Amendment.

On 15.05.2019, the Admiralty Court decided that the limitation fund should be constituted as per the limits mentioned in the 2012 Amendment. Although there have been still no Court of Appeal judgment regarding the application of the 2012 Amendment, with the above mentioned decision of the Admiralty Court we had the chance to see the approach of the Turkish Courts and we can say that the 2012 Amendment is applicable in Turkey.

4. CUSTOM FINES FOR CARGO SHORTAGES OR OVERLANDING IN TURKEY

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If shortage or overlanding cases are not proven for a valid reason, fines are applied to cover government's loss of customs tax. When a shortage or overlanding is recorded, customs will serve a notice on the vessel's local agent. The Agent is granted three months from the date of the notice to explain the reason for shortage/overlanding, or to present a Correction Manifest. It is also possible for the Owners/Agent to request a three-month extension. At the end of the second three-month extension, a final one-month extension can also be requested. At the expiry of this period, the imposition of the fine is unavoidable.

The Agent, Owner, Vessel, Master are jointly and severally liable for paying the customs fine. The imposition of the fine arises from public law and in practice the authorities collect it from the Agent directly by force of law regardless of whom the Agent represents. If the agents do not receive support from the carriers or the insurers, this can sometimes lead to the bankruptcy of the local agent depending on the amount of the fine.

As emphasized in the decision numbered E.1984/11-582, K.1986/135 of the General Assembly of the Court of Cassation:

"No provision shall be established in such a way as to enable the right holder to obtain his right from the agency."

On the other hand, Article 105, Paragraph 3 of Turkish Commercial Code states that:

"The decisions taken as a result of the lawsuits filed in Turkey against whom the agents act on behalf of, cannot be applied to the agents."

As can be seen from the above explanations the fact that the authorities collect these fines from the agents creates a contradiction with Turkish Commercial Code and with the established case law. It also puts the agents in a difficult position especially in cases where the agents do not receive support in this matter or the carriers are withdrawn or bankrupt. This is an important issue that should be discussed and resolved as soon as possible in order not to cause further problems for the agents.

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Ulgener LC/LO, based in Istanbul, with its office right in the Shipping Center, where the most major Turkish ship holding groups have their headquarters, is a law firm dedicated mainly to shipping matters, with a wide scope including all kind of related issues, such as: P&I matters, such as cargo claims - disputes arising from bills of lading, crew claims, pollution, liens on vessels; as well as accidents, such as collisions, salvage, wreck removal and general average matters, etc. FD&D matters, such as disputes arising from voyage and time charterparties, i.e. forced freight & demurrage collection, liens on cargoes, etc. H&M, war and strike clauses and cargo insurance matters, such as salvage, general average adjustment, etc., also representing underwriters and providing legal advice regarding local and international law, collection of outstanding premiums on behalf of P&I Associations, Ship Finance - Sale & Purchase, as well as assisting foreign banks and other financial institutions, covering also mortgages and disputes arising out of mortgages, Enforcement of foreign arbitration and court awards, Advising shipowners and P&I Clubs regarding issues arising from Turkish as well as International maritime law, (legal correspondent of a P&I Club within International Pool) Also assisting owners for protection of their interests and avoiding conflicts on drafting charterparties, bills of lading, MOA's and other documentation, advising leading Turkish steel manufacturers for shipping related issues, Serving as legal advisers to Turkish Chamber of Shipping, also representing the Chamber at the Bimco Documentary Committee.

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